MENTAL HEALTH LAW 101

2017 Seminar Material

S0179.17

New Jersey Institute for Continuing Legal Education

A Division of the State Bar Association
NJICLE.com

MENTAL HEALTH LAW 101

Moderators/Speakers

Honorable Daniel D'Alessandro, JSC
(Jersey City)

Honorable Patricia B. Roe, JSC
(Toms River)

Speakers

Jill Ducoff Claudio, MSW, LCSW
Capital Health System
(Trenton)

Steven M. Fishbein, MS, CRC, LRC
Division of Mental Health and Addiction Services (DMHAS)
(Trenton)

Hope Massa, MSW, LSW
Capital Health Regional Medical Center (Trenton)

Jessica S. Oppenheim, Esq.
Director, Criminal Justice Advocacy Program, The Arc of New Jersey
(North Brunswick)

Georgina Giordano Pallitto, Esq.
Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney
Pallitto Law, LLC
(Newark)

Brian I. Sperber, Esq.
Assistant Deputy Public Defender, Division of Mental Health Advocacy
(Newark)

S0179.17

Table of Contents

Capital Health Regional Medical Center

Hope Massa, MSW, LSW

MERCER COUNTY'S DESIGNATED PSYCHIATRIC SCREENING CENTER

Screening Law

10:31-1.2 Purpose

(a) The purposes of the Screening and Screening Outreach Program are as follows:

- 1. To provide clinical assessment and crisis stabilization in the least restrictive, clinically appropriate setting, as close to the individual's home as possible, in a manner that is culturally competent and recovery-oriented and assists the consumer in achieving a self-directed transition to wellness;
- 2. To provide outreach to individuals who may need involuntary commitment and are unable or unwilling to come to the screening service location, as stipulated in N.J.S.A. 30:4-27.5(d);
- 3. To provide outreach for the purpose of crisis intervention and stabilization;
- 4. To assure referral and linkage, which is voluntary in nature to appropriate community mental health and social services;
- 5. To coordinate access, where appropriate, to the publicly affiliated acute care psychiatric resources serving a designated geographic area, that is, acute partial hospitalization/care, crisis housing or voluntary inpatient services;

Screening Law

- 6. To screen individuals, so that only those persons who are in need of involuntary commitment, as set forth in N.J.S.A. 30:4-27.2m, are committed;
- 7. To serve as the admission screener and primary route of access to the short term care facility, county psychiatric hospital, and State psychiatric hospital;
- 8. To provide training and technical assistance concerning psychiatric emergencies to other social service, law enforcement and mental health providers in the geographic area;
- 9. To coordinate a system for review and monitoring of the effectiveness and appropriateness of screening and screening outreach service use, including impact upon admissions to State and county psychiatric hospitals; and
- 10. To provide leadership within the acute care network of services and advocate for services to meet consumers' needs and encourage the system to respond flexibly.

Screening Service

- In the state of New Jersey, the Emergency Mental Health Psychiatric Screening service is a 24 hour 7 Day a week, 365 day a year mental health service available to the community and residents of the designated county that the screening center is located in.

Purpose of the Screening Service

- The purpose of the screening services is to determine need of level of care for the patient and provide linkage to either an inpatient psychiatric facility (Involuntary, Consensual, or Voluntary) or outpatient resources in the community.

How Screening Services Are Utilized

- Screening services are utilized through the emergency room or mobile outreach.
- All patients that are brought to the hospital through mobile outreach, police, ems, or walk in must go through a medical clearance in the ER before being screened in the Screening Center

Services Provided

- Mobile Outreach

Mobile Outreach requests can come from a community treatment provider, nursing homes, family or friends of the patient, or police.

The requests are triaged through the screening center's crisis hotline. Once all available information is collected and it is appropriate a Mobile Outreach will be offered. Mobile Outreach brings the psychiatric screening service into the community through a team of 1-2 screeners accompanied by police if in a community based non secured setting (private residence, community mental health agency, primary care doctors offices)

Once dispatched and on location screeners contact local police department (if applicable) for assistance with assessment of the patient. Once police arrive screening can take place.

If it is deemed that the patient meets criteria of involuntary inpatient psychiatric hospitalization a transport order can signed by a screener for the patient to some back to the hospital being transported by police.

Once the transport order is signed the patient must come back to the hospital being transported by police.

Screening Process

- The screening process consists of a psychosocial assessment (current psychiatric symptoms, psychiatric history, and demographics) current mental status, and most importantly assessment for dangerousness to self, others or property by reason of mental illness.
- Through this assessment need for level of care is determined.

Screening Process

- The screening service or affiliated emergency service procedures shall require recording of pertinent consumer information, where available, including, but not limited to:
- i. Basic identifying data as it relates to the presenting crisis;
- ii. The history and nature of the presenting problem;
- iii. The psychiatric and social history;
- iv. The medical history, including current medical status problems, allergies and current medication;
- v. The mental status and level of functioning;
- vi. Any drug and alcohol use and history;
- vii. Any indication of dangerousness;
- viii. Exploration of available resources and natural support system;
- ix. Preliminary diagnosis; and
- x. Whether or not the consumer has executed an Advance Directive for Mental Health Care.

Levels of Care

- Involuntary
  - Meets criteria of dangerousness to self, others, or property by means of mental illness
- Consensual
- Voluntary
- Outpatient Treatment- Outpatient, EISS (early Intervention Support Services), IOP, Partial Care, Involuntary Outpatient Commitment (IOC)
  - Care Management Teams- RIST, ICMS, PACT, Supportive Housing
  - Group Homes

Involuntary Commitment Process

- If a patient meets criteria for involuntary inpatient psychiatric admission a certified screener will complete a screening document recommending involuntary inpatient care. The patient then will be evaluated by a psychiatrist. If the psychiatrist agrees with the recommendation of the screener the psychiatrist will complete a Physician Certificate (PC). The patient will then be referred to the receiving Psychiatric facility. A second PC must be completed by a second psychiatrist within 72 hours. Screening Document & 2 PC's are then sent to the Judge in the residing County where they are received and sent back with the Judges Order completing the process until court review.

Advanced Directives

- **Psychiatric/Mental Health Advance Directives (PAD): Refers to written instructions making a decision in advance about mental health treatment, including medications, voluntary admission to inpatient treatment and electroconvulsive therapy.**

Important Links

Designated Screening Centers by County

- http://www.state.nj.us/humanservices/dmhas/home/hotlines/MH_Screening_Centers.pdf

Department of Human Services General Definitions

- http://www.state.nj.us/humanservices/staff/opia/documents/DHS%20General%20Definitions.pdf

Mental Health and the Law

Brian I. Sperber

What is Mental Heath Law…?

- Generally speaking, Mental Health Law are the laws pertaining to individuals who either have or possibly have a mental health diagnosis, as well as the individuals both managing and treating those individuals
- While Mental Health Law covers a variety of topics, today, we are going to speak in detail about the following areas of Mental Health Law
- Civil Commitment
- Competency to Stand Trial
- Not Guilty for Reason of Insanity
- *Krol* Supervision
- Guardianships/Power of Attorney
- Mental Health Court

"Mentally Ill"

- For a person to be committed, they must be found to suffer from a mental illness.
- According to N.J.S.A. 30:4-27.2(r): a person is mentally ill when they suffer from a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality. The term mental illness is not limited to "psychosis" or "active psychosis" but shall include all conditions that result in the severity of impairment described above.

Important statutes for civil commitments

The New Jersey Screening Law

- New Jersey Statute 30:4-27.1, enacted in 1987, was done so that each county or designated mental health service area would develop a screening service and short-term care facility which will meet the needs for evaluation and acute care treatment of mentally ill persons in that specific county or service area.
- The goal was for each county or service area to provide accessible crisis intervention, evaluation, and referral services to mentally ill persons in the community, clinically appropriate alternatives to inpatient hospitalization, and when necessary, provide a means for involuntary commitment.

Screening Centers

- New Jersey Statute 30:4-27.4 provides that the Commissioner of Mental Health Services shall designate at least one mental health agency or facility in each service area to act as a screening center
- This place provides assessment , emergency, referral,, and if needed involuntary commitment to mentally ill persons within this catchment area
- The designated screening center for Hudson County is the Jersey City Medical Center

Who merits civil commitment?

- New Jersey Statute 30:4-27.2(m) states that an adult who is mentally ill, whose mental illness causes the individual to be dangerous to self of dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at the short term care psychiatric facility because other services are not appropriate or available to meet the person's mental health needs

Temporary Orders of Commitment

- When it is alleged that an individual needs commitment, the County needs to obtain a temporary order of commitment to detain an individual at a psychiatric facility to receive continued treatment.
- After being presented by certificates by two qualified mental health care professionals, a person is temporarily committed if a judge finds that there is probable cause that an individual is mentally ill, the individual is dangerous to self, others or property, and no other appropriate facilities or services are available.
- The temporary order of commitment is valid through an individuals initial commitment review, but cannot exceed 20 days.

Legal Standard of Commitment Reviews

- New Jersey Statute 30:4-27.15(a) states that in order to continue and individual's civil commitment, the State must prove that the individual needs continued inpatient treatment by clear and convincing evidence.
- Evidence is clear and convincing when it produces a firm belief in the mind of the trier of fact as to the allegations sought to be established.

Court Rules Controlling Civil Commitment

- ALL PROCEDUREAL ASPECTS, FROM APPLICATIONS FOR COMMITMENT, TO HEARINGS, TYPES OF HOSPITAL ADMISSION, METHODS OF ADMISSION, AND DISHARGE ARE CONTROLLED BY COURT RUILE 4:74-7 FOR ADULTS, AND 4:74-7(a) FOR MINORS

Important law for NGRI and competency cases

Controlling Law for Competency Cases

- N.J.S.A. 2C:4-4: “No person who lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.”
- N.J.S.A. 2C:4-5a: “Whenever there is reason to doubt the defendant's fitness to proceed, the court may on motion by the prosecutor, the defendant or on its own motion, appoint at least one qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant.”
- N.J.S.A. 2C:4-5(b): The report of the examination shall include at least the following: (1) a description of the nature of the examination; (2) a diagnosis of the mental condition of the defendant; (3) an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense. The person or persons conducting the examination may ask questions respecting the crime charged when such questions are necessary to enable formation of an opinion as to a relevant issue, however, the evidentiary character of any inculpatory statement shall be limited expressly to the question of competency and shall not be admissible on the issue of guilt.

Competency Continued

- N.J.S.A. 2C:4-6(a): When the issue of the defendant's fitness to proceed is raised, the issue shall be determined by the court. If neither the prosecutor nor counsel for the defendant contests the finding of the report filed pursuant to section 2C:4-5, the court may make the determination on the basis of such report. If the finding is contested or if there is no report, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, either party shall have the right to summon and examine the psychiatrists or licensed psychologists who joined in the report and to offer evidence upon the issue
- N.J.S.A. 2C:4-6(b) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided At this time, the court may commit him to the custody of the Commissioner of Human Services to be placed in an appropriate institution if it is found that the defendant is so dangerous to himself or others as to require institutionalization, or it shall proceed to determine whether placement in an out-patient setting or release is appropriate

NGI Cases

N.J.S.A. 2C:4-8 : After a client is found NGI, the Court must make the following determination:
(1) If the court finds that the defendant may be released without danger to the community or himself without supervision, the court shall so release the defendant; or

(2) If the court finds that the defendant may be released without danger to the community or to himself under supervision or under conditions, the court shall so order; or

(3) If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed. In all proceedings conducted pursuant to this section and pursuant to section N.J.S.2C:4-6 concerning a defendant who lacks the fitness to proceed, including any periodic review proceeding, the prosecuting attorney shall have the right to appear and be heard. The defendant's continued commitment, under the law governing civil commitment, shall be established by a preponderance of the evidence, during the maximum period of imprisonment that could have been imposed, as an ordinary term of imprisonment, for any charge on which the defendant has been acquitted by reason of insanity. Expiration of that maximum period of imprisonment shall be calculated by crediting the defendant with any time spent in confinement for the charge or charges on which the defendant has been acquitted by reason of insanity.

Law Controlling *Krol* Supervision

- AOC # 9-96 in *Krol* cases where commitment is ordered, the maximum sentence that could have been imposed for any charge on which the defendant has been acquitted by reason of insanity should be set forth by the judge in the judgment. *N.J.S.A.* 2C:4-8b(3). Additionally, counsel should be heard with respect to the possible merger or other appropriate disposition of the remaining charges.

Law pertaining to guardianships

LAWS CONTROLING GUARDIANSHIPS

- N.J.S.A. 3b 12-1 and New Jersey Court Rule 4:86-1 through 4:86-10: Guardianships are Court supervised arrangements that provide surrogate decision making for minors or persons who are incapacitated – that is, unable to manage their property and affairs effectively. The arrangement is typically commenced by a third-party application to the Court, and once the Court adjudicates a person to be incapacitated, it obtains jurisdiction over an incapacitated person

Types of hospitals

Private v. Public Hospitals

Public Hospitals

- ✓ Funded and directly operated by the Department of Human Services' Division of Mental Health & Addictions Services (DMHAS), Medicaid, Medicare, and other types of insurance
- ✓ Many different types of care available

Private Hospitals

- ✓Can obtain care anywhere
- ✓Insurance or financial resources needed
- ✓Psychiatric care can be more limited – fewer programs

State v. County Hospitals

State Hospitals

- Directly operated by the Division of Mental Health Services
- Three regional facilities and one maximum security facility state wide
- Serve as institutions of "long term commitment"
- Greystone is the State Hospital for Hudson

County Hospitals

- Operated by a county on a Voluntary Basis
- Does not fall under direct authority of the Division of Mental Health Services
- Some prohibitions on admission
- Serves as institutions of "intermediate commitment"
- Meadowview is the Hudson County Facility

Short Term v. Long Term

Short term

- Inpatient community based facility that provide acute care and assessment services to mentally ill individuals.

Long term

- Inpatient facilities that provide extended therapeutic services in an attempt to ensure long term stabilization

Civil commitment players

County Adjuster

- Each county has a County Adjuster in Law Department
- They are responsible for carrying out the duties outlined in N.J.S.A. 30:4-34
- Duties include being in the supervision of the preparation of papers regarding the admission and / or commitment of clients to private, county, state and federal psychiatric hospitals
- Setting court hearings that protect client rights and privacy

DIVISION OF MENTAL HEALTH ADVOCACY

- Located within the New Jersey Office of the Public Defender, the Division of Mental Health Advocacy (MHA) provides representation at initial commitment hearings, periodic review hearings, voluntary approval hearings and placement hearings at federal, state, county, general and private psychiatric hospitals for adults and children in the counties of Atlantic, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Monmouth, Ocean, Salem , Somerset and Union, as well as all committed children.

Patients rights!!!!!

N.J.S.A. 30:4-24.2

- Commitment in and of itself is not a reason to deprive a patient of basic civil rights
- The right to be presumed competent
- The right to be free from excessive medication
- The right to be free from shock treatments as well as experiential treatments
- The right to communicate with an attorney, physician, or the Courts

Rights during a commitment review

- Since an involuntary commitment deprives an individual of their most fundamental legal right, liberty, the individual should feel like they had a full and fair hearing and not simply another treatment team meeting.
- The hearing is required to have every formality of any other court proceeding.

Mentally Ill Clients Charged with a Crime

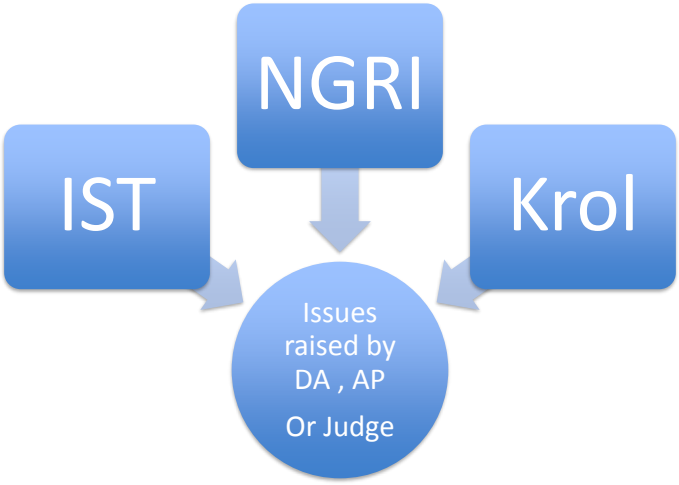
Patricia B. Roe, J.S.C.

Justice Involved Services

MAY VARY BY COUNTY

- Pre & Post-booking Diversion
- Adult Probation Mental Health Caseloads
- Veterans Assistance Initiatives & Mental Health Diversionary Programs

Getting Your Client a Mental Health Evaluation



Evaluation of Competency to Stand Trial

IST-30 Order (2C:4-5a)

Order Mandating a Psychiatric Evaluation of Defendant's Fitness to Proceed to Trial and of a Defendant's Dangerousness to Self, Others or Property as a Result of Mental Illness

Ann Klein Forensic Center Jail Based Competency Evaluation Program

- Defendants are evaluated in the jail by psychologists
- Reduces unnecessary hospitalization
- Psychologists may recommends Competent, Incompetent or Indeterminate

Indeterminate Requires an Inpatient Evaluation

30 Day Evaluation Order-
IST-30 Order (2C:4-5a)

Fitness to Proceed (Competency)

Dangerousness

Incompetent to Stand Trial
2C:4-6

- Order Committing Defendant Pursuant to N.J.S.A. 2C:4-6 Who Lacks the Fitness to Proceed to Trial and Who has been Found to Be Dangerous to Self, Others or Property as a Result of Mental Illness

Incompetency to Stand Trial
(IST)

- Individual is competent to stand trial on criminal charges if proofs are established according to NJSA 2C:4-4(b)

Individual is found Competent Dispositions

Found fit to proceed and suffers from mental illness but does not need institutionalization (NJSA 2C: 4-6b)

- Return to Jail or Prison. Tx provided
- Placement in unsupervised release
- Other appropriate and available treatment

Individual is found Incompetent (NJSA 2C:4-6)

- Dispositions:
- If mentally ill and dangerous as a result of mental illness then court civilly commits until return to fitness
- If mentally ill and civilly committed, hold hearing 3 months (NJSA 2C:4-6(c)
- Not fit, dangerous to self and others as a result of mental illness, needs inpatient treatment, charges dropped, patient civilly committed and hospitalized under NJSA 30:4-27.10

Review Hearings

- ❑ Charges held in abeyance until returned to competency
- ❑ Charges dismissed by the court with prejudice. Defendant remains incompetent and there is a finding that it is substantially probable defendant will not regain competence.

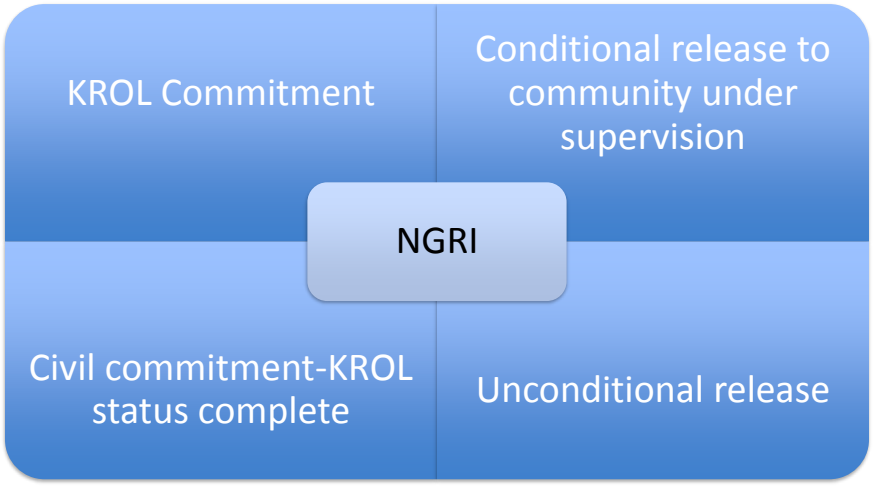
Sanity Evaluations and Dispositions

- Not Guilty by Reason of Insanity(NGRI) or KROL
- NJSA 2C:4-2 No Criminal responsibility if: by reason of mental illness…

1. Actor did not know nature and quality of act, or
2. Actor did not know it was wrong.

Evaluation of state of mind at the time of the offense.

Possible Dispositions for NGRI Defendant



NGRI Dispositions

KROL Commitment

- Individual is dangerous as a result of mental illness and needs inpatient hospitalization

(NJSA 2C:4-8(b)(3))

Periodic Review Hearings

Conditional release to community under supervision

- Individual released on conditions, NGRI (Still under court supervision).

NJSA 30:4-27.15(c))

Periodic Review Hearings

NGRI DISPOSITIONS

Civil commitment-KROL status complete

- Individual completes maximum KROL term under (NJSA 2C:4-8(b)(2)). Defendant requires continued treatment Civil commitment (NJSA 30:4-27.10)
- Criminal court jurisdiction ends.

Unconditional Release

- Unconditional release(NJSA 2C:4-8(b)(1) No longer dangerous to self, others or property by reason of mental illness.

Mental Heath Diversionary Programs

The need exists to improve services for individuals in the criminal justice system who have a serious and persistent mental illness, and whose illness has been a contributing factor to their justice system involvement.

Referrals to Program

- Prosecutor's Office
- Medical Personnel at the Jail
- Public Defender's/Private Attorneys
- Treatment providers
- Police
- Judge

Jail Diversion Criteria

- ❑ Legally Appropriate
- ❑ Clinically Appropriate
- ❑ Case Management Appropriate

Legally Appropriate

- Charge is usually non-violent though some may be acceptable on case by case basis
- No gun charges
- No sex offenses(past or present
- No extensive priors
- Usually 3rd or 4th degree offenses

Clinically Appropriate

- ✧Individual must have an Axis I diagnosis(schizophrenia, depressive disorder,bipolar,etc.)
- ✧Can have co-occurring disorder but mental diagnosis must be primary
- ✧Efforts are made to catch those who "fall between the cracks"

Case Management Appropriate

- ➢Ability to be supervised through case management in the community
- ➢Compliance with court ordered conditions
- ➢Safety considerations

Goals of the Program

- Charges are dismissed or downgraded to lesser offenses
- Diverted from jail or prison sentence or criminal conviction(which may pose a barrier to certain treatment options/placement and housing).

Assistance provided by the Program

- ✓Understanding illness and proper medications
- ✓Education as to medications
- ✓Housing assistance
- ✓Job assistance

Ocean County Mental Health Program

Mental Health Agencies experienced increased needs in the aftermath of Sandy

About the Panelists…

Jill Ducoff Claudio is Coordinator for Psychiatric Emergency Screening Services, Capital Health System, Helene Fuld Hospital, in Trenton, New Jersey. She has 30 years of clinical and administrative experience in the mental health acute care system and knowledge of the Screening System, STCF's, State Hospitals and Community Mental Health Services, as well as the Children's System of Care, including PerformCare and Mobile Response.

Ms. Claudio has been BLS and Handle with Care Certified every two years, and is a member of the Behavioral Health Constituency at the New Jersey Hospital Association. She formerly served the hospital as a psychiatric screener and prior to that worked with Muhlenberg Regional Medical Center in Plainfield and the Richard Hall Community Health Center in Bridgewater.

Ms. Claudio received her A.B., *magna cum laude*, from Bard College and her MSW from the University of Pennsylvania School of Social Work.

Honorable Daniel D'Alessandro, JSC is assigned to the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, and sits in Jersey City, New Jersey. He has been the designated Open Public Records Acts Judge for Hudson County, and was formerly assigned to the Chancery Division, Family Part, from 2010-2015.

Judge D'Alessandro was a member of the Supreme Court Committee on Women and Courts and the Administrative Director of the Court's Working Group to Address Technological Solutions. Prior to his appointment to the Court in 2010, he was a general practitioner for 35 years with extensive experience in civil and estate litigation, family law, commercial, and residential real estate litigation and development. He served as an Economic, Probate and Civil Mediator; a Civil Arbitrator; and a Matrimonial Early Settlement Panelist; and was appointed by the court as Presiding Condemnation Commissioner, Conservator and Guardian. Judge D'Alessandro began his career as Municipal Defender for the City of Jersey City and as Prosecutor for the Town of Secaucus after his judicial clerkship in the Juvenile and Domestic Relations Court. He served as *pro bono* counsel to domestic violence women's groups and established Jersey City's Office of Handicapped Advocacy, *pro bono.*

Past President of the Hudson County Bar Association and the Boys & Girls Clubs of Hudson County, Judge D'Alessandro has lectured for ICLE, the New Jersey State and Hudson County Bar Associations, Lorman Education Services, Lawyers for Justice and the National Business Institute. He is a former member of the District VI Ethics Committee and Vice-Chair of the Fee Arbitration Committee, and has been listed in *Who's Who in America* and *Who's Who in American Law*.

Judge D'Alessandro received his B.A. from St. Peter's College, his J.D. from Seton Hall University School of Law and his LL.M. in Criminal Justice from New York University School of Law. He also attended the National Judicial College on scholarship.

Steven M. Fishbein, MS, CRC, LRC is Manager of Justice Involved & Veteran Services, Office of Treatment & Recovery Support, Division of Mental Health and Addiction Services (DMHAS), in Trenton, New Jersey. With more than 40 years of experience as a practitioner, supervisor,

administrator and trainer in vocational and psychiatric rehabilitation, he is responsible for all the division's criminal programs, including Drug Court; overseeing jail diversion and re-entry services for persons with mental illness; and assisting in fostering police-based interventions, including Crisis Intervention Teams (CIT) throughout the state.

A Certified and licensed Rehabilitation Counselor, Mr. Fishbein was a member of the Supreme Court Interbranch Advisory Committee on Mental Health Initiatives and is Co-Chair of the Interbranch Implementation Committee. He is a former member of the Governor's Task Force on Reducing Recidivism and was appointed to the Study Commission on Violence. He monitors the Copt to Cop helpline program contract, is the liaison for veterans' services and sits on New Jersey's Veterans Services Enhancement Team. He previously managed the DMHAS Supported Employment (SE) in 21 counties and oversaw other mental health services including Illness Management and Recovery, Integrated Treatment for Co-Occurring Disorders through a learning community, and Wellness Coaching.

Mr. Fishbein is trained by The National Gains Center, PRA, to conduct Sequential Intercept Mapping of the Criminal Justice, Mental Health and Substance Abuse Program. An Adjunct Clinical Instructor in the Department of Psychiatric Rehabilitation & Behavioral Health Care of Rutgers-SHRP, he is the recipient of several honors including a Dean's Citation from Rutgers, the Mort Gati Award from NJPRA, the Rebecca McDonald Leadership Award from NJAPSE and the New Jersey State Parole Board's 2009 Partnership Award.

Mr. Fishbein received his undergraduate degree from Rutgers University and his M.S. in Rehabilitation Counseling from Boston University.

Hope Massa, MSW, LSW is a Psychiatric Screener, Emergency Mental Health Services, Capital Health Regional Medical Center, in Trenton, New Jersey.

Jessica S. Oppenheim is Director of the Criminal Justice Advocacy Program of The Arc of New Jersey in North Brunswick, New Jersey, where she provides serves to persons with intellectual and developmentally disabilities who have become involved in the criminal justice system. She provides training to DDD case managers, law enforcement and lawyers in understanding and working with individuals who have intellectual and developmental disabilities.

Admitted to practice in New Jersey and Illinois, Ms. Oppenheim sits on the Boards of the Association for the Treatment of Sexual Abusers, the Middlesex County Bar Foundation and Women Aware, the Middlesex County service provider for survivors of family violence. She has served as an Assistant Prosecutor in the Middlesex County Prosecutor's Office, where she ran the Domestic Violence and *Megan's Law* Units, and was a Deputy Attorney General, New Jersey Division of Criminal Justice, in Trenton, New Jersey, for 20 years. Eventually rising to Assistant Bureau Chief and Bureau Chief of the Prosecutors Supervision and Coordination Bureau, she oversaw the 21 County Prosecutors Offices and more than 500 municipal prosecutors and police departments, and was instrumental in the implementation of federal grants for law enforcement training in domestic violence, first response to individuals with developmental disabilities and human trafficking. She also represented the Attorney General on several task forces and councils, and has taught in the Criminal Justice Studies Department at Fairleigh Dickinson University.

Ms. Oppenheim received her B.A. from Grinnell College and her J.D. from Chicago-Kent College of Law, Illinois Institute of Technology.

Georgina Giordano Pallitto, Certified as a Criminal Trial Attorney by the Supreme Court of New Jersey, operates her own firm Pallitto Law, LLC in Newark, New Jersey, and also serves as Assistant County Counsel for the County of Hudson, assigned to Meadowview Psychiatric Hospital in Secaucus, New Jersey. In her current position with the hospital, Ms. Pallitto represents the county in all civil commitment hearings. She is also the appointed Assistant Municipal Prosecutor for East Hanover Township.

Admitted to practice in New Jersey, Ms. Pallitto is a member of the New Jersey State Bar Association. She has served as an Assistant Prosecutor in Hudson County and is an Adjunct Professor in the Political Science Department at New Jersey City University.

Ms. Pallitto received her B.A. from the University of California at San Diego and her J.D. from Seton Hall University School of Law. She clerked for the Honorable Michael A. Petrolle, J.S.C., Essex County, Criminal Division.

Honorable Patricia B. Roe, JSC is a Judge of the Superior Court, General Equity, Ocean County, and sits in Toms River, New Jersey. She is former Presiding Judge of the Family Part in both Ocean and Burlington Counties, and also sat in the Criminal Division in Ocean County. Prior to her appointment to the bench she was a Certified Matrimonial Law Attorney and Partner in the firm Louis, Roe & Wolf, P.C., a practice limited to family law.

Judge Roe is a member of the New Jersey State Bar Association Family Law Executive Committee and the Ocean County Bar Association. Past President of the New Jersey Council of Juvenile and Family Judges, she served on the Council's Family Violence and Domestic Relations and Curriculum Development Committees. She is a Director of the National Council of Juvenile and Family Court Judges, has been Vice-Chair of the Supreme Court Family Law Practice Committee and is a member of the Supreme Court Committees on Evidence and Civil and Criminal Jury Selection.

A founding faculty member of the Ocean/Monmouth Family American Inns of Court, Judge Roe has lectured for ICLE, the Judicial College, the Comprehensive Judges Orientation Program and the Newly Appointed Judge Orientation in New Jersey. She is the recipient of ICLE's Distinguished Service Award for her contributions to the family law field and an Award for Excellence in the Administration of Justice from the Ocean County Bar Association.

Judge Roe received her B.A., *cum laude*, and M.A., *magna cum laude*, from Montclair State University. She received her J.D. from Seton Hall Law School and clerked for the Honorable Robert A. Fall, J.A.D., then Presiding Judge, Family Part, Ocean County.

Brian I. Sperber is an Assistant Deputy Public Defender of the Public Defender's Division of Mental Health Advocacy in Newark, New Jersey. He began working with the Office of Public Defender in 2011 as an Attorney Fellow in the Union County Trial Region. Mr. Sperber has been with the Division of Mental Health Advocacy since 2012 and has represented thousands of individuals in civil commitment proceedings throughout Northern New Jersey. He covers civil commitment calendars at the Hudson County Meadowview Psychiatric Hospital in Secaucus, the

Hoboken University Medical Center and the Jersey City Medical Center, and also represents clients under *Krol* supervision in Essex and Bergen Counties.

Admitted to practice in New Jersey and New York, Mr. Sperber is a member of the New Jersey State Bar Association. While in law school, he interned at public defender offices in both Miami and Fort Lauderdale, Florida, as well as at the South African Litigation Centre in Johannesburg, South Africa.

Mr. Sperber received his B.A. from Emory University and his J.D. from the University of Miami School of Law.

Mental Health Law 101:

DEPARTMENT OF HUMAN SERVICES (DHS)
DIVISION OF MENTAL HEALTH &
ADDICTION SERVICES (DMHAS)

NEW JERSEY
AUGUST 9,2017

Mental Illness: Key Concepts

1

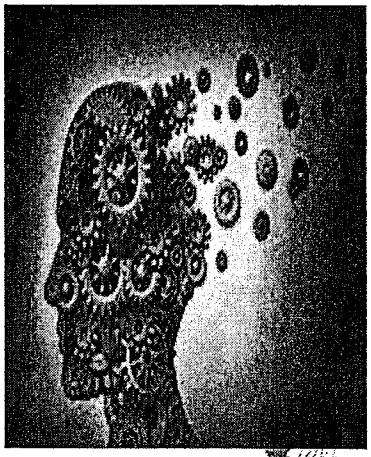
- Mental illnesses are medical conditions that require a health care response.
- Mental disorders are connected to our physical health and can show symptoms that mirror physical illnesses.
- Our personal feelings and beliefs can affect how people view these conditions.
- Our view of these conditions can influence the outcome of the court's interaction

NB8

Mental Illnesses are Mental Health Disorders

2

- Mental health problems involve changes in thinking, mood and/or behavior that are linked to distress and impaired functioning.
- As the severity of these problems increases, they are described as mental illness.



Division of Mental Health & Addiction Services
wellness*recovery*prevention

Human Services

How Common Are Mental Disorders?

3

- The National Institute of Mental Health (NIMH) estimates that 1 in every 4 adults suffers from some form of a measurable mental disorder.
- NIMH also suggests that nearly 6 percent of the U.S. population suffers from a severe mental disorder.
- 10.6% of New Jersey's prison population is diagnosed with some type of mental illness and 7.6% with a substance abuse disorder.

Human Services

Coexisting Diseases: Physical & Mental Health Conditions

4

- 68% of adults with mental health disorders have a medical condition.
- 28% of adults with a medical condition have a mental illness.
- Almost half of the U.S. population suffers from chronic diseases and conditions.

Substance Abuse and Mental Health: *Co-Occurring Disorders*

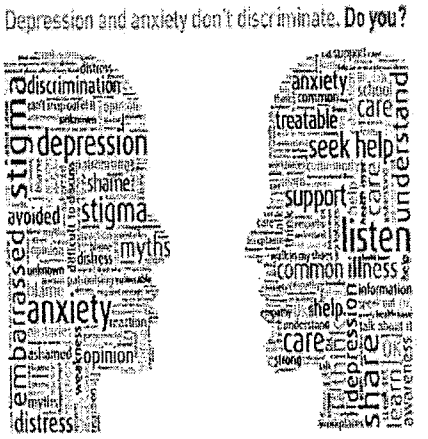
5

- People with mental illness are more likely to also have a substance use disorder.
- Co-occurring mental health and substance abuse disorders are common.
- 45% of Americans with mental illness sought treatment for substance abuse problems.
- There are about 8.4 million people with co-occurring disorders. (SAMHSA, 2014)

The Facts About Mental Illness

6

- Weakness and laziness have nothing to do with the causes of mental illness and substance abuse.
- People with mental illness and substance abuse disorder can and do recover.



Mental Illness and Violence

7

- *People with mental illnesses are no more likely to be violent than anyone else in the general population* (Shern & Lindstrom, 2013)
- Only a small number of people with a mental illness contribute to the overall rate of violence in the U.S.
- People with serious mental illness are far more likely to be the victims rather than the perpetrators of violent crime. (Glied & Frank, 2014)

Barriers to Mental Health Care

8

Barriers to care may include:

- Cost of care, even if insured.
- Providers don't accept their insurance.
- Limited transportation options.
- Inconvenient hours of services.

Some mental health disorders impair an individual's insight and understanding about their own condition and need for mental health care.

Main Classifications of Mental Disorders

9

- Thought Disorders
- Mood Disorders
- Anxiety Disorders
- Personality Disorders

Understanding Signs & Symptoms

10

Disorders

- Mood
- Thought
- Anxiety

Symptoms

- What the person in distress experiences

Signs

- What the person intervening observes

Thought Disorders

11

- Thoughts and language are disordered or illogical.
- May include delusional or bizarre content, tangential thinking or thought derailment.
- Schizophrenia and other psychotic disorders are most often associated with thought disorders.
- Thought disorders can also occur with other disorders.

What is Psychosis?

12

- Psychosis can occur as part of a Thought Disorder, but also in other types of disorders.
- Psychosis is a condition in which a person has lost some contact with reality.
- The person may have severe disturbances in thinking, emotion, and behavior.

Types of Disorders in Which Psychosis May Occur

13

- Schizophrenia
- Bipolar disorder
- Psychotic depression
- Schizoaffective disorder
- Drug-induced psychosis

Signs and Symptoms of Thought Disorders

14

- Hallucinations
- Delusions
- Inability to process information or make decisions
- Illogical speech (word salad, jumbled)
- Decreased working memory (immediate recall)
- Trouble with focus and attention

Hallucinations & Delusions

15

- **Hallucinations** are false sensory perceptions. They involve an experience involving the apparent perception of something not present; sight, smell, feel, taste
- **Delusions** are a belief held with strong conviction despite superior evidence to the contrary; beliefs or impressions that are firmly maintained despite being contradicted by what is generally accepted as reality or rational argument.
- There are several common themes of delusional thought:
  - **Paranoia,**
  - **Grandiosity** NB9
  - **Control**

Mood Disorders

16

- Mood disorders are a category of illnesses that describe a serious change in mood, affect or emotions in a persistent manner.
- They among the most common mental illnesses.
- They can have some similar signs and symptoms.
- They can frequently co-occur with other conditions.
- Mood disorders interfere with the ability to participate fully in daily life.

Types of Mood Disorders

17

- Major depressive disorder
- Bipolar disorder
- Postpartum depression
- Seasonal depression
- There are sub-types of mood disorders featuring less severe symptoms

Symptoms of a Depressive Mood Disorder

18

- Feeling sad or having a depressed mood
- Loss of interest in pleasurable activities
- Changes in appetite, with or without weight changes
- Insomnia (inability to sleep); Sleeping too much
- Lethargy (loss/lack of energy)
- Slowed movements and speech
- Feeling worthless, guilty or shameful
- Difficulty with concentration or decision-making
- Thoughts of death or suicide.

Symptoms of a Bipolar Mood Disorder

19

Manic

- Feeling euphoric
- Delusions of grandeur
- Sudden feelings of:
  - Irritability or rage
  - Invincibility
  - Impulsivity/ Recklessness
  - Racing thoughts
  - Hyperactivity

Depression

- Intense sadness/despair
- Extreme lethargy
- Severe sleep issues
- Weight gain or loss
- Impaired thinking
- Suicidal thoughts/preoccupation with death

Facts About Depression and Suicide

20

Nearly 400,000 people attempt suicide in the U.S. every year.

- The annual suicide rate is **12.93 per 100,000** individuals.
- Men die by suicide **3.5x** more often than women.
- On average, there are **117** suicides per day.
- The rate of suicide is **highest in middle age** — white men in particular.
- White males accounted for **7 of 10** suicides in 2013.
- Firearms account for **almost 50%** of all suicides.

Source: American Foundation for Suicide Prevention

Suicide Warning Signs

21

If a person talks about:

- Being a burden to others
- Feeling trapped
- Experiencing unbearable pain
- Having no reason to live
- Killing themselves

Specific things to look out for include:

- Increased use of alcohol/drugs
- Searching online for materials or means
- Acting recklessly
- Withdrawing from activities
- Isolating from family and friends
- Sleeping too much or too little
- Giving away prized possessions & Aggression

People who are considering suicide often display one or more of the following moods:

- Depression
- Loss of interest
- Rage
- Irritability
- Humiliation
- Anxiety

Interacting with a Suicidal Person: Do's & Don'ts

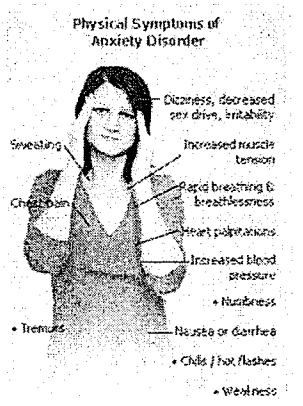
22

- **Let the person know you care**, that he/she is not alone. The right words are often unimportant. If you are concerned, your voice and manner will show it.
- **Listen**. Let the suicidal person unload despair, ventilate anger, be sympathetic, non-judgmental, patient, calm, accepting.
- **Offer hope**. Reassure the person that help is available and that the suicidal feelings are temporary. Let the person know that his or her life is important to you.
- **If the person says things like**, "I'm so depressed, I can't go on," ask the question: "Are you having thoughts of suicide?" You are not putting ideas in their head, you are showing that you are concerned, that you take them seriously, and that it's OK for them to share their pain with you.

Anxiety Disorders

23

- Anxiety disorders are the most commonly diagnosed mental disorders.
- Some anxiety is productive; it helps keep us alert and out of danger.
- Constant, uncontrollable worry, fear or dread, that is not based in rational facts can cause someone to withdraw from activities or change behaviors, may be an anxiety disorder.



Anxiety Disorders: Signs and Symptoms

24

Disorder	Symptoms	Signs

Anxiety Disorders:
▪ Separation anxiety disorder
▪ Selective mutism
▪ Specific phobias
▪ Social phobia
▪ Panic disorder
▪ Agoraphobia
▪ Generalized anxiety disorder
▪ Posttraumatic stress disorder
	▪ Overwhelming feelings of fear or panic
	▪ Uncontrollable obsessive thoughts
	▪ Painful, intrusive memories
	▪ Recurring nightmares
	▪ Jumpy, jittery, tense
	▪ Social isolation
	▪ Increased substance abuse
		▪ Preoccupied, distracted, agitated
		▪ Jumpy, nervous
		▪ Physical complaints:
		  ▪ GI discomfort
		  ▪ Breathing problems
		  ▪ Heart palpitations
		▪ Impulsive behaviors
		▪ Suicide/Self-harm risk

Posttraumatic Stress Disorder

25

- Posttraumatic stress disorder (PTSD) is a type of anxiety disorder.
- PTSD is a health condition triggered by seeing or experiencing a traumatic event.
- It can occur from a variety of traumatic experiences such as: combat, motor vehicle accidents, natural disasters, physical/sexual assault, witnessing a violent death or injury.

Personality Disorders

26

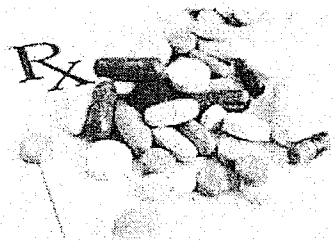
- One's personality is the way of thinking, feeling and behaving that makes a person different from other people.
- A personality disorder is a way of thinking, feeling and behaving that deviates from the expectations of the culture, causes distress or problems functioning, and lasts over time.[1]
- There are 10 subtypes but common to all personality disorders is a long-term pattern of behavior and inner experience that differs significantly from what is expected.

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). American Psychiatric Association. (2013).

About Psychiatric Medications

27

- Psychotropic medication: Any medication capable of affecting the mind, emotions, and behavior.
- Psychiatric medications are one tool among many that may lessen mental distress.
- Medicines are usually more effective when combined with psychotherapy.
- All medications have "side effects."
- The effects of psychiatrics medications on individuals are unique.



About Psychiatric Medications

28

- Psychiatric medications "treat" but do not "cure" mental illnesses.
- Side effects of psychiatric medications can mimic the symptoms of medical and mental illness.
- Medication combinations can be unpredictable.
- NB10 Recreational substances and "social" substances often interact with psychiatric medications.
- More medication is not always better.
- Older people, people with health problems, brain injuries, and intellectual disabilities may be more sensitive to psychiatric medications and their side effects.

Mental Health Evaluations

29

- **Forensic screening/evaluations** are conducted by mental health personnel at the direction of criminal justice NB11 thorities to provide information about the mental condition of client-offenders for decision making in the criminal justice system.
- **Mental Health assessment/evaluation** is th NB12 process conducted by mental health practitioners in order to determine a mental illness exists and what the course of treatment and se NB13 ce delivery should be to restore the individual.

DMHAS Justice Involved Services

30

- **Police Based Interventions:**
  - Mental Heath De-escalation awareness training
  - Crisis Intervention Training (CIT)
- **Post booking diversion:**
  - Prosecutor Diversion Program
  - Municipal Court Liaison Pilot Program
- **Re-entry Services from jails & prisons:**
  - Pre-release planning and linkage to services upon released
- **Coordination with Probation and Parole**
- **Participation on Judiciary and OAG committees and initiatives**

Often Used Mental Health Resources

31

Designated Screening Centers: provides mental health services including assessment, commitment, emergency and referral services to mentally ill persons in a specified geographical area.

Involuntary Outpatient Commitment: programs provide a comprehensive outpatient services, coordination and referral system individuals committed to outpatient treatment

Short Term Care Facilities: short term unit for individuals who meet the legal standards for commitment and require intensive treatment. Clients are referred through the screening service

State and County Psychiatric Hospitals short and long term units for those under commitment.

Division of Mental Health & Addiction Services
wellness/recovery/prevention

Mental Health Resources Cont.'

32

- **Intensive Outpatient Treatment and Support Services (IOTSS)** These programs provide a comprehensive outpatient service package that addresses the needs of individuals with an exacerbation of the symptoms of mental illness and/or a co-occurring substance abuse disorder
- **Early Intervention Support Services (Crisis Intervention Services)** Short term, crisis intervention and crisis stabilization services in a setting that is an alternative to hospital based emergency room treatment. Outreach (non-office based) services are available.

Mental Health Resources Cont.'

33

NB14

- **Outpatient Services** Periodic therapy, counseling and supportive services
- **Partial Care are** day program services that maximize client's independence and community living skills.
- **Programs of Assertive Community Treatment (PACT)** is a multi-disciplinary team which provides comprehensive rehabilitation, treatment and support for those with serious mental illness.
- **Supportive housing/Community Support Services** offers individuals opportunities for involvement in community life. Emphasis is placed on the development and strengthening of natural supports in the community.

Mental Health Resources Cont.'

34

- **Residential Services** NB15 provide support and encouragement in the development of life skills required to sustain successful living within the community.
- **Supported Employment Services (SE)** NB16 assist clients to gain competitive employment and support their job tenure
- **Programs for Assistance in the Transition from Homelessness (PATH)** NB17 facilitate services and linkage to housing, social and mental health services for those that are homeless or at imminent risk of becoming homeless

35

Questions??

Thank You!

36

For More Information go to the Judiciaries new Webpage entitled, "Mental Health Resources" at:

https://www.judiciary.state.nj.us/public/mentalhealth.html

or

The DMHAS Website @:

http://www.state.nj.us/humanservices/dmhas/home/index.html

Steven M Fishbein, Acting Deputy Asst. Director
Div. Of Mental Health & Addiction Services
(609) 777-0655 Steve.Fishbein@dhs.state.nj.us

5:3-2. Closed Hearings; Record

(a) Hearings on Welfare or Status of a Child. Except as otherwise provided by rule or statute requiring full or partial in camera proceedings, the court, in its discretion, may on its own or partys motion direct that any proceeding or severable part thereof involving the welfare or status of a child be conducted in private. In the childs best interests, the court may further order that a child not be present at a hearing or trial unless the testimony, which may be taken privately in chambers or under such protective orders as the court may provide, is necessary for the determination of the matter. A verbatim record shall, however, be made of all in camera proceedings, including in-chamber testimony by or interrogation of a child.

(b) Sealing of Records. The court, upon demonstration of good cause and notice to all interested parties, shall have the authority to order that a Family Part file, or any portion thereof, be sealed.

5:3-3. Appointment of Experts

(a) Medical, Psychological and Social Experts. Whenever the court, in its discretion, concludes that disposition of an issue will be assisted by expert opinion, and whether or not the parties propose to offer or have offered their own experts opinions, the court may order any person under its jurisdiction to be examined by a physician, psychiatrist, psychologist or other health or mental health professional designated by it. No such appointment, however, shall be made of an expert who is providing or has provided therapy to any member of that persons family. The court may also direct who shall pay the cost of such examination. The court may also require a social investigation by a probation officer or other person at any time during the proceeding before it.

(b) Economic Experts. Whenever the court concludes that disposition of an economic issue will be assisted by expert opinion, it may in the same manner as provided in Paragraph (a) of this rule appoint an expert to appraise the value of any property or to report and recommend as to any other issue, and may further order any person or entity to produce documents or to make available for inspection any information or property, which is not privileged, that the court determines is necessary to aid the expert in rendering an opinion. The court may also direct who shall pay the cost of such expert appraisal or report.

(c) Selection of Experts. Experts appointed hereunder may be selected by the mutual agreement of the parties or independently by the court. The court shall establish the scope of the experts assignment in the order of appointment. Neither party shall be bound by the report of the expert so appointed.

(d) Investigation by Experts. Any expert appointed by the court shall be permitted to conduct an investigation independently to obtain information reasonable and necessary to complete his or her report from any source, and may make contact directly with any party from whom information is sought within the scope of the order of appointment. The parties shall be entitled to have their attorneys and/or experts present during any examination by a court appointed expert. The expert shall not communicate with the court except upon prior notice to the parties and their attorneys who shall be afforded an opportunity to be present and to be heard during any such communication between the expert and the court. A request for communication with the

court may be informally conveyed by the expert by letter or telephonic means, where after further communications with the court, which may be conducted informally by conference or conference call, shall be done only with the participation of the parties and their counsel.

(e) Submission of Report. Any finding or report by an expert appointed by the court shall be submitted upon completion to both the court and the parties. The parties shall thereafter be permitted a reasonable opportunity to conduct discovery in regard thereto, including, but not limited to, the right to take the deposition of the expert.

(f) Use of Evidence. An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed experts findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the courts own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.

(g) Use of Private Experts. Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court, upon the same or similar issues.

5:8-6. Trial of Custody Issue

Where the court finds that the custody of children is a genuine and substantial issue, the court shall set a hearing date no later than six months after the last responsive pleading. The court may, in order to protect the best interests of the children, conduct the custody hearing in a family action prior to a final hearing of the entire family action. As part of the custody hearing, the court may on its own motion or at the request of a litigant conduct an in camera interview with the child(ren). In the absence of good cause, the decision to conduct an interview shall be made before trial. If the court elects not to conduct an interview, it shall place its reasons on the record. If the court elects to conduct an interview, it shall afford counsel the opportunity to submit questions for the courts use during the interview and shall place on the record its reasons for not asking any question thus submitted. A stenographic or recorded record shall be made of each interview in its entirety. Transcripts thereof shall be provided to counsel and the parties upon request and payment for the cost. However, neither parent shall discuss nor reveal the contents of the interview with the children or third parties without permission of the court. Counsel shall have the right to provide the transcript or its contents to any expert retained on the issue of custody. Any judgment or order pursuant to this hearing shall be treated as a final judgment or order for custody.

RULE 5:8A. APPOINTMENT OF COUNSEL FOR CHILD

In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the childs lawyer. The appointment of counsel should occur when the trial court concludes that a childs best interest is not being sufficiently protected by the attorneys for the parties. Counsel

may, on an interim basis or at the conclusion of the litigation, apply for an award of fees and costs with an appropriate affidavit of services, and the trial court shall award fees and costs, assessing same against either or both of the parties.

RULE 5:8B. APPOINTMENT OF GUARDIAN AD LITEM

(a) Appointment. In all cases in which custody or parenting time/visitation is an issue, a guardian ad litem may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment. The services rendered by a guardian ad litem shall be to the court on behalf of the child. A guardian ad litem may be appointed by the court on its own motion or on application of either or both of the parents. The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon. In addition to the preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need not be limited to, the following:

1. Interviewing the children and parties.

2. Interviewing other persons possessing relevant information.

3. Obtaining relevant documentary evidence.

4. Conferring with counsel for the parties.

5. Conferring with the court, on notice to counsel.

6. Obtaining the assistance of independent experts, on leave of court.

7. Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.

8. Such other matters as the guardian ad litem may request, on leave of court.

(b) Objection or Refusal of Appointment. A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.

(c) Term. The term of the guardian ad litem shall be coextensive with the application pending before the court and shall end on the entry of a Judgment of Divorce or an Order terminating the application for which the appointment was made, unless continued by the court. The guardian ad litem shall have no obligation to file a notice of appeal from a Judgment or Order nor to participate in an appeal filed by a party.

(d) Fee. The hourly rate to be charged by the guardian ad litem shall be fixed in the initial appointing order and the guardian ad litem shall submit informational monthly statements to the parties. The court shall have the power and discretion to fix a retainer in the appointing order and

to allocate final payment of the guardian ad litem fee between the parties. The guardian ad litem shall submit a certification of services at the conclusion of the matter, on notice to the parties, who will thereafter be afforded the right to respond prior to the court fixing the final fee.

Official Comment for Rules 5:8A and 5:8B

The purpose of Rules 5:8A and 5:8B is to eliminate the confusion between the role of a court-appointed counsel for a child and that of a court-appointed guardian ad litem (GAL). The Supreme Courts Family Division Practice Committee in its 1987-1988 Annual Report distinguishes the roles.

A court-appointed counsels services are to the child. Counsel acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted. If the purpose of the appointment is for legal advocacy, then counsel would be appointed.

A court-appointed guardian ad litems services are to the court on behalf of the child. The GAL acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The GAL submits a written report to the court and is available to testify. If the purpose of the appointment is for independent investigation and fact finding, then a GAL would be appointed. The GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise. Attorneys acting on behalf of children in abuse or neglect cases and in termination of parental rights cases should act as counsel for the child pursuant to Rule 5:8A rather than in the capacity of a GAL pursuant to Rule 5:8B. See, Matter of M.R., 135 N.J. 155, 174, 638 A.2d 1274, 1283 (1994)).

These rules are not intended to expand the circumstances when such appointments are to be made; neither are these appointments to be made routinely.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

R. R.,	SUPERIOR COURT OF NEW JERSEY
	HUDSON COUNTY
Plaintiff,	CHANCERY DIVISION: FAMILY PART
v.	DOCKET NO. FM-09-934-15
L. A. C.,	CIVIL ACTION
Defendant.	OPINION

Decided: April 17, 2015
The Plaintiff was represented by
Kathleen Garvey, Esq.
The Defendant was self-represented.

D'ALESSANDRO, J.S.C.

INTRODUCTION

This case concerns the court's authority to fulfill a child's request to hug and see her father.

THE PARTIES

The plaintiff, R.R.[1], ("Father") is the non-custodial parent. Although the defendant, L.A.C., ("Mother") did not answer the complaint, she attended the default divorce hearing and asked to speak. Father works full-time, ten hours a day, and lives alone. Mother works part-time, for minimum wage, and lives with the parties' daughter, Gabriela. Mother testified that she cannot work full-time because of Gabriela's needs, explaining that "the time I provide to my daughter is worth it because it is improving her health."

Father requested a divorce, with the possibility of future parenting time "when I am ready." Mother listened attentively and softly replied, "we do not have joint property or belonging[s]; but we do have a daughter of the two of us." Mother asked the court for assurances that Gabriela's father would help her and raise Gabriela if she was unable to. Mother voiced the worry of parents who struggle to raise children alone: "I am not a person made out of steel. I may get sick. Who will look after our daughter, if something happens to me?"

FINDINGS OF FACT

Father emigrated from Peru and arrived in the United States in 1987. He returned years later and the parties married on August 12, 1993 in Peru. They lived separate and apart throughout most of their marriage after he returned to the United States in 1997. He occasionally returned to Peru before Gabriela was born on December 23, 1999. He returned a few more times between 2000 and 2002. He did not see his wife and daughter from 2002 to 2013, except when

[1] For privacy, the parties are referred to as mother and father. The pseudonym "Gabriela" is used for their child.

they lived together in Peru for a month in 2008. He sponsored their emigration from Peru to the United States. They arrived on July 2, 2013.

Gabriela had no recollection of her father. He was a stranger except in her heart. Unhappy differences between father and mother and between father and Gabriela arose immediately. Father intended that mother would come to the United States only as "friends" to give her and Gabriela the chance to live and prosper here. Mother had other expectations. She intended to live with him and Gabriela as a family. Instead, father lived separately in one room of a small apartment. Mother and Gabriela lived separately in another room.

When Gabriela arrived in the United States, she was thirteen years old. Instead of being reunited with her father, she was isolated from him again. Her parents lived under the same roof as angry strangers. Marital discord intensified. Mother, father and Gabriela quarreled. The arguments were heated. The police were called. Mother obtained a temporary restraining order, which was subsequently dismissed at her request. The Division of Child Protection & Permanency ("DCP&P") intervened and provided services and evaluations. During her evaluation, Gabriela expressed a poignant wish: "to have a Dad." Her wish was not fulfilled. Her parents separated less than two months after Gabriela arrived in the United States.

While flailing helplessly in the maelstrom of marital discord at home, Gabriela found no comfort at school. She was taunted and bullied because of her cleft palate, hearing loss and impaired speech. In desperation, mother sent her back to Peru to live with her maternal grandmother to escape the bullies and for medical treatment that she could not afford in the United States. Within a few months, Gabriela left her home in Peru for the United States; had her hopes for a family dashed; was bullied at school; and boarded a plane back to Peru without her mother. Four months later, she returned to the United States at age 14. She is in therapy to

ease the pain of separation, bullying, her many challenges and adolescent angst. She had cleft palate surgery. Surgical repairs, speech rehabilitation and dental restoration beckon.

Soon after the hearing began, the court noticed someone whose head was down while rocking back and forth in the back of the courtroom. Mother had brought Gabriela to court. The court asked why. Mother responded that Gabriela's psychologist told Gabriela that she had every right to come to court to ask the judge her questions. The court closed the proceeding.

Gabriela cautiously approached counsel table. She spoke with the assistance of the court interpreter. Now age 15, she is in the 8th grade and will attend high school in the fall. During gentle questioning by the court, Gabriela explained that she came here "to ask [the court] if it is possible for him [father] to see me once a week." Gabriela hesitated before her evocative second request: "and I would like to give him a hug."

A hungry person does not want a dissertation on the socio-economic causes of poverty. There will be time enough for that after the hunger pangs subside. A hungry person wants something to eat. Gabriela came to court believing that a judge could and would help her. She did not seek an explanation of why some parents do not see their children. Gabriela stood courageously before strangers risking rejection, disappointment and more heartbreak if her requests were denied. Gabriela's heart hungered to know and hug her father.

The court thanked Gabriela and invited her to join staff in chambers. After Gabriela left, the court questioned her parents. Father explained that he is leery and uncomfortable about seeing his daughter. "I am not ready. I need psychology. Someone to speak to. I don't hate her. I know she is my daughter. I brought her here to make something different for her."

Through colloquy with the court, father began to see things through his daughter's eyes instead of his own. Father acknowledged that Gabriela was without him for most of her life

wondering what she did wrong to explain his absence. He acknowledged that Gabriela might have been justifiably angry when she called him bad names in the past because she was unable to express her pain in a way that he approved of. Gabriela worried about her appearance, her prior surgeries and the surgeries to come. She suffered at school. She was depressed and attempted to harm herself. She was reminded why each time she spoke and whenever she saw her image in the reflection of her tears.

Before Gabriela returned to the courtroom, mother said that she had a "gift" for father. Her "gift" was to let him know that Gabriela is now considered a genius at school, and that she is a photographer and a poet whose poetry may soon be featured in the New York Times.

Gabriela returned and cheerfully acknowledged her love of photography and poetry. The Court then asked father if he was ready to share the "gift" that was discussed while Gabriela was in chambers. Father quickly walked toward Gabriela as she rushed toward him. They sobbed heartily and hugged for a long time.

LEGAL ANALYSIS

A custodial parent is entitled to the non-custodial parent's assistance raising their children. Non-custodial parents (who have not been declared unfit) should assist custodial parents in raising and nurturing their children unless there is a court order prohibiting them from doing so. Custodial parents need a parenting break too. Parents should communicate and work together in their children's best interest despite their differences.

The court, as *parens patriae*, protects children. When a custodial parent violates a parenting time Order, the court has the right to impose substantial sanctions.[2] The court also has the equitable authority to facilitate parenting time between children and absent parents, to order counseling, and to require parents to complete parenting programs. "In promoting the child's welfare, the court should [make] every effort to attain for the child the affection of both parents." In re Jackson, 13 N.J. Super. 144, 147-48 (App. Div. 1951). Today's Order strives to do so.

"The [Chancery Division, Family Part] possesses broad equitable powers to accomplish substantial justice." Finger v. Zenn, 335 N.J. Super. 438, 446 (App. Div. 2000), certif. denied, 167 N.J. 633 (2001). The court has the authority to facilitate and grant Gabriela's request that her father see her once a week. Father requested counseling and expressed his desire to establish a relationship with Gabriela. The court granted his request. Consistent with evolving notions of therapeutic courts, father and daughter took that first step and embraced. Today's Order establishes a parenting schedule, provides counseling and a path toward enhanced parental commitment.

Father shall call Gabriela frequently and see her weekly. The court has identified low-cost counseling and a program designed to foster fathering skills. Father shall promptly begin

---

[2] Rule 5:3-7(a): (1) compensatory time with the children; (2) economic sanctions, including but not limited to the award of monetary compensation for the costs resulting from a parent's failure to appear for scheduled parenting time or visitation such as child care expenses incurred by the other parent; (3) modification of transportation arrangements; (4) pick-up and return of the children in a public place; (5) counseling for the children or parents or any of them at the expense of the parent in violation of the order; (6) temporary or permanent modification of the custodial arrangement provided such relief is in the best interest of the children; (7) participation by the parent in violation of the order in an approved community service program; (8) incarceration, with or without work release; (9) issuance of a warrant to be executed upon the further violation of the judgment or order; and (10) any other appropriate equitable remedy.

individual counseling and complete the "Fatherhood Program" at Visiting Homemaker Service of Hudson County, Inc. He shall send the court proof that he completed the program by August 14, 2015. Gabriela is doing well in therapy. Father and Mother shall contact Gabriela's therapist and participate in her therapy if asked to do so.

CONCLUSION

Courage takes many forms and comes in all sizes. Gabriela's courageous words were riveting. The tears that she and her father shared were inspirational. Mother cried afterwards "that seeing my daughter happy makes me happy." The court thanks this beautiful child for her gift of hope. Tear-moistened soil is often fertile soil.