

REPORT OF THE BLUE-RIBBON COMMISSION ON FORENSIC CUSTODY EVALUATIONS

Delivered to Governor Kathy Hochul

December 2021

INTRODUCTION	2
THE COMMISSION PROCESS	2
SUMMARY OF THE COMMISSION’S CONCLUSIONS	3
PREVAILING QUESTION FOR CONSIDERATION: POSSIBLE LEGISLATION TO ELIMINATE FORENSIC CUSTODY EVALUATIONS	4
RECOMMENDATIONS TO THE GOVERNOR FOR ACTION VIA STATUTE, REGULATION OR APPROPRIATION	6
Recommendation 1: Propose Legislation Limiting the Use and Scope of Forensic Custody Evaluations	6
Recommendation 2: Ensure Mental Health Evaluations are Ordered Equitably, without Regard to the Income Level of Litigants	8
Recommendation 3: Create a Forensic Evaluator Certification Committee through Legislation or Judiciary Administrative Action	8
Recommendation 4: Introduce Legislation to Mandate Training of Forensic Custody Evaluators	9
Recommendation 5: Expand the Availability of Discovery in Child Custody Cases by Enacting Legislation and Providing Resources to Parties	10
Recommendation 6: Propose Legislation that Mandates Disclosure of Conflict of Interest in Selection of Evaluators	11
Recommendation 7: Advance Legislation to Establish Equitable Access to Reports	11
Recommendation 8: Develop Accountability Processes, Including Passing Legislation that Eliminates Evaluators’ Quasi-Judicial Immunity	12
Recommendation 9: Establish a Process to Further Assess Use of Virtual Technology	13
Recommendation 10: Reclassification of Forensic Evaluators as “Qualified Mental Health Evaluators”	14
Recommendation 11: Increase Resources for the Family Courts	14
MEMBERS OF THE BLUE-RIBBON COMMISSION ON FORENSIC CUSTODY EVALUATIONS	15
REFERENCES	16

INTRODUCTION

Announced in the 2021 State of the State and convened in June 2021, the Governor's **Blue-Ribbon Commission on Forensic Custody Evaluations** ("the Commission") was charged with providing recommendations to the Governor regarding if and/or how forensic custody evaluations should be used by New York courts. New York State convened the Commission after hearing from parents, attorneys, and other court actors who reported negative experiences with forensic custody evaluators.

In the New York State courts, judges order and rely on forensic evaluations for some cases involving child custody and parenting time. Statewide, there is no consistent approach regarding if and/or when evaluations are ordered, who may act as a forensic custody evaluator, how evaluators should conduct these evaluations, or how incompetent or unethical evaluations may be subject to review. While there are longstanding certification, credentialing, training, and accountability processes in place for the courts in the boroughs of New York City and the surrounding counties composing the First and Second Appellate Divisions of the New York State Judiciary, these do not extend upstate.

The Commission is co-chaired by the Honorable Sherry Klein Heitler (Ret.), former Chief of Policy and Planning for the New York State Unified Court System and Justice of the Supreme Court of the State of New York, Commissioner Sheila Poole of the Office of Children and Family Services, and Office for the Prevention of Domestic Violence Executive Director Kelli Owens. The members of the Commission include former judges, academics, attorneys who practice family and matrimonial law, children's rights experts, domestic violence advocates, psychologists, and parents. Coming to this work from different perspectives and committing to make a good faith effort to address this important issue, the Commission members gave generously of their time, energy, and expertise in developing recommendations for the Governor.

THE COMMISSION PROCESS

Among the matters considered by the Commission:

- If forensic custody evaluations should be ordered by the courts at all, and if so, under what circumstances;

- How to standardize the evaluation process;
- How reports should be used by the courts;
- How to ensure equity regarding the availability and conduct of forensic evaluations among all parties;
- How to standardize access to reports for parties and attorneys;
- Necessary qualifications, training, and oversight of evaluators;
- Possible certification processes for evaluators; and
- How to address bias in the system.

The Commission members undertook a significant amount of work in a limited timeframe. To efficiently and productively address these issues, the Commission formed **three subcommittees** to focus on issues pertaining to: **1) the use of forensic evaluations within the court process; 2) potential training and certification requirements for forensic evaluators; and 3) bias within the system.** Each subcommittee embraced its charge to study its particular area in a comprehensive manner, given the profound and permanently life-changing impact forensic custody evaluations have on many children and parents in New York State. Members engaged in hours of thoughtful debate and reviewed numerous research articles from multiple disciplines (see appendix of references).

The full Commission met monthly through the summer and fall of 2021, and also held two virtual listening sessions that were open to the public. Deep consideration was given to the public statements provided to Commission members by parents, children, forensic evaluators, attorneys and advocacy organizations about the challenges and inequities of the current forensic evaluation process, the costs of such evaluations, and the difficulties holding forensic evaluators accountable.

SUMMARY OF THE COMMISSION’S CONCLUSIONS

The State charged the Commission with examining the well-documented flaws in forensic custody evaluations. There are systemic biases and inequities, however, in the overall justice process that go beyond this singular issue, and to address those would be outside the Commission’s mandate. Custody cases in New York are heard in the state’s supreme and family courts. Only supreme courts can hear divorces, and both courts have jurisdiction over custody, visitation, orders of protection and other matters. The majority of custody cases are heard in the family courts, which are under-resourced. As a result, family courts have extraordinarily high case dockets, long delays in cases being adjudicated, and a dearth of available court-appointed counsel for those financially unable to afford private attorneys. These fundamental issues

disproportionately impact low-income New Yorkers, especially people of color and immigrants. These larger issues are not addressed in this report but offer important context for the recommendations.

Ultimately, the Commission members agree that some New York judges order forensic evaluations too frequently and often place undue reliance upon them. Judges order forensic evaluations to provide relevant information regarding the “best interest of the child(ren),” and some go far beyond an assessment of whether either party has a mental health condition that has affected their parental behavior. In their analysis, evaluators may rely on principles and methodologies of dubious validity. In some custody cases, because of lack of evidence or the inability of parties to pay for expensive challenges of an evaluation, defective reports can thus escape meaningful scrutiny and are often accepted by the court, with potentially disastrous consequences for the parents and children. Commission members recognize that this Commission was established in the hope of preventing such tragic occurrences in the future. As it currently exists, the process is fraught with bias, inequity, and a statewide lack of standards, and allows for discrimination and violations of due process.

The Commission developed a number of robust and important recommendations that address the need to reconsider the role of evaluations and the situations in which they are ordered. All members support efforts to improve training, ethics, and accountability for evaluators, and introduce more equity into the process. Those recommendations are presented in-depth in the “Recommendations to the Governor” section. The Commission also debated the question of eliminating forensic custody evaluations, either permanently or as a temporary measure as reforms are put into place. The facets of that discussion are presented below.

PREVAILING QUESTION FOR CONSIDERATION: POSSIBLE LEGISLATION TO ELIMINATE FORENSIC CUSTODY EVALUATIONS

After a review of research, reflection, and discussion, the Commission agrees that changes should be made to the current environment when custody evaluations are ordered; however, the members could not reach uniform consensus on whether forensic custody evaluations should continue to exist within the court system.

By an 11-9 margin, a majority of Commission members favor elimination of forensic custody evaluations entirely, arguing that these reports are biased and harmful to children and lack scientific or legal value. At worst, evaluations can be dangerous,

particularly in situations of domestic violence or child abuse – there have been several cases of children in New York who were murdered by a parent who received custody following an evaluation. These members reached the conclusion that the practice is beyond reform and that no amount of training for courts, forensic evaluators and/or other court personnel will successfully fix the bias, inequity and conflict of interest issues that exist within the system. These arguments are not new; calls for elimination of forensic custody evaluations have been published by multiple scholars and experts over the past two decades. These members note that even with the removal of these evaluations, the court system will be able to adjudicate custody matters based upon the normal processes and procedures for hearing evidence and determining facts in a manner that affords parents and children due process protections. Should the Governor decide to accept the recommendation to eliminate forensic evaluations going forward, legislative action will be required.

Another significant group of Commission members believe that forensic custody evaluations should continue within the court systems, but flaws with the current practice must be addressed with the reform measures discussed by the Commission and detailed below, such as better training and accountability practices. These members argue that custody litigants may present serious mental health issues, and that judges need to understand these issues to determine the custodial arrangement in a child's best interest. They note that preventing judges from hearing expert evidence on mental health and parenting dynamics will not serve the best interests of children, and believe the state can take steps to make improvements while continuing to allow judges to order evaluations under more narrow circumstances. Without neutral evaluators, parties with financial means will engage in a battle of the experts while parties with limited means will be unable to present relevant mental health evidence. They note judges and lawyers have little to no professional training in understanding family dynamics better known to behavioral health practitioners. There are also concerns that eliminating the forensic custody evaluation process confines victims of domestic violence to the forensic trauma and chilling effect of telling their story on the stand, which may also increase risk to survivors.

Some of the Commission members who support eliminating forensic evaluations as they are currently performed recommend that the court increase reliance and expand the role of local mental health service providers to perform targeted mental health assessments where forensics would otherwise have been needed. Currently in many jurisdictions, local mental health service providers only play that role in situations in which the parties lack the resources to pay for a forensic evaluation. Some on the Commission, however, argue that a mental health evaluation is not an appropriate replacement for forensic evaluations, and that such evaluations would likely work against the victims of abuse and domestic violence. They note that an exclusive reliance on other kinds of mental health professionals will present significant limitations,

as a diagnosis, or lack of one, does not conclusively determine parenting abilities. For domestic violence survivors, these limited tests could do more harm than good and thus place families and children at greater risk. They contend that preventing judges from hearing expert evidence on parenting ability and children's best interests will not serve children, and believe that the state can take steps to make improvements (e.g., training requirements and enhancement of statewide accountability practices) while continuing to allow judges to order evaluations under more narrow circumstances and forensic custody evaluators to practice in the meantime.

In the absence of unanimity regarding the elimination of forensic evaluations, Commission members also considered whether to recommend an immediate moratorium on custody evaluations until significant reforms could be enacted and funded. A more significant majority, though not all, of the Commission members agree with this approach. Should a temporary moratorium be established, Commission members urge Governor Hochul to maintain the moratorium until such time as all the Commission's recommended reforms are fully implemented. Any proposed moratorium would require a timeline and set parameters, and there is disagreement regarding how effective these proposed reforms may be, particularly if only some and not all are implemented.

RECOMMENDATIONS TO THE GOVERNOR FOR ACTION VIA STATUTE, REGULATION OR APPROPRIATION

Despite the wide range of views regarding whether to eliminate, temporarily halt, or continue forensic evaluations, Commission members agree that if forensic custody evaluations are to continue then the state must implement much-needed reforms. The Commission offers these recommendations as a potential reform package. The Commission recognizes that implementation of this package will take time and that some recommendations will require a significant financial commitment by New York State.

Recommendation 1: Propose Legislation Limiting the Use and Scope of Forensic Custody Evaluations

A majority of Commission members support limiting the use and scope of forensic custody evaluations to those cases where they are necessary to assess a parent's mental health, as it affects their behavior as a parent. These members recommend evaluations only be ordered when all parties agree there is a need. Judges should not order forensic evaluations for the purposes of finding out "what is really going on",

obtaining an outside professional opinion on parenting access, or general information gathering or data collection.

In addition to limiting the scope of evaluations, the majority of members felt forensic evaluators should not be called upon to assess allegations of intimate partner violence or other forms of family abuse, or allegations that one parent is distancing a child or children from the other parent. Both are questions of fact that should be determined by the judge based on the evidence presented at trial. If a judge deems specialized expertise to be essential in order to accurately interpret the facts, especially related to family abuse, and such expert testimony is not proffered by either party, court appointment of specialized experts is still permissible under this recommendation. Since general forensic evaluators lack expertise in child sexual abuse, and often other forms of abuse, they should never be relied on for such issues. Additional specialized issues could include child sexual abuse, special education, developmental disabilities, or other particular medical conditions. Access to such specialized experts would be more equitable than the use of forensic evaluations, assuming parties are not required to pay the fees of such experts and that the fees paid by the state for such expert testimony are reasonable.

Others emphasize the critical importance of not limiting custody evaluators to mental health evaluations. They are concerned that this will hamper evaluators' ability to thoroughly understand individual cases and will not be helpful to the judges without information regarding family dynamics. Moreover, they are concerned that a misuse of mental health evaluations could potentially backfire on victims of domestic violence because research has shown that victims, but not perpetrators, score poorly on mental health testing and evaluations. They also note that using mental health evaluations in this context is a violation of psychologists' ethical guidelines.

Commission members support legislation that would require any judge ordering an evaluation to make findings in writing or on the record specifying the factors considered in ordering a forensic evaluation in a particular case. In their reports, forensic custody evaluators should be required to also provide a rationale for use of certain assessments and approaches (e.g., psychological testing) and the limitations of such testing or approaches. Particularly (but not only) when evaluations under this recommendation will be limited to cases where there is concern about a party's potential identified mental disorder, these members believe evaluators should be prohibited from opining on questions of fact, such as whether a family offense was committed, and from making specific recommendations for custody or parenting time in their reports. Other members believe it is responsible for evaluators to suggest parenting options to the court, assuming those are based on logical reasons consistent with the facts of the case.

Recommendation 2: Ensure Mental Health Evaluations are Ordered Equitably, without Regard to the Income Level of Litigants

When appropriate and relevant to the proceedings, the parties should have equal ability to request mental health evaluations, and judges should order such evaluations, conducted by qualified mental health professionals regardless of income or ability to pay. The number and availability of qualified mental health evaluators in the state must be increased.

Currently, families of means typically pay out of pocket for forensic evaluations, with the costs ranging from \$4,000 to five or even six-figures. Although there is also a state-funded process of compensating court-ordered custody evaluators under the auspices of the court system currently operating, families of marginalized communities and/or low-income families are instead ordered into the child protective system (which already over-represents children and families of color and many living in poverty) where they are required to cooperate with an “investigation” pursuant to FCA §1034/§255. The Commission is troubled by the child welfare intervention for poorer families and believe these investigations create inequality of resources and procedures across income levels. All members of the commission support increasing resources for mental health evaluations, to cover the costs for poorer families, without forcing them into the child welfare system.

Recommendation 3: Create a Forensic Evaluator Certification Committee through Legislation or Judiciary Administrative Action

The Commission unanimously recommends that a standing, statewide Forensic Evaluator Certification Committee (“FECC”) be established to review and approve or deny applications of psychiatrists, psychologists and social workers seeking to serve as forensic custody evaluators throughout New York State.

The FECC would be responsible for: (1) maintaining a list of approved, trained forensic custody evaluators in each department; (2) creating a system to recertify forensic custody evaluators on a regular basis; (3) ensuring comprehensive and scientifically based training; (4) creating best practices for forensic custody evaluators during various stages of the forensic evaluation; (5) creating a transparent, accessible, statewide complaint process for parents, attorneys, judges, and other court personnel to raise concerns about an individual forensic custody evaluator, educate stakeholders on how

to lodge a formal complaint, and provide notice to complainants when investigations have been concluded and the results of the investigation; and, (6) ensuring that an immediate and thorough review occurs for those cases in which a fatality or serious injury occurs to a child or parent during or after the forensic report is made, including identification of the scope of these investigations.

The Commission notes that such a committee would, however, be impeded in its ability to approve and certify evaluators if evaluators are not also mandated to receive training on the key issues the Commission identified as problem areas.

Recommendation 4: Introduce Legislation to Mandate Training of Forensic Custody Evaluators

The Commission unanimously recommends that mandatory and ongoing trainings for qualified mental health evaluators be established. Such trainings must cover topics related to the history of forensic evaluations, best practices in forensic evaluations, implicit and explicit bias, domestic violence and intimate partner violence, child abuse, child sexual abuse, substance abuse, coercive control, and trauma. In addition, the state should establish a “blind” regular peer review process, as well as a rigorous quality assurance review program to ensure that professional standards are followed as an additional safeguard against bias.

Evaluators should receive no less than 36 hours of basic training. Continuing Education (“CE”) credit should be offered for these trainings, whenever practicable, however the trainings should commence without delay.

A standing committee composed of mental health, legal, domestic violence and child abuse experts should be created to produce a uniform, statewide training curriculum based on scientifically based methods and materials. The individuals seeking to serve as forensic custody evaluators in New York State would complete this training prior to applying to become certified by the FECC to serve. The standing training committee, upon completing the development of a training program, may be converted to a Training, Curriculum and Guidelines Committee (“TCGC”) that will work under the auspices and supervision of the FECC. The TCGC would be comprised of forensic evaluators, attorneys, judges, experts in domestic violence, child abuse and child sexual abuse, and parents/survivors. The TCGC would meet regularly to review the training curricula and update accordingly.

Recommendation 5: Expand the Availability of Discovery in Child Custody Cases by Enacting Legislation and Providing Resources to Parties

Pretrial disclosure pursuant to Civil Practice Laws and Rules (“CPLR”) Article 31 should be permitted on a statewide basis in child custody cases, with some specific exceptions. Currently, because custody proceedings are special proceedings, CPLR Article 31 does not automatically apply. Attorneys must request and obtain court permission to engage in discovery, which occurs routinely in the Third and Fourth Departments. When there are issues of domestic violence, sex abuse or child sexual abuse, the court typically hears arguments about limiting discovery. The court often issues scheduling orders with discovery schedules, assuming discovery will occur. Conversely, in the First and Second Departments, requests for discovery in custody proceedings are not made due to case law prohibitions.

Employing the use of pre-trial discovery statewide may significantly reduce judges’ use of forensic evaluation, which is currently relied upon as a means of gathering information. Discovery could provide an alternative and fairer means of gathering evidence which comports with due process, permitting the judge and counsel to determine the facts of the case or analyze evidence that does not pertain to mental health issues.

Even though discovery can have advantages, Commission members understand that the unfettered use of discovery can also be a tool for abusive partners to engage in litigation abuse (i.e., use the litigation itself as an opportunity to further harass and intimidate). There should be a presumption against depositions and interrogatories in cases involving intimate partner violence. In the under-resourced family courts, where many litigants are self-represented or are appointed counsel with huge caseloads and little out of court case preparation time available, time-consuming pretrial discovery, including depositions and interrogatories, is also not viable. In fact, it is seldom used in upstate low-income cases. If discovery is mandated early in the litigation, the judge should issue an order that specifically describes the scope of discovery to be conducted in that case, and should consider court oversight, for instance by being the repository for sensitive case materials.

Materials should also be developed and made available to all litigants *pro se* to explain how to navigate the discovery process. Additional financial resources should be provided for all assigned counsel (both counsel for parents and attorneys for children) so that counsel will be able to handle the increase in the workload that discovery will require. Among other steps, the state should increase funding for institutional providers

that represent parents and children and increase the state's rate of pay for court-appointed counsel and Attorneys for Children (which is currently statutorily mandated at significantly below market at \$75/hour).

Recommendation 6: Propose Legislation that Mandates Disclosure of Conflict of Interest in Selection of Evaluators

In response to reports of conflicts of interest, particularly the impact of the substantial fees for custody evaluations on some professionals' livelihoods, evaluators should be required to disclose: a) past or concurrent referrals by attorneys, judges, Attorneys for Children, or other professionals involved in the case for other evaluations, or other professional appointments; b) professional and/or personal interactions outside of court; business dealings/interactions; c) donations to campaigns. If such disclosures result in a litigant or attorney objecting to the candidate working on the case, the judge should not select that evaluator for the case.

When forensic evaluations are ordered by a judge, all litigants should be provided with pertinent information. That information should include the goals of the forensic evaluation, the roles and responsibilities of the evaluator, the time frame, the litigants' rights with respect to the evaluation (noting that litigants have the ability to object via court processes to a forensic evaluation or to the selection of a particular forensic evaluator), and the process for lodging complaints about an evaluator.

Recommendation 7: Advance Legislation to Establish Equitable Access to Reports

There is inconsistency in how and to whom forensic custody reports are provided. In the Commission's public listening sessions, many parents and survivors of abuse provided testimony about how their inability to access and/or carefully review their forensic report impaired their ability to challenge the conclusions of the report in court, or to make counsel aware of the flaws and inadequacies in the report. Several also commented about the exorbitant costs of obtaining such reports.

Commission members agree that the inability to access these reports and the underlying data created fundamental due process, fairness, and equal justice issues, requiring immediate action. A group of Commission members believes that each party and litigant should be provided with his or her own copy of the forensic report, file, and underlying data, which they would then be able to share with their retained experts and consultants.

Other Commission members support providing parties and counsel access to the reports, but do not support providing physical copies of the reports to litigants. Many Commission members raised safety and privacy protection concerns related to this recommendation. They stress the need for adequate safeguards such as redacting names and addresses from the evaluation, report, and accompanying file before sharing it with litigants and counsel, especially in instances where confidentiality orders and orders of protection are in place. Judges should issue orders prohibiting the sharing of this confidential information and should have discretion to impose case-specific conditions and/or limits on public dissemination of information in the reports. There was also a request to redact sections that include what a child disclosed to the evaluator, as allowing the parties to see this may endanger the child.

Recommendation 8: Develop Accountability Processes, Including Passing Legislation that Eliminates Evaluators' Quasi-Judicial Immunity

Most of the members of the Commission agree with the need for the elimination of quasi-judicial immunity. Currently, when parents and attorneys believe unethical, biased or incompetent evaluators have victimized them or their children, there is no well-known avenue to have their grievances addressed. In the First and Second Departments, a process overseen by the Office of Court Administration exists to have the evaluator removed from a panel where the evaluator is appointed, but parents are often not given information about it and do not know how to pursue it. The Commission suggests this be rectified with information about every aspect of the process provided in writing to all litigants.

The relevant statutes should be amended to (a) explicitly require the Office of Professional Development of the State Department of Education (OPD) to investigate such complaints as fully as any other complaints filed, while maintaining confidentiality of court documents reviewed; and (b) require the court overseeing the custody matter to provide any information or material requested by OPD to allow the investigation to proceed unimpeded to conclusion.

Because OPD reviews forensic evaluators' licenses, a minority of the Commission is concerned that unlike the process that exists in the First and Second Departments overseen by the Office of Court Administration, in the Third and Fourth Departments a process that permits a review of the evaluators but does not affect their professional licenses does not exist. These members recommend that all state litigants, counsel, judges and forensic evaluators should be able to lodge complaints about a forensic

evaluator's performance and limit the ability of a forensic evaluator to conduct evaluations in the future, without necessarily jeopardizing their professional license. Some members of the Commission argue that this function should be removed from OPD entirely and be overseen by another entity.

A majority of Commission members believe that as common law effectively prohibits civil action against evaluators, a cocoon of quasi-judicial immunity impedes evaluator accountability. They recommend legislation be enacted eliminating such quasi-judicial immunity so that evaluators may be subject to civil liability where their conduct gives rise to a cognizable cause of action.

Those who oppose it argue the very nature of custody evaluations will often cause intense reactions from parents angered by the findings in the report and could lead to retaliatory civil litigations against the evaluator. The decertification process discussed above will provide adequate protection against harmful evaluators without scaring good evaluators from serving in this role.

Recommendation 9: Establish a Process to Further Assess Use of Virtual Technology

There should be further study to consider issues such as the ethics of virtual evaluations, the lack of home visits, access to technology, quality of internet, safety protocols, and confidentiality. Commission members identified several potential advantages to using virtual technology for forensic evaluations. Virtual evaluations could enable downstate forensic evaluators to be used in upstate cases, thereby increasing the number of forensic evaluators available in upstate communities underserved by behavioral health practitioners. Many victims of intimate partner violence may feel more comfortable being interviewed via a virtual platform. Further, litigants may be able to participate in virtual proceedings without the attendant costs of lost pay or day care necessitated by in court proceedings.

However, concerns have been raised about the ability of abusers to manipulate their partners or children off screen and outside the view of the forensic evaluator. Litigants who lack access to technology may only be able to access public spaces like libraries and coffee shops for virtual interviews, a significant invasion of privacy. Only some courts are providing computers with internet access in private spaces at the courthouse or other public buildings, and that should be considered in any study.

Recommendation 10: Reclassification of Forensic Evaluators as “Qualified Mental Health Evaluators”

Most Commission members support statutorily reclassifying forensic evaluators as Qualified Mental Health Evaluators so there is a clear understanding by the parties, attorneys, and the court of their role. The use of the term “forensic” in connection with the term “evaluator” creates an underlying assumption that the forensic evaluator’s role is to investigate and solve the issues before him/her/them and to present the answer to the court. But it is the role of the court, not the evaluator, therefore the name used for appointed mental health experts should convey the limits of their roles.

One member supports this reclassification but also feels there should be a specific definition included that explains the scope of the “Qualified Mental Health Professional” role. Others on the Commission felt that this classification would be misleading as this violates “best practice” and the work of the forensic evaluator is not, nor can ever be a diagnosis or a mental health evaluation.

Recommendation 11: Increase Resources for the Family Courts

As discussed in the introduction, the family courts, where most child custody cases are litigated, are among the least-resourced courts in the state despite the life-and-death nature of the critical issues are adjudicated there. While the narrow focus of this Commission was dedicated to forensic evaluations, the Commission hopes for an overall investment in the family courts to address these issues and the recommendations laid out above.

MEMBERS OF THE BLUE-RIBBON COMMISSION ON FORENSIC CUSTODY EVALUATIONS

Chairs

- Hon. Sherry Klein Heitler, Retired, Former Chief of Policy and Planning for the New York State Unified Court System and Justice of the Supreme Court of the State of New York
- Kelli Owens, Executive Director, NYS Office for the Prevention of Domestic Violence
- Sheila Poole, Commissioner, NYS Office of Children and Family Services

Commission Members

- Amie Barnes, Executive Director, Seven Dancers Coalition
- Jaya Connors, Assistant Professor of Law and Director of Field Placement Clinic, Albany Law School
- Hon. Laura E. Drager, Retired, Manhattan Supreme Court
- Jacqueline Franchetti, Founder, Kyra's Champions
- Jennifer Friedman, Director, Bronx and Manhattan Legal Project and Policy, Sanctuary for Families
- Joan Gerhardt, Director of Public Policy and Advocacy, New York State Coalition Against Domestic Violence
- Dr. Jerold Grodin, Director of Professional Affairs, New York State Psychological Association
- Leah Hill, Clinical Associate Professor of Law, Fordham University School of Law
- Pei Fong Kuo, Parent and Survivor Advocate
- Dr. Robin Lynch, Former Chair, Child Custody Evaluation Committee for the Forensic Division of the New York State Psychological Association

- Joan Meier, Professor of Clinical Law and Director of the National Family Violence Law Center, George Washington University Law School
- Hon. Janice M. Rosa, Retired, Erie County Supreme Court
- Michael Scherz, Director of the Domestic Violence Project, Lawyers for Children
- Lorraine R. Silverman, Partner, Copps DiPaola Silverman, PLLC
- Dr. Carolyn Springer, Associate Professor of Psychology and Director of African, Black and Caribbean Studies, Adelphi University
- Timothy M. Tippins, Founder, MatLawSystems Corp.
- Harriet Weinberger, Director, Office of Attorneys for Children at Supreme Court of the State of New York, Appellate Division, Second Department

REFERENCES

22 NYCRR 623.

22 NYCRR 680.

Appellate Division First and Second Departments. *Mental Health Professionals Panel Application*.

Appellate Division First and Second Departments. *Judicial Evaluation of Forensic Services*. Retrieved from <https://www.nycourts.gov/courts/ad2/pdf/2013%20Mental%20Health%20Professionals%20Handbook.pdf>

Appellate Division First and Second Departments. *Mental Health Professionals Panel Application for Psychiatrist and Psychologist Without Forensic Custody Experience*.

Appellate Division First and Second Departments. *Mental Health Professionals Panel Application for Social Workers*.

Appellate Division First and Second Departments. *Mental Health Professionals Panel Re-certification Application 2021-2021 Psychiatrist/Psychologist*.

Appellate Division First and Second Departments. *Mental Health Professionals Panel Social Worker Re-certification Application*.

Bragg, C., For *After children die, questions of standards and biases*, Times Union, (June 1, 2020) - <https://blog.timesunion.com/capitol/archives/290251/after-children-die-questions-of-standards-and-biases/>

Bragg, C., *For A child's death in Schenectady draws scrutiny in Family Court*, Times Union, (October 3, 2021), Available at <https://www.timesunion.com/state/article/A-child-s-death-in-Schenectady-draws-scrutiny-of-16496870.php>

Breger, Melissa L., *The (In)Visibility of Motherhood in Family Court Proceedings*, New York University Review of Law & Social Change, Vol. 36, P. 555 (2012), Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2204680.

Conner, D. H., *Back to the Drawing Board: Barriers to Joint Decision-making in Cases Involving Intimate Partner Violence*, Duke Journal of Gender Law & Policy, 18, 223 (2011).

Davis, G., *A Systematic Approach to Domestic Abuse–Informed Child Custody Decision Making in Family Law Cases*, Family Court Review, 53(4), 565-577 (2015).

Davis, O'Sullivan, Susser and Fields, *Custody Evaluations When There are Allegations of Domestic Violence: Practices, Beliefs, and Recommendations of Professional Evaluators*, Final Report to Department of Justice, Award # 2007-WG-BX-0001 (May 2011).

Erickson & O'Sullivan, *Doing Our Best for New York's Children: Custody Evaluations When Domestic Violence is Alleged*, 23:2 NY Psychologist 8-12 (2011).

Gordon, Anne D., *Better Than Our Biases: Using Psychological Research to Inform Our Approach to Inclusive, Effective Feedback*, 27 Clinical Law Review 195, Duke Law School Public Law & Legal Theory Series No. 2021-z28 (2021), Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3777546.

Jeffries, S., *In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings, and the "Expert" Assessments that Guide Judicial Determinations*, Laws, 5(1), 14 (2016).

Keilitz, S. L., Davis, C. V., Flango, C. R., Garcia, V., Jones, A. M., Peterson, M., & Spinozza, D. M., *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers*, Williamsburg, VA: National Center for State Courts (1997).

Hill, Leah A., *Do You See What I See – Reflections on How Bias Infiltrates the New York City Family Court – The Case of the Court Ordered Investigation*, 40 Colum. J.L. & Soc. Probs. 527 (2007), Available at: https://ir.lawnet.fordham.edu/faculty_scholarship/400.

Lovik, M. & Shiemke, R., *Domestic Violence and Children's Best Interests*, Michigan Bar Journal (2014).

Lubit, R., *Recognizing and Avoiding Bias to Improve Child Custody Evaluations: Convergent Data are not Sufficient for Scientific Assessment*, Journal of Family Trauma, Child Custody & Child Development, 18:3, 224-240, Available at: <https://doi.org/10.1080/26904586.2021.1901635>

Matrimonial Practice Advisory and Rules Committee (2020). *A White Paper on Forensic Evaluations in Custody Cases*.

Meier, Joan S., et al., *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations*, GWU Law School Public Law Research Paper No. 2019-56 (2019), Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448062.

Sapien, J., *For New York Families in Custody Fights, a 'Black Hole' of Oversight*, ProPublica, (March 7, 2017), Available at <https://www.propublica.org/article/for-new-york-families-in-custody-fights-a-black-hole-of-oversight>.

Saunders, D.G. & Browne, A., *Intimate Partner Homicide*. In R.T. Ammerman & M. Hersen (Eds.), *Case Studies in Family Violence*, Kluwer Academic Publishers (2000), Available at https://link.springer.com/chapter/10.1007%2F978-1-4615-4171-4_18.

Saunders et al, *Child Custody Evaluators' Beliefs about Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge, and Custody-Visitation Recommendations*, Final Technical Report Submitted to the National Institute of Justice (2011).

Stark, D.P., Choplin, J.M., & Wellard, S. (2019). *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform*, Mich. J. Gender & L. (2019).

Tippins, T M, "Forensic Custody Reports: Where's the Science," NYLJ, 09-04-19.

Wisconsin Governor's Council on Domestic Abuse & End Domestic Abuse Wisconsin, *Domestic Abuse Guidebook for Wisconsin Guardians Ad Litem: Addressing Custody, Placement, and Safety Issues* (2017)

Working Group on Complex Divorces -- Multidisciplinary Collaboration, *It Won't Stop Until You Protect the Victims: Complex Divorces and Suspicions/Allegations of Domestic Violence*, CSMS Group, Netherlands (2019).