

Practice:

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Association of Family and Conciliation Courts Approves Guidelines for Court-Involved Therapists

Family psychologists often provide therapy to separating or separated parents and their children, but may encounter numerous complications, including clinical and ethical challenges, when members of the family are involved with the Courts. The general ethics codes governing psychological practice may assist a psychologist in some respects, but to date there has been no specialized guidance for therapists who treat court-involved families. The dynamics of court involvement may impact psychological treatment in any number of ways, affecting the information coming to the therapist, the expectations of clients or parents of child clients, and the behavior of clients and other professionals. Conversely, ongoing psychological treatment may have profound effects on the functioning of family members and thereby impact the legal case. Ancillary to treatment of members of court-involved families, complex issues related to consent, management

of confidentiality/privilege issues, effective intervention, limitations of therapeutic opinion, the nature of therapeutic alliance, and the assessment of client information may arise. Psychologists may also encounter situations in which the normal “rules” related to privilege, consent, or other issues do not apply, or which vary markedly between jurisdictions or based on the context of the court case. Psychologists, lawyers, and judges may all intend the best for children but as they have been trained in different disciplines with different terminology, may have different ethical expectations - further complicating these issues. Families in transition are impacted by multiple systems - within the family, in the treatment context, among professionals, and when psychological practice intersects with the law.

Therapists may become involved with a family before court processes begin and then become “court-involved,” or they

may initiate their work on a case after parents decide to divorce and court processes have been commenced. Therapists may be sought out by parents to address their own emotional concerns, or may be asked to provide treatment to children at the center of a custody conflict. Parents may seek such treatment out of a desire to assist their children, but may also have desires and expectations regarding the therapist’s direct or indirect participation in the court processes that determine custody arrangements. Both the process of treatment and the contribution of information from the therapist may impact the process and outcome of a custody case. Appropriate treatment may offer considerable benefit to children and families, while inappropriate treatment may escalate conflict and cause considerable harm to families. Either effect may occur whether or not the therapist provides testimony in the case.

Many members of Division 43 are familiar with the Association of Family and Conciliation Courts (AFCC), an international, interdisciplinary organization devoted to improving the lives of court-involved children and families. AFCC is focused on improving interdisciplinary cooperation among professionals and improving the systems that impact children and families. A number of Society of Family Psychology members have served, or currently serve, in leadership positions at the AFCC. In 2009, AFCC convened a task force to promulgate professional

guidelines for therapists who are involved with child custody and juvenile dependency cases. Dr. Robin Deutsch, then-AFCC president and a former chair of the APA Ethics Committee, convened the interdisciplinary task force. The task force chairs were Matthew Sullivan, Ph.D. and Hon. Linda Fidnick. Lyn R. Greenberg, Ph.D., served as task force reporter. The process for development of the guidelines consisted initially of a review of relevant literature,

intersections between the practice of psychology and the law. While therapists may come to these roles with different levels of experience and expertise, the general concepts embodied in the guidelines become applicable whenever therapists work with a court-involved family.

The guidelines consist of a preamble and definitions section, including differentiation between a treating expert and a forensic expert. This section is followed by the ten guidelines, and additional resources such as a suggested procedure for responding to a subpoena, sample consent forms and therapy orders, and a list of professional references and resources.

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after which sub-committees developed draft guidelines. The draft guidelines were then subjected to an extended comment period by the AFCC membership and other professionals. Shortly after the final revisions, the Guidelines were submitted for review and approval by the AFCC Board of Directors. They were unanimously approved on October 28, 2010.

The aim of the AFCC guidelines is to build on existing ethical and professional practice principles and provide specific guidance to therapists who must navigate the difficult crosswinds occurring at the intersection of psychology, troubled families, the courts, and the other systems with which our families interact. The Guidelines are also designed to be used by other professionals who engage with mental health professionals or rely on their work, so that they can better understand psychologists' obligations, services, and opinions. The Guidelines are designed to serve as a common resource for legal and mental health professionals to consult, and a common communication point as we all navigate the difficult

Guideline 1, Assessing Levels of Court Involvement, provides guidance in assessing the degree to which legal processes are impacting therapy, and the potential impact of the therapeutic process on the legal case. This section also addresses issues to be considered when a child is to participate in treatment.

Guideline 2, Professional Responsibilities addresses core professional issues such as maintaining appropriate role boundaries, respecting the parties' rights and the legal process, managing relationships responsibly, professional objectivity and accountability.

Guideline 3, Competence, details the content areas with which court-involved therapists should maintain adequate training, education, and familiarity with current research, so that the therapist can function effectively in court-related cases.

Guideline 4, Multiple Relationships, addresses issues regarding role boundaries, conflicts of interest, and multiple relationships that are familiar to most psychologists, but with additional specificity and relevance to the legal setting. In addition to alerting psychologists of emerging role conflicts, this guideline may provide support to the psychologist in resisting demands that may inappropriately compromise his/her professional role.

Guideline 5, Fee Arrangements, provides specific advice for establishing payment arrangements

in court-related cases, which may be complicated by underlying financial disputes between the parties and requests that the therapist perform services beyond the structure of the traditional session.

Guideline 6, Informed Consent, details the informed consent processes that may be required when a family is involved in litigation, therapy is court ordered, or when the child in a court-involved family is to receive treatment. Enhanced informed-consent procedures are often essential in these cases, for the protection of both the therapist and the family.

Guideline 7, Privacy, Confidentiality, and Privilege, provides a road map for considering and addressing the complex confidentiality and privilege issues that may arise when a family is involved with the court. Procedures are included for anticipating and avoiding ethical dilemmas, as well as responding to requests for treatment information.

Guideline 8, Methods and Procedures, addresses areas in which clinical management may interact with the special demands of a court-involved case. These include procedures for ensuring that therapeutic methods are adapted to the dynamics of the court context, protective of the therapist's effectiveness and objectivity, and defensible if challenged.

Guideline 9, Documentation, addresses record-keeping issues that may be especially important in the court context.

Guideline 10, Professional Communication, addresses ethical, clinical, and practical issues that may arise when a therapist is asked to release information about treatment. This guideline also addresses issues such as the limits of therapeutic opinion and mechanisms for communicating effectively while remaining within the therapist's role and applicable ethical standards.

The Association of Family and Conciliation Courts has promulgated these guidelines to support high quality treatment in child custody and juvenile dependency cases; they are not intended as a standard of practice. Rather, the guidelines are intended to assist therapists in performing effectively in these cases, and to assist attorneys, judicial officers, and families in understanding and appropriately utilizing our services. The Guidelines and their associated resources will be published on the AFCC web site (www.afccnet.org) within the next few weeks. ■

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