



March 16, 2022

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Honorable Kathy Hochul  
Governor of the State of New York  
NYS Capitol Building  
Albany, NY 12224

**Re: Forensic Custody Evaluations in Custody  
Matters/Blue Ribbon Commission**

Dear Governor Hochul:

I write as President of the New York Chapter of the American Academy of Matrimonial Lawyers. The AAML was founded in 1962 by highly-regarded family law attorneys “to encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be protected.” The New York Chapter of the AAML follows these important principles so that the families and children of the State of New York are better served while trying to navigate the difficulties and trauma which accompany the dissolution of their family.

The AAML-NY respectfully renews our offer to participate in a comprehensive, impartial review of forensic custody evaluations in custody matters while we and other interested organizations and parties such as the Association of Family and Conciliation Courts (“AFCC”) and the New York State Bar Association Family Law Section continue to review and prepare a response to the Commission’s Report, which in December 2021 was made publicly available.

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As you may be aware, when the Commission was formed to study the role of mental health professionals in New York courts, the New York State Bar Association--Family Law Section and the American Academy of Matrimonial Lawyers--New York Chapter asked that our organizations participate and contribute to the Commission's work. See letter dated February 23, 2021 to Governor Andrew Cuomo attached hereto. Neither organization was invited to nominate anyone to the Commission.

Now that the Commission has issued a Report, we, and other interested organizations, are working hard to analyze its contents, its implications, and its nearly equal divide among the Commission's twenty members. We are concerned that families will be adversely impacted by any precipitous action which may be taken on the Commission's recommendations – particularly where one of the recommendations is to engage in precipitous action – despite the lack of consensus of its members and without input from the vast number of experienced professionals (judges, practicing attorneys, and mental health providers), who work in this area daily and who have a unique understanding of this complex area of the law.

While New York does not have a list of statutory factors to consider in custody cases, case law has established that numerous factors should be considered by judges in making custody decisions, that no single factor should be determinative and that judges should state their reasoning on the record. The standards include an assessment of (a) parenting capacity; (b) developmental needs and ability of each parent to meet those needs; (c) values and capacities of each parent to provide stability; (d) interactions between parent and child; and others.

Judges have come to recognize that these standards are not easily provable and could be more easily assessed if an investigation were made by a qualified neutral mental health professional. Thus, a portion of this responsibility has often fallen on the shoulders of forensic evaluators who are frequently called upon to make reports and (sometimes) recommendations based upon their observations. The work of these professionals has received a great deal of attention over the last forty years with professional standards and guidelines being adopted and numerous critiques being published.

A great deal of attention has been paid to the question of the scientific validity of mental health evaluations that are performed during custody evaluations. Books have been written about it, numerous articles have been published, and there have been innumerable lectures and programs galore exploring same. In 2004, the Miller Commission was appointed by Chief Judge Judith Kaye. It worked for two years, held extensive hearings and issued a comprehensive report with appendices which also addressed this very same issue. There is, and has been, an awareness that the system is imperfect and that there can be improvement. There has also been an awareness that what we had before was worse.

In December 2021, the Blue Ribbon Commission appointed by Governor Cuomo, issued its 18 page Report. The Commission Members, by a 9 to 11 margin, concluded that forensic evaluations should be eliminated. Unlike the Miller Commission, the Blue Ribbon Commission tells us very little about the process in the Report (e.g., who appeared, what information was collected, etc.). This is particularly troubling in that the one and only vote count released was as close as it could be, barring an equivalence of votes. The Commission Members are an assorted group of professionals, but it is clear that there was a lack of true geographic diversity, many are associated with organizations that deal exclusively with domestic abuse issues, and some come with long-standing agendas. There appears to be only one member who is in the private practice of law, so there is a practical void of attorneys who are in the trial courts on a regular basis directly addressing these matters on behalf of their clients. The Commission Members do not appear to be as diverse as one might expect a panel of such significance to be.

The Report itself does not disclose anything about “the public statements” which were “provided to the Commission Members.” Nothing was disclosed regarding who gave the statements, nor what the nature of the information was. This is ironic indeed considering the criticisms contained in the Report.

The Report indicates its awareness of “extraordinarily high case dockets, long delays in cases being adjudicated and a dearth of available court appointed counsel....” It does not mention the dearth of available mental health professionals or the substantial delays in producing reports occasioned by the systemic difficulties. The Report points out that some forensic reports are defective and that defective reports sometimes “escape meaningful scrutiny and are often accepted by the court....” The Report does not seem to consider that the “disastrous consequences” that sometimes result may be caused in part by an insufficient number of judges, an insufficient number of qualified attorneys and a system which does not adequately triage for the truly difficult cases. Instead, the Report seems to place the blame on the custody evaluations.

In its section entitled “Prevailing Question for Consideration: Possible Legislation to Eliminate Custody Evaluation,” the Commission begins with a draconian solution to the stated problem - eliminate the evaluation. Such a suggestion, which appears Shakespearean in its absolutism, is simplistic at best and potentially damaging to families and their children at worst.

The Report seems to overlook the significant problems that are likely to emerge with the elimination of forensic evaluations in a state where there are hardly any statutory factors enumerated for the court to consider.

In addition to the Commission’s Report, “Kyra’s Law,” as initially proposed, would elevate the significance and standard of domestic violence considerations in custody cases, and would create impossible procedural and other requirements. With the Blue Ribbon Commission’s cry for the elimination of forensic evaluations in custody cases, and the potential enactment of Kyra’s Law or

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some amended proposal thereof, the complexity of the issue is self-evident and shows why greater consideration, broad study, and scrutiny is necessary before any action is taken.

We live in an imperfect world where we have imperfect laws administered by imperfect people. The tolerance for injustices impacting the lives of children should be low, and there is much to be learned from our history. Certainly, there is much in the Commission's recommendations which have merit and others which have a potential for evolution. We do not mean to be exclusively critical -- merely that, given the existing lack of consensus in the Commission and the absence of representation therein of practicing family law attorneys with extensive knowledge and practical expertise in this area, a collaborative and in-depth review should be undertaken.

Existing statutory considerations combined with the proposals generated by the Commission and by the proponents of Kyra's Law will surely place an even greater, if not overwhelming amount of pressure upon courts to conduct hearings on each relevant factor in custody cases. This would negatively impact the apparent backlog courts are already struggling to address. This is yet another consideration that does not appear in the Blue Ribbon Commission's Report.

Thus, we respectfully suggest that Your Honor pause before any action is taken as a result of the Commission's Report so as to allow for our organization and others, such as the New York State Bar Association Family Law Section and the interdisciplinary AFCC to submit thoughtful, comprehensive responses in an effort to assure that any steps taken include input from those of us who have dedicated our professional lives to this area of the law, the families we represent, and the communities we serve.

Adam John Wolff  
President  
American Academy of Matrimonial Lawyers  
New York Chapter

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February 23, 2021

The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Cuomo:

The undersigned write on behalf of our respective professional organizations to offer nominees from our roster of Members and Fellows to serve on the forthcoming Commission to study the role that mental health professionals have in the Family Courts of the State of New York.

The Family Law Section of the New York State Bar Association counts as its members approximately 2,400 registered New York attorneys who are committed to advancing the practice of family and matrimonial law for all families throughout the 13 Judicial Districts that comprise the State. The 130 attorneys with 10 or more years of experience who have been admitted after a rigorous application process as Fellows of the New York Chapter of the American Academy of Matrimonial Lawyers have unique experience with complex matrimonial matters. Each of us is an active participant in both organizations because, collectively, they represent the depth and breadth of practice in this complex field.

We are attorneys who see first-hand how mental health evaluations impact our clients and, more importantly, their children. For this reason, our Members and Fellows often lecture to and lead professional discussions with attorneys, members of the judiciary and their staff, and members of the mental health professional community who interact with family and matrimonial law.

There are many important issues to address by this Commission, and we are confident that our input will benefit the commission and, as a result, the families we serve.

GASSMAN BAIAMONTE GRUNER, P.C.  
The Honorable Andrew M. Cuomo  
February 23, 2021  
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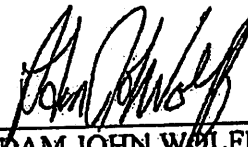
Given the breadth and wealth of experience presented by our combined membership, we respectfully submit that Your Honor's Commission would be aided by our contributions and unique insight. It would be our great pleasure to assist you in this incredibly important task.

Please do not hesitate to contact us for any assistance we may be able to provide.

Respectfully,



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