CHAPTER 3

KEY POINTS *from Chapter 3*

1. Our responses to people with mental health conditions should not be based on stigma.

2. Mental health diagnoses reflect a constellation of symptoms that a person may be experiencing, not their parenting or other capacities.

3. Mental health conditions must be viewed in the full context of the circumstances, including the party's and family's strengths, how they are impacted by the mental health condition, and their efforts to address any impacts this may have on their children or parenting. participation in treatment, and/or access to other supports.

4. In working with families where mental health conditions are at issue, the judge must also consider whether a person's mental health condition is impacting their ability to fully participate in their legal case or court proceedings, and if so, what can help to mitigate those effects.

5. When encountering/working with a person who is experiencing mental health symptoms that are impacting their ability to participate in court proceedings, there are approaches that can better serve/best serve the needs of the parties and proceedings before the court.

CHAPTER 3

Understanding the Spectrum of Mental Health Conditions and How to Respond to Them

This chapter provides an overview of the broad spectrum of mental health conditions so that judges and staff may better understand how to work effectively with individuals and families experiencing situational or ongoing mental health symptoms or conditions.

We begin the chapter with caveats:

- **People who experience mental health conditions are regularly stigmatized in society - more so than people with physical health conditions.** We too often rely on labels that carry inappropriate/inaccurate assumptions and behavioral connotations and do not reflect the/a person's capacities, strengths, and abilities. Judges and court staff must resist this societal tendency. How a person experiences a given mental health condition varies widely, and the diagnosis itself does not tell you how a given person is being impacted.
- When judges and staff learn that participants in the litigation before them may be impacted by a mental health condition, they may inappropriately focus on diagnoses to guide next steps. This tendency is even stronger when children are involved, out of an inclination to protect. **Relying on diagnoses to guide decision making in such cases will likely result in decisions that are more harmful than helpful to the individuals and their circumstances.** Judges should instead consider the persons involved, family strengths, participation in treatment, and/or access to other healing modalities and supports.

A Broad Spectrum of Mental Health Conditions

One in five adults in the United States will experience a mental health condition in any given year. Almost half of all adults living in the United States will experience a mental health challenge at some point during their lifetime. As with all health conditions, mental health issues can be situational, temporary, or chronic and most do not rise to the level of "serious mental Illness." Understanding mental health symptoms and conditions in context can be particularly helpful to judges when a person is not able to engage in their court proceedings in a meaningful way and/or presents in a way that may be perplexing and distressing. It is also helpful when the mental health of one party is raised in a family court case and judges need to sort out what that means and what implications it has for parenting-time decisions, a topic treated in greater detail in Chapter 4: Understanding the Impact of Mental Health Conditions on Parenting Capacity.

Below are some of accompanying behaviors or interactions that might be observed during litigation. This is not intended to be an exhaustive list, nor is it intended to diagnose conditions. To meet criteria for a diagnosis, people need to experience a certain number of symptoms over a defined period of time and to have been impacted in multiple domains. People with the same diagnosis can have very different constellations of symptoms and many symptoms cut across diagnostic categories. How people are impacted also varies widely and can change over time.

Table 1. Behaviors or Interactions Observed During Litigation

Anxiety Disorders		• Worry excessively about everyday things • Have a hard time relaxing and concentrating and may have physical symptoms • Appear fidgety, restless, tense, and nervous
Mood Disorders	**Manic Episode**	• Have racing thoughts, rapid speech, and have many plans/projects • Sleep little, and may have an increased appetite and chemical usage (substance use), decreased need for sleep, increased energy, elevated mood. • May appear irritable, grandiose, or paranoid
	Depressive Episode	• Think negative thoughts about themselves, others, and their circumstances • Feel sad and hopeless and lack interest in and energy for their usual activities • Appear lethargic, unable to concentrate
	Bipolar Disorder	• Mood Disorder that includes at least one manic or hypomanic episode and often includes episodes of depression • May have elements of both manic and depressive disorders

Post-Traumatic Stress Disorder (PTSD)	• Have intrusive thoughts and memories about the trauma(s) • Feel anxious, numb, unable to concentrate • Appear hypervigilant and avoidant of trauma reminders
Psychotic Disorders	• Thinking may show some loss of contact with external reality • Feel frightened, suspicious, uneasy around others • Appear withdrawn, unable to answer questions logically
Substance Use Disorders	• Pattern of use negatively affects judgment, work, school, and/or relationships • Feel blamed, regretful, and verbalize desire to change; May also feel shame • Likely to have repeated episodes of substance use until actively in recovery • May experience substance use coercion in the context of intimate partner violence; for example, a person may be coerced into using by an abusive partner, prevented from accessing treatment and achieving their recovery goals and then discredited with friends, family, helping professionals, and the courts

Personality Disorders	• Show patterns that differ significantly from what is expected in how they:
	  ○ Think about themselves and others
	  ○ Respond emotionally
	  ○ Relate to others
	  ○ Control or don't control their behavior

Treatment and Medication

What is helpful to parties varies. Medication alone or in combination with therapy can be effective.

For those whose treatment recommendations include prescribed medication, that treatment approach can be highly effective in dealing with the common symptoms associated with the disorder, as long as it is accessible, affordable, and the person's choice. Understanding the effects of the medication prescribed, as well as the dosage, requires explanation by practitioners. The National Institute of Mental Health (NIMH) provides a useful list of medications.

There are many reasons why a person may not choose medication, even if it is recommended. Not all diagnosed conditions benefit from psychiatric medication. In fact, periodic or ongoing therapy may be the preferred course of treatment. For some, other healing modalities, activities, connections, and/or peer support may be what is most helpful.

In making decisions where a person's mental health condition is a factor in their legal case (e.g., custody/visitation), consideration should be given to the party's efforts to address their mental health symptoms, such as their effort to obtain medication and to take it as prescribed, participate in therapy, and/or take other steps to manage the impact of their mental health symptoms on others. Some mental health conditions respond well to medications but identifying the appropriate medication and the effective dosage can take months of working with a doctor. For example, a party with severe depression may or may not manage well on medication or they may benefit from additional support or therapeutic techniques to enable better management of their condition. If parties appear not to be taking medications, find out why. Medications often have unpleasant side effects that result in some individuals not taking them as prescribed. Prescriptions can be very expensive, and individuals may struggle to pay for them. Additionally, some individuals may seek out non-Western or culturally specific modalities of treatment to address mental health concerns. There are peer-based approaches and self-management tools (e.g., WRAP ™) developed to support people who aren't able to tolerate medication.

Intimate Partner Violence Considerations

Victimization by an intimate partner greatly increases a person's risk for developing a range of mental health conditions, including depression, anxiety, PSTD, eating disorders, chronic pain, insomnia, substance use disorders, psychotic episodes, and suicide attempts. Further, coercive controlling behavior or threats or commissions of domestic violence can be used to exacerbate a diagnosed mental health issue.

Figure 1.
Victimization and Increase of Mental Health Conditions

People who abuse their partners use mental health and/or substance use issues against their partners. A 2014 study by the National DV Hotline and the Center on Domestic Violence, Trauma and Mental Health identified these behaviors:

Undermine Mental Health: Attempt to convince others that partner is unstable/mentally ill; gaslighting; blaming the abuse on partner's mental health.

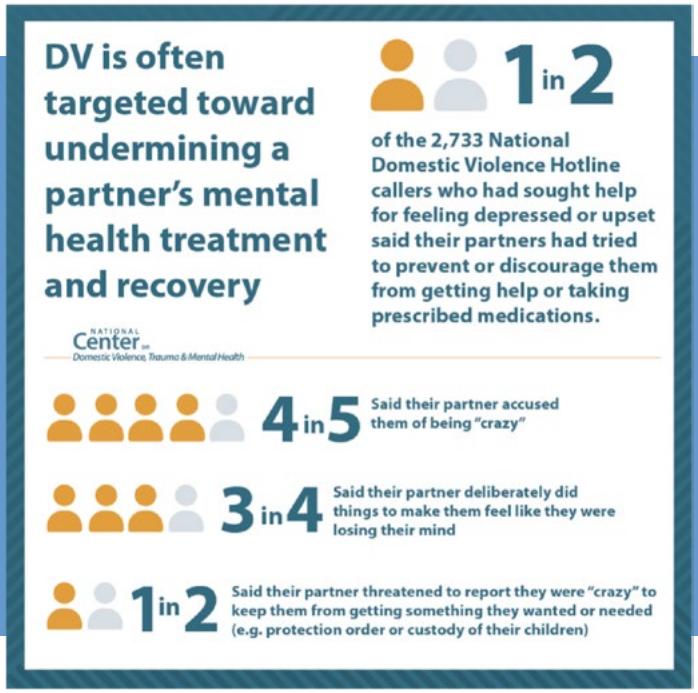
Treatment Interference: Attempt to control the treatment provider's perceptions; prevent a partner from accessing or engaging in treatment; sabotage a partner's recovery efforts.

Control of Medications: Prevent from taking, force to take (wrong dose/overdose), steal medications.

Threats to Report or Discredit: Use mental health to influence custody or obtain protective order.[1]

Figure 2.
Domestic Violence and Undermining Treatment

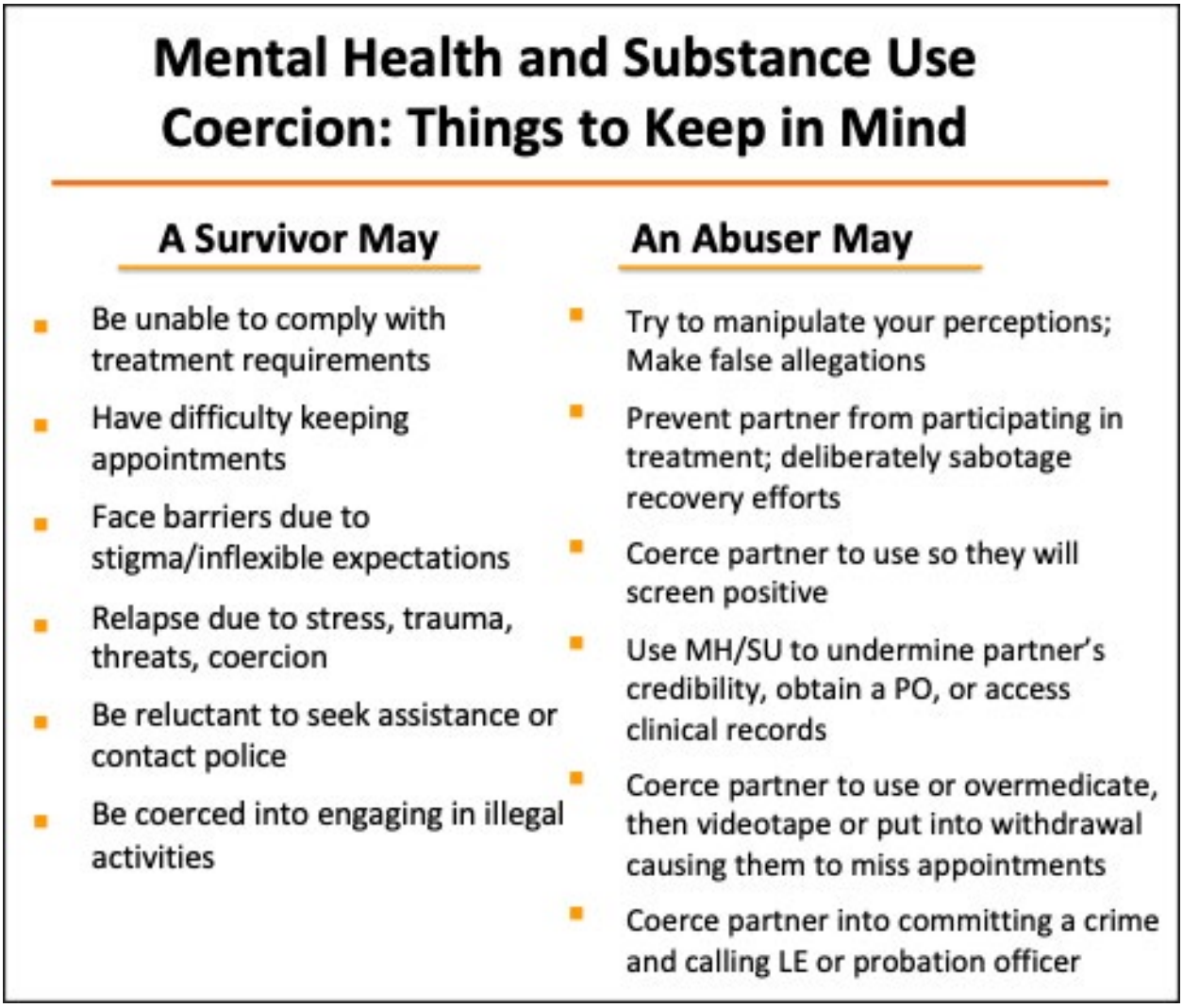
Note. Infographic by the National Center on Domestic Violence, Trauma & Mental Health, (http://www.nationalcenterdvtraumamh.org/).



1 C. Warshaw et al., "Mental Health and Substance Use Coercion Surveys: Report from the National Center on Domestic Violence, Trauma and Mental Health and the National Domestic Violence Hotline," National Center on Domestic Violence, Trauma and Mental Health, March 2014. Retrieved from http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2014/10/NCDVTMH_NDVH_MHSUCoercionSurveyReport_2014-2.pdf

Judges observing or learning about these behaviors should recognize them as elements of the power and control wheel[2] and an attempt by an abuser to discredit, sabotage, threaten, and exercise dominance over their partner. The chart below illuminates possible conditions and causes.

Figure 3. Mental Health and Substance Use Coercion: Things to Keep in Mind



2 Domestic Abuse Intervention Programs, "Understanding the Power and Control Wheel" (n.d.). Retrieved from https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/.

Assessing whether domestic violence or intimate partner violence (IPV) is present is of paramount importance. When IPV is known or is a concern, any mental health challenges experienced by a survivor must be considered in the context of ongoing threats, danger, and coercive control. Fear of violence, fear of custody loss, trauma, and emotional distress experienced by the survivor may exacerbate mental health challenges.

Responding to Emotional Distress and Crisis

Judicial officers and staff may experience parties in a distressed or heightened emotional state. Under stress, a person's interaction with the court may be other than expected. The following provides considerations for how a person may present in court.

Table 2. Considerations for How a Person May Present in Court

If a person appears . . .	. . . this could mean. . .
. . . withdrawn, shutdown, non-responsive . . .	. . . they are afraid, tired, do not trust the process, are depressed, experiencing dissociation, are dealing with a traumatic brain injury or intimate partner violence.
. . . to be responding inappropriately or not responding to the questions asked . . .	. . . they are overwhelmed in a court setting, they are dissociating, experiencing psychotic symptoms . . .
. . . agitated	. . . they are experiencing PTSD-related hypervigilance/hyperarousal, or emotional dysregulation related to trauma . . .
. . . to be talking very fast and not making sense	. . . they are afraid, anxious, experiencing acute manic/psychotic state, or taking a stimulant

When parties are experiencing emotional distress during court proceedings or are behaving in ways that are preventing them from participating in their legal case and/or may be distressing to others, judicial officers and staff can help mitigate distress. Here are best practices for working with families, as well as techniques for working with parties experiencing anxious states of being:[3]

- Avoid using court jargon or specialized terms.
- Express genuine interest in the person's experience and concerns.
- Speak more slowly with a caring, non-patronizing tone.
- Avoid arguing and raising your voice.
- Pause if necessary. Consider taking a break or offer to return another day if someone is not understanding or is unwilling to engage further.
- Recognize when emotions are getting heightened.
- Seek other services and support systems if needed.
- Work with the attorney or support person present.
- Facilitate seeking help or support for the individual, if concerns exist about the person being a danger to self or others.
- Work with a carefully selected, and agreed upon, support person present.
- Offer other space solutions, if possible. For example, having a hearing in a meeting room with regular table and chairs to reduce distress.
- The court can be an unknown and stressful environment. Are there non-adversarial or alternative dispute resolution options available?

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3 National Center for State Courts (2021) Mediation and mental health best practices handbook. National Center for State Courts. https://cdm16501.contentdm.oclc.org/digital/collection/adr/id/68.

Get Support from the Mental Health Community

This chapter provides only an introduction to complex issues in working with individuals and families experiencing situational or ongoing mental health conditions. It is an emerging promising practice that courts work to create effective court-behavioral health partnerships. It is far more common that communities have limited mental health services. In the face of lacking services, it is common for judges to email colleagues to seek out needed services like where to conduct a psychological assessment or where to find inpatient treatment. Where possible, courts should endeavor to create community resource lists of service providers and take steps to broaden service array and to ensure that referrals are made to providers and evaluators who are culturally responsive and both domestic violence and trauma informed. This should include identifying resources that could advise them regarding appropriate orders.

Additional information and training on the topics mentioned above are available at National Center on Domestic Violence, Trauma and Mental Health.