

THE **RECORDER**

COMMENTARY

Family courts need to look in the mirror

Daniel Pollack & Elisa Reiter | September 11, 2023



Employees in many different fields have an opportunity to do a self-evaluation to assess their own overall job performance. This helps to ensure that employees are tapping into their full potential. A rigorous self-assessment can be an invaluable tool for employees, the company, and ultimately, their customers. Thousands of child custody cases involving domestic violence go through family courts every year. How many of these courts, if any, have ever done a look-back self-assessment to ascertain how successful their judgments were?

This introspection could have a positive impact on the children and parties involved, as well as on the court itself. An honest self-assessment could be the starting line to a more transparent family system. When judges know, in fact, the results of their previous decisions, they will gain insight into what decision-making skills they need to work on.

Family law matters may include:

- divorce, annulment, and property distribution;
- cases involving child custody and visitation;
- cases in which alimony and child support are at issue;
- other child focused cases such as paternity, adoption, and termination of parental rights;
- juvenile cases (juvenile delinquency matters, child abuse, and child neglect cases); cases involving allegations of domestic violence;
- contempt cases, such as civil and/or criminal nonsupport;
- cases involving name changes for children and/or adults;
- guardianship and/or conservatorship, as applicable, for minors and disabled persons; and
- end of life decisions, such as whether to withhold or to withdraw life-sustaining medical procedures, involuntary admissions, and emergency psychiatric evaluations.

[Barbara A. Babb](#) suggested almost ten years ago that “... family courts adopt both a therapeutic and a holistic approach to court structure and processes, as well as to family law decision making.” Babb notes that Professors David Wexler and Bruce Winick define such [therapeutic jurisprudence](#) as:

...the study of the role of law as a therapeutic agent. It looks at the law as a social force that, like it or not, may produce therapeutic or anti-therapeutic consequences. Such consequences may flow from substantive rules, legal procedures, or from the behavior of legal actors (lawyers and judges). The task of therapeutic jurisprudence is to identify—and ultimately to examine empirically—relationships between legal arrangements and therapeutic outcomes. The research task is a cooperative and thoroughly interdisciplinary one.

The goal of this interdisciplinary approach is to attempt to assure a positive impact on those who are part of a family court case - especially children, whose best interests judges are to serve.

Here are some sample questions family court judges and staff might consider asking themselves:

- Are there any specific skills, training, or resources that would help us make better decisions, including but not limited to trauma awareness training?
- How could we better manage our time, including continuing to use video and other electronic meeting platforms?
- Have we set up feedback mechanisms, and are we open to hearing about the ramifications of our decisions?
- What metrics should we use in our self-evaluation, beyond the number of orders signed in a given quarter or year?

Some means of evaluating family courts might include:

1. Clearance rates: What is the rate at which cases are cleared or resolved from a judge's docket?
2. Average time to disposition: How much time passes between filing and resolution?
3. Age of active pending cases: How long has a given case been pending in the judicial system? Many involved in family law recognize the issue of the "lifetime case" with litigants who are so enmeshed that they repeatedly come back to court until the children made the subject of the litigation finally attain majority.
4. Trial date certainty: Should judges implement a system whereby cases are scheduled for trial within a set period after filing?

Metrics alone are insufficient to measure the effectiveness of family court judges. We need to explore family court judges' [perceptions and experience](#), as their perceptions and experience can provide valuable insight to the impact of their rulings on family and children.

Judges must maintain dignity throughout the process for all involved. [Benjamin A. Barsky, Heather Ellis Cucolo, and Dominic A. Sisti](#) contend that therapeutic jurisprudence should be expanded in a variety of ways to create team approaches in problem-solving courts that would better serve individuals with mental illness and substance use disorders. Has the time come for family courts to have not only law clerks, but also mental health professional liaisons and forensic accountants attached to each court to assist in helping litigants reach the best possible resolution? Would families stay together if ordered to complete family counseling

and financial management courses as a condition precedent to moving forward with divorce?

After a divorce, parents do not necessarily remain in the same location. Family law judges face mobile litigants, and cases involving families and children that could be the subject of more than one court order stemming from more than one jurisdiction. Those orders can conflict with each other. Many jurisdictions have developed a unified family court approach, seeking to unify and coordinate efforts between courts. The focus in unified family courts is to consolidate and/or coordinate related cases, netting judicial economy, and hopefully, savings in fees and costs for litigants. What can judges do to improve their handling of related cases, to coordinate services for litigants in their courts, to avoid duplicative orders, and to create a simplified system for matters related to families and children?

Self-reflection is hard. Who really feels comfortable assessing their own performance? When undertaking an accurate and complete self-assessment, family courts need to be brutally honest with themselves. Just like every employee has strengths and weaknesses, it is important for judges to take pride in their strengths while simultaneously acknowledging how they can find solutions to improve their weaker areas. Family court judges need to ascertain not only how to arrive at the truth, but how they can preserve family integrity in the most difficult cases.

The Supreme Court of Canada stated in *R. v. Gagnon*, 2006 SCC 17 (S.C.C.), at para. 20, it is not always possible “to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events” (see also *R. v.*

M.(R.E.), 2008 SCC 51 (S.C.C.), at para. 49; Hurst v. Gill, 2011 NSCA 100 (C.A.), at paras 18-19). Family court judges have very difficult jobs. They must possess the wisdom of Solomon, the work ethic of Steve Jobs, and the kindness of Dolly Parton. When a family court judge looks in the mirror, do they see the legions of individuals whose lives they have touched standing behind them? Are family court judges haunted by those families whose lives they've impacted, or pleased by their actions in serving the best interests of those families?

As Justice Ruth Bader Ginsburg wrote: "Whatever you choose to do, leave tracks. That means don't do it just for yourself. You will want to leave the world a little better for your having lived."

Daniel Pollack, MSW, JD is a professor at Yeshiva University's School of Social Work in New York City. He is co-author of [*Domestic Abuse, Child Custody, and Visitation: Winning in Family Court*](#). Contact: dpollack@yu.edu.

Elisa Reiter is Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization. She has served as an Adjunct Professor at SMU. Mrs. Reiter is a Senior Attorney with Underwood Perkins, P.C. in Dallas, Texas. She is also admitted to practice in the District of Columbia, Massachusetts, and New York. Contact: ereiter@uplawtx.com.

Original link: <https://www.law.com/therecorder/2023/09/11/family-courts-need-to-look-in-the-mirror/>