



The Mental Health and Wellness Committee of the
Queens County Women's Bar Association Presents,

Clues About the Blues: The Mental Health of Children in Custody Battles

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Queens County Women's Bar Association a Recognized Chapter of the Women's Bar Association of New York



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Chair QCWBA Mental Health and
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By The Numbers

- According to the 2011 census Approximately 25% of children in the United States lives with only one parent – often as a result of custody disputes irrespective of whether the parents were ever married
- Children can be effected by factors such as
 - Reduced parenting time
 - Financial instability
 - Relocation and the inconvenience of travel between parents
 - **Single most detrimental factor to a child's mental health:**
Continued conflict between the parents
- Tonight we're talking about the Court's role in these conflicts but we must keep in mind that's only in instances where the parents are driven to Court. Too often conflict rages on and, for a litany of reasons such as attorney costs or resources, the Court never has the opportunity to intervene for the child's best interest



What is the Risk?

- Children can suffer from adaptive and maladaptive behavioral responses including
 - Transitory adjustment problems
 - Loyalty conflicts
 - Internalized chronic stress
 - Behavioral problems
 - Poor academic performance
 - High risk behavior such as experimentation with drugs and alcohol

This means that 25% of children are at higher risk for any or all of these symptoms/conditions *in addition* to the various environmental factors kids today face for mental health stresses or illness



When the Courts Get Involved

- When we are talking about combative custody cases we're talking about cases that are already being litigated before the Courts
- While acting as an advocate for the client, the attorney's also have a duty to the mental health of the children involved and Ravi Cattray will be talking about balancing this burden
- Where appointed, the attorney for the child will advocate for their best interest and the Court will do their best to rule in that theme and our next speaker, Joshua Katz, will talk about how this standard has evolved and the role it plays in courts today

JOSHUA KATZ, ESQ.

Approaching Custody Cases From the
Perspective of the “Attorney for the Child” and
the Burden of Interpreting the Child’s Best
Interest



Best Interests of the Child Standard

- Different from psychologist perspective as a legal standard
“Totality of circumstances” = multiple factors, including:
 - Primary caretaker
 - Stability (financial, residential, relationship, employment)
 - Ability to foster relationship with noncustodial parent
 - Appropriate housing
 - Siblings
 - Status quo
 - Parental judgment



UNIFIED COURT RULES, PART 7

Rule §7.2 Function of the attorney for the child.

- (a) As used in this part, "attorney for the child" means a law guardian appointed by the family court pursuant to section 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto.
- (b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.
- (c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.
- (d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.
- (1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.
- (2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.
- (3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.



UNIFIED COURT RULES, PART 7

Rule §7.2 Function of the attorney for the child

- Friederwitzer v. Friederwitzer, 55 NY2d 89 (1982)
- Eschbach v. Eschbach, 56 NY2d 167 (1982)
- Lohmiller v. Lohmiller, 140 AD2d 497, 498 (2nd Dept. 1988)

RAVI CATTRY, ESQ.

Approaching Custody Cases From the
Perspective of the Practitioner Relating to
Clients



Mental Health of Children in Custody Battles – Parent/Client Perspective

Best interest of the child

- Every determination of custody is based on the best interest of the child and the factors considered are:
 - Stability - emotional, educational, financial
 - Willingness to foster relationship with the other parent
 - Primary caretaker
 - Mental health of the parents



Forensic Evaluations

- Evaluation of the family by a neutral psychiatric professional appointed by the Court to provide a recommendation to the court for making a determination on custody
- Obligation of attorney to prepare the client to attend the evaluations
 - Cooperation with forensic evaluator
 - Ensure capability of client to communicate with evaluator effectively to show they are able to keep the best interests of the child/children in mind as the custodial parent
- Parent-client will be interviewed about not just their relationship with the child/children but also their relationship with the other parent and potentially their own childhood
- There may be involvement of other adults involved in the child/children's lives, such as grandparents, nanny, potentially even teachers



RULE 1.4

COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of:

(i) any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(j), is required by these Rules;

(ii) any information required by court rule or other law to be communicated to a client; and

(iii) material developments in the matter including settlement or plea offers.

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with a client's reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by these Rules or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

DR. SANAM HAFEEZ

**'A Call to Action' Instructional Information
and Tips on How to Talk to Kids and
Approach the Various Issues Discussed**

*Sanam Hafeez, PsyD
Forensic and Neuropsychologist
www.ComprehendtheMind.com*



Custody Evaluations

What to look for:

- 1) Parent-related: Parenting skills, physical and mental health, substance abuse, current and previous involvement in the child welfare facilities, and willingness to cooperate with the other parent in raising the child.
- 2) Child-related: Mental health, attachment to each parent, and preferences regarding custody or living arrangements.
- 3) Family-related: History of domestic violence, allegations of abuse, and allegations of parental alienation.



Components of a good forensic evaluation

- Interviews! Detailed interviews of parents, children, other caregivers, teachers and any other pertinent adults that may provide insight
- Standardized testing; MMPI, PAI, Wechsler IQ scale, some projectives like the TAT, parenting and trauma scales, and specific tailored testing for alcohol/drug use etc
- Use of literature and data to inform the parties and court. For instance, parents undergoing custody battles may appear 'paranoid' or 'psychotic' on some measures. Victims of DV may perform poorly
- Always remember the only person(s) relevant are the children. These are not to protect the rights of the parents but to serve the best interest of the children!! Be aware of your own biases!



Go the extra mile!

- Ask for emails and text message correspondence. They tell a story!
- Look for photos, home videos, and family event narratives
- Ask to see medical records, IEPs, school records and reports
- Children should be thriving, not existing. As legal counsel, AFC, officers of the court, look beyond the obvious and offer resources
- Create alternate plans and schedules. The more accommodating parent will put the child first.
- Ask about mental health history of not just parents but extended family.



What you can do!

- As any attorney (not just AFC) involved in any custody dispute, you have an obligation to protect the children.
- Counsel your clients, don't just tell them what they want to hear
- Know signs of abuse, maltreatment and that violence is not always (in fact, often) physical
- Children often tell the truth, and especially when they feel safe. Establish a trusting rapport, and listen. While parental alienation is a real thing, it is often misused successfully by parents to win. This is why a proper evaluation can assess all facets of a family and present a picture that often precludes the court



About me

Dr. Sanam Hafeez is a licensed psychologist with expertise in assessments and evaluations. Dr. Hafeez is an expert witness and is sought out by the media, having appeared on CNN, MSNBC, writing for The New York Times and the Washington Post. She and her team at Comprehensive Consultation Psychological Services (www.ComprehendtheMind.com) perform;

- *Child Custody and Divorce evaluations*
- *Forensic evaluations for Immigration, Hardship, Special Education and Personal Injury cases*
- *Neuropsychological assessments for ADHD, Autism, Mood disorders, Learning Disabilities and Brain Injury for children and adults*
- *Fitness evaluations (e.g. parents, employees, law enforcement)*