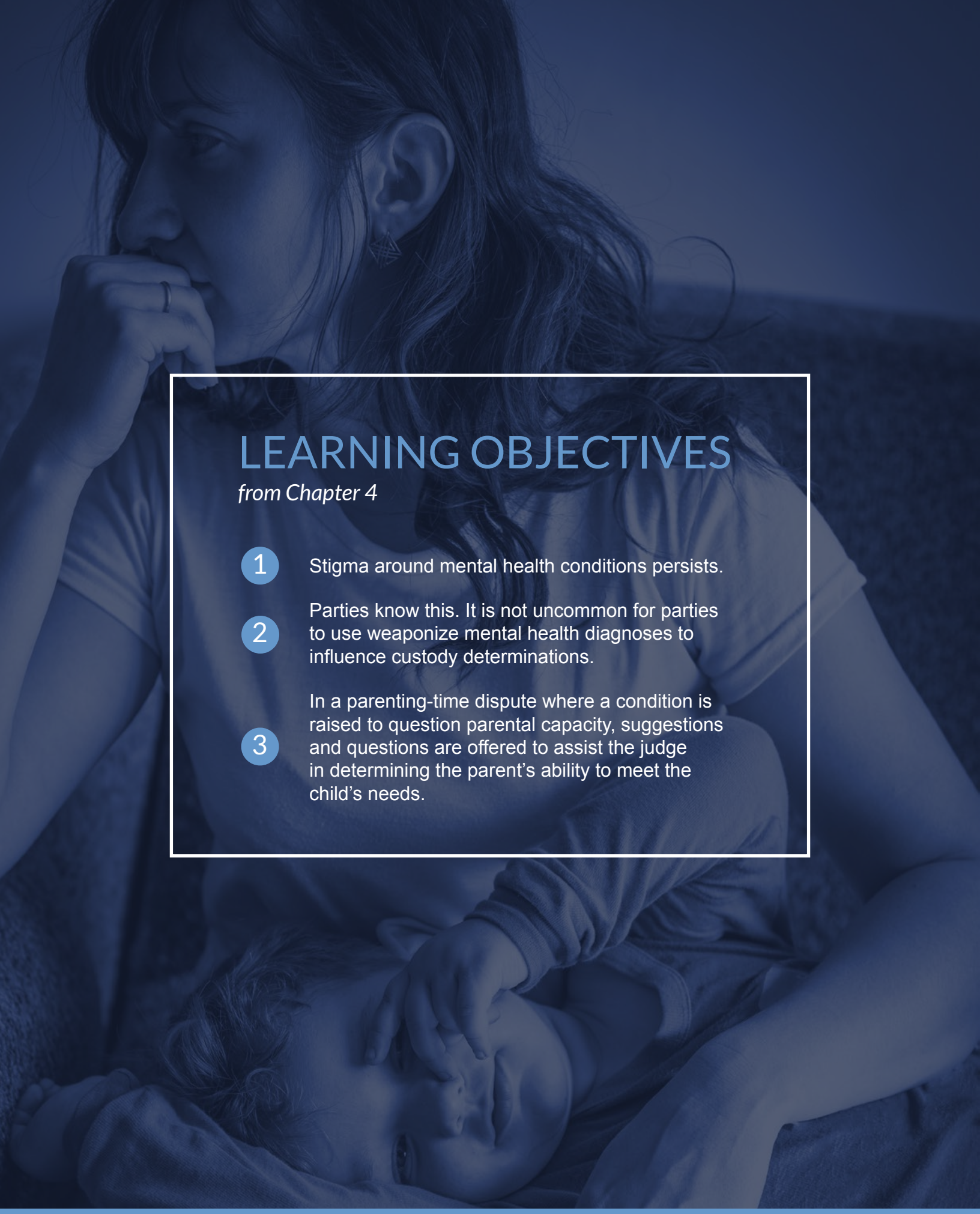
CHAPTER 4



LEARNING OBJECTIVES

from Chapter 4

1. Stigma around mental health conditions persists.

2. Parties know this. It is not uncommon for parties to use weaponize mental health diagnoses to influence custody determinations.

3. In a parenting-time dispute where a condition is raised to question parental capacity, suggestions and questions are offered to assist the judge in determining the parent's ability to meet the child's needs.

CHAPTER 4

Understanding the Impact of Mental Health Conditions on Parenting Capacity

The Destigmatization of Mental Health Conditions and Diagnoses

Decisions made in family law cases are challenging, especially when judges are left to make decisions based on information that is incomplete or disputed. One such issue arises from the intersection between mental health and parenting capacity. This chapter highlights the importance of using a person-centered approach instead of a pathologizing approach that views or characterizes mental health conditions as psychologically abnormal. It emphasizes the need to look at a diagnosis as just the first step in assessing child safety and well-being in a parent's care.

Stigma around mental health continues to exist and may even provoke unconscious bias. The term "mentally ill" conjures pejorative perceptions. Judges are better served to use the phrase "having a mental health condition." Understanding stigma around mental health conditions, and how it impacts decisions on parenting capacity will ensure that mental health diagnoses do not drive decisions about a parent's ability to meet a child's needs. It is far more effective that judges examine patterns of behavior, the impact of treatment, including medication, and child safety issues.

The Parenting Capacity vs. Diagnosis Disconnect

Judges and court staff must understand that the mere presence of a mental health condition should never dictate how the case resolves. The current litigation approach in most circumstances is heavily reliant on diagnoses to guide next steps, due to the inclination to act in a protective capacity toward children. In litigious cases, it is far too common for one party to try to leverage the other's mental health diagnosis in parenting-time disputes.

The notion that the capacity of a parent to assess and address a child's best interests is limited by the presence of a condition or diagnosis, is a fallacy. Reducing the court's reliance on labels is a preferred approach in understanding mental health conditions and the effects of trauma on litigants. Having a mental health condition does not mean that parents are not doing what they need to do for a child. Accordingly, judges should look more closely at what the condition or diagnosis means regarding the parent's plan for child safety and well-being.

Intersection of Mental Health and Domestic Violence

Clearly, domestic abuse negatively affects parenting and jeopardizes the safety of the child. When looking at the intersection of mental health and domestic violence, judges should first consider the victim's trauma (Chapter 3) and the coercive behavior of the abuser (including control, intimidation, and dominance). Judges should also be aware that many perpetrators of domestic violence or abuse raise the mental health conditions of the other parent as a legal strategy or in an attempt to dominate their partner. A 2014 report by the National Center on Trauma, Domestic Violence and Mental Health reported frequent use of reporting of a party's medications or treatment to influence court custody determinations.

As a result of the abuse they have experienced, a victim can appear hypervigilant about their children's safety. It is important for practitioners to evaluate the root cause for the hypervigilance and avoid confusing hyper-vigilance with alienating behaviors. In court, especially in the presence of the alleged abuser, a victim may respond in ways that reflect the fear and trauma they are experiencing, due to the abuse itself, and/or due to direct intimidation by their abusive partner and fear of retaliation, as well as custody-related threats. Responses to fear and trauma can range from seeming disconnection or lack of affect or very intense affect, as well as memory gaps and can prevent a survivor/victim from providing a coherent narrative and clear explanations of their responses and behaviors.

In addition to securing training on the impacts and effects of domestic violence, courts should consider alternatives to in-person hearings and having victim advocates readily available to provide support and/or reduce stimuli that may provoke a stress response.

Pattern of Behaviors vs. Diagnosis

To separate a mental health condition or diagnosis from its consequences for parenting, judges should consider patterns of behavior as well. Examining behaviors allows judges to identify activity that is not safe for the well-being of a child, while reducing the weight of labels that may influence decisions on parenting capacity. For more on this, see ***Chapter 3: Understanding the Spectrum of Mental Health Conditions.***

Judges should look more closely at parenting assessments, preferably by trained professionals, and the fit between the child's needs and the parent's ability to meet those needs. When a parenting assessment is not available, the judge should look at information provided by the parents, the child, if appropriate (*see* **Chapter 5**), and reliable collateral sources.

Judges should ensure that assessments of mental health conditions and parental capacity are done by neutral, preferably court-employed, professionals who are knowledgeable about trauma and domestic violence. When such assessments are proffered by counsel or parties, judges should exercise extreme care in considering such information.

Making Parenting-Time Decisions

A closer look should be given to what effect, if any, the mental health condition has on parenting. The judge should determine:

- Does the party acknowledge the condition?
- Is the party taking steps to ensure that their mental health condition does not negatively impact their parenting or their children?
- Does the parent have a safety plan for the child that identifies supports if the parent becomes de-stabilized?
- Is there a support person or family member who may serve as a resource in times of stress or crisis?
- Is the co-parent weaponizing or exacerbating the mental health condition?

In a family law dispute where a mental health condition is raised to question parental capacity, the judge should direct questions about the parent's ability to meet the child's needs to the treatment provider. If the provider is unwilling to comment on parenting capacity, a separate assessment may be needed. The chart below captures the typical questions that should be asked by a provider during an assessment.

Table 1. Typical Questions by a Provider During an Assessment

Understanding the Diagnosis	• Was a mental health condition diagnosed? When? By whom? • What is the parent's specific diagnosis? • What symptoms and/or behaviors were identified/observed that support the diagnosis? • What is the current level of severity of symptoms or behaviors observed? • What is the mental health history of the individual, i.e., previous treatment or hospitalizations? • What is the common prognosis for an individual with this condition? • What are the common treatments for individuals with this condition? • Is this condition situational or chronic?
Asking about Treatment	• Is there a treatment plan? What are the current goals of treatment? Is the treatment plan feasible and acceptable to the individual? Is an abusive partner trying to sabotage the treatment plan? • In what treatment activities is the individual currently engaged? • What is the individual's level of engagement in and commitment to treatment? As evidenced by…? (*Ask about specific behavioral indicators*) • What is the individual's progress to date on treatment goals? As evidenced by…? (*Ask about specific behavioral change*) • Has the parent been prescribed with any medication? Is the parent taking medication as prescribed? If not, are there reasons why they aren't taking medications as prescribed? What would be a helpful alternative? (Transportation, childcare, affording meds and MD visits, abusive partner preventing them from taking meds as prescribed?)
Safety & Risk	• Does the individual pose a risk of harm to themselves or to others? • What specific risk factors are present or absent to support the risk status? • What is the risk for relapse/decompensation/recurrence? • What factors mitigate risk for the individual? (*Ask about safety/relapse prevention plan.*) • What is their support system and are they using it? How so? What is the plan to use their supports?

Parenting Implications	• What is your general understanding of how this diagnosis might affect an individual's capacity to parent?
	• How might the parent's diagnosis effect their ability to co-parent?
	• Is the individual able to meet the basic needs of children?
	  • Safety and protection
	  • Food and shelter
	• How able is the parent in managing relational aspects of parenting?
	  • Attachment and warmth
	  • Attunement and responsiveness
	  • Emotional support and nurturance
	  • Predictable and reliable responses
	  • Modeling prosocial behaviors—such as distress tolerance, positive coping skills, healthy relationships, etc.
	• How able is the parent in handling executive aspects of parenting?
	  • Manage child behavior
	  • Establish routine and structure
	  • Manage logistics of childcare—school, medical appointments, activities, etc.
	  • Maintain engagement with the outside world

Parenting Observations	• Have you directly observed the individual with their child(ren)? Have you directly observed them while engaged in parenting activities?
	• Are you aware of any impacts of the individual's mental health condition on the children?
	  • Parent self-report?
	  • Direct observation?
	  • Report of professional treating the children?
	• Are you aware of any specific risk to the children from the individual? From others?
	• Do you have any specific treatment recommendations related to parenting?

Understanding the Child	• What is the child's age and current level of developmental functioning? • What is the child's current level of functioning at school, at home, in the community? • What strengths and protective factors are present in the child? • In what supportive relationships and activities is the child involved?

Experience of Parent's Mental Condition	• What is the child's direct experience of the parent's mental health condition? • How has the child been impacted directly or indirectly by the parent's mental health condition? • Has the child's immediate safety been directly impacted by the parent's mental health condition? • What is the child's current level of knowledge, awareness and understanding of the parent's mental health condition? • What coping strategies has the child employed to deal with the parent's mental health condition? • Has the child had excessive responsibility to care for themselves, the parent or siblings?

Direct Observation	• Have you directly observed the child with the parent who has a mental health condition?
	• Have you directly observed the child with the other parent?
	• What did you note about the parent's (or parents') ability to demonstrate the following?
	  ○ Attachment and warmth
	  ○ Attunement and responsiveness
	  ○ Emotional support and nurturance
	  ○ Predictable and reliable responses
	  ○ Modeling of prosocial behaviors—such as distress tolerance, positive coping skills, healthy relationships, etc.
	  ○ Manage child behavior, establish routine and structure
	  ○ Manage logistics of childcare—school, medical appointments, activities, etc.
	  ○ Maintain engagement with the outside world
	• What did you specifically note about the child's emotional and behavioral response to the parent(s)?
	• What is your assessment of the of the child's overall attachment to the parent(s)?

Going Forward	• What do you believe the child needs from the parent with the mental health condition in the following areas?
	  ○ Basic needs, protection, and safety
	  ○ Dealing with the parent's mental illness
	  ○ General parenting capacity
	• What do you believe the other parent can do to support the child's relationship with the parent who has a mental health condition?

If a person's mental health condition is impacting their parenting, consideration should be given to the parent's efforts to protect their children. For example, is the parent able to care for their children regardless of any mental health condition? If not, how does their mental health condition impact their parenting ability? What are they doing to manage any symptoms that may be affecting their children? What supports would they need? Is an abusive partner actively undermining their mental health, interfering with treatment, controlling their medication, and undermining their parenting? If so, what steps could be taken to protect the non-abusive parent and their children?

When appropriate, seek cooperation between parents so that the non-diagnosed parent can be a resource instead of a hostile informant. Additional attention should be given into assessing what the other parent is going to do to be a resource in times of destabilization. In cases of abuse or violence allegations, it is not appropriate to engage/include the non-diagnosed parent as a resource.

In conclusion, judges should use caution when issues regarding mental health conditions, trauma, and abuse are raised in the course of litigation. They need a deeper understanding of the impacts of those things than what is provided by typical societal stigmas or labels applied in such circumstances. A mental health condition or trauma may or may not be sufficient to limit a parent's access to a child. Because the issues are complex, whenever possible, a judge should use the services of a trained professional with knowledge of trauma and domestic violence to provide the assessments that are needed to evaluate the parenting capacity of a parent with a mental health condition.