



If Your Client Is Involved in Family Court, Now There's a Road Map!

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Psychologists often provide therapy to separated parents and their children, and may offer great benefits to clients and families. These cases can present numerous ethical and clinical challenges. While some issues arise suddenly and unexpectedly, many can be anticipated and managed from the moment a psychologist is contacted.

Treatment of any family may become court-involved, as when an intact family separates after treatment has begun. On other occasions, treatment is sought after court processes begin. Parents seeking treatment for themselves, or for a child, may be genuinely concerned for the child but may also have expectations that the therapist will become directly or indirectly involved in the parenting dispute. Just as the legal context impacts treatment, decisions and actions by the therapist may profoundly impact the individual client or family, and developments in the custody case. Ethical and clinical risks abound and general ethics codes governing psychological practice may assist in some respects, but

prior to 2010 there was no specialized guidance for therapists treating court-involved families.

Families in transition are impacted by multiple systems — within the family, in the legal process, in treatment, among professionals, and when psychological practice intersects with the law. Legal processes are enormously stressful and may affect clients' perceptions, behavior, expectations, and information provided to the therapist. Complex issues related to consent, management of confidentiality/privilege issues, effective intervention, limitations of therapeutic opinion, therapeutic alliance and the assessment of client information may arise. The therapist who fails to recognize and manage these issues may cause serious harm to both the identified client and others in the family. These risks may be present whether or not the therapist testifies.

In California, judges must make complex decisions that impact, or are impacted by, the conduct of therapists. These may include issues of confidentiality/privilege, whether and how to consider therapeutic information or opinions, the credibility of parents and the validity and relevance of statements made by children. Attorneys may challenge practices they perceive to be inappropriate or harmful, and other professionals may need to consider therapeutic information and make recommendations or decisions about future treatment. Each professional may know little about the ethics codes and legal rules which apply to the others.

The Association of Family and Conciliation Courts (AFCC), an international, interdisciplinary professional organization, approved Guidelines for Court Involved Therapists in 2010. The guidelines resulted from the work of a task force convened in 2009 by Robin Deutsch, PhD, then AFCC president and a former chair of the APA Ethics Committee. The task force was chaired by California psychologist Matthew Sullivan, PhD and Judge Linda Fidnick. Details on the development and peer review process can be found elsewhere (AFCC, 2011; Fidnick, Koch, Greenberg, & Sullivan, 2011; Greenberg, Sullivan, & Fidnick, 2011).

The Guidelines were designed to achieve several purposes, including but not limited to: (1) building on existing ethical and professional practice principles to provide specific guidance to therapists who work with court-involved adults, children and families; (2) serving as an educational resource for other professionals who engage with mental health professionals or rely on their work; and (3) serving as a common reference for improved interdisciplinary communication. The Guidelines can help psychologists anticipate and manage risks, serve clients better and manage situations in which legal professionals do

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not understand psychologists' obligations. While therapists may have different levels of experience and expertise, the Guidelines are designed to be applicable whenever therapists work with a court-involved family or can reasonably anticipate that court involvement may occur.

Involvement in a parenting dispute may impact a parent's perception of events, as well as the information provided to the therapist. If a three-year-old has a tantrum following a transition between his parents, this may be a normal child behavior or a response to the presenting parent's stress, rather than suggesting something nefarious about the other parent. The therapist who explores these issues may help the parent avoid over-interpreting the child's behavior. The therapist who fails to consider alternative possibilities or assist the parent with critical thinking may both support dysfunctional behavior and leave the client unprepared for interactions with more neutral professionals. Parents who fuel conflict, or cannot separate their own needs from those of the children, can cause serious emotional harm to children. They also tend to make a poor impression on custody evaluators and the Court.

Psychologists have a particular responsibility to implement careful procedures when a child of separated parents is to be involved in treatment. For example, it is generally unwise to accept a child into treatment at the behest of only one parent, particularly if the therapist is asked not to inform or consult the other parent. A parent who claims sole decision-making authority should be asked to provide a court order documenting this; otherwise, the excluded parent may be able to stop treatment that has been provided without his/her consent. If there is a court order requiring both parents' involvement in such decisions, the therapist may be unwittingly colluding in a violation of that order.

Moreover, the psychologist who engages with only one parent risks

biasing or compromising treatment to the extent that it fails to help or even harms the child. The therapist may unwittingly convey the message that s/he has sided with the involved parent, or fail to consider important information that the other parent could provide. Therapists must actively consider multiple hypotheses about children's statements and behavior, understanding that the child may behave very differently depending on the circumstances. Psychologists should know the factors that may lead to distorted and incomplete information from children, including developmental issues and the dynamics of abuse and parental conflict. Knowledge of factors leading to bias, the impact of leading questions or selective attention, and general developmental issues is essential. Some therapists support regressive, avoidant and acting-out behavior by children toward parents that they would not justify toward any other adult, rather than encouraging age-appropriate problem solving. Overly-aligned therapists may draw unwarranted conclusions about the parent who is not involved in treatment, failing to recognize the limits of their information or the potential impact of conveying such opinions to the therapy-involved parent or other professionals.

Parents in California do not automatically waive privilege by being involved in a custody dispute. Treatment information may be requested by an evaluator or parenting coordinator, or the parent may wish to waive privilege because he/she believes it will help in the legal conflict. Careful, detailed informed consent is essential and should occur both at the beginning of treatment and at any subsequent point when such issues become relevant. Privacy of children's information may be a particularly complicated issue, but can often be handled clinically by the therapist without ever requiring a legal decision. Therapists can reduce

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the risk of legal conflict by using careful and balanced methods, assisting children and parents with healthy communication and, whenever possible, therapeutically managing the sharing of necessary information to support the child. Clinically, this can often be done without disclosing the child's specific statements.

Judges often respect therapeutic privacy and providing a child with a "safe place" to express his/her feelings, but must weigh this against other factors to protect the best interest of the child. Many judges have also seen therapists assert privilege to protect themselves rather than their clients or conflate issues of general philosophy with the needs and rights of the individual child or parent. Children's therapists should not assume that all information can be kept from parents, nor should such a blanket promise be offered to children. As in the example above, if a parent has been excluded from the child's treatment and feels that the child is being harmed, he/she may challenge the therapist's procedures in an effort to protect the child.

If there is a dispute about releasing treatment information and the issue reaches the court, a judge will determine who holds privilege and whether that person has waived privilege, intentionally or otherwise. It is never beneficial to the family for this decision to be made after the fact and against someone's wishes, when the issue could have been managed therapeutically from the outset of treatment.

The AFCC Guidelines are not intended as a standard of practice, nor to advance any particular treatment model. They do address ethical and clinical issues that frequently arise in these cases, along with detailed suggestions for anticipating and managing them. The Guidelines

and additional resources/references may be found at the AFCC web site (http://www.afccnet.org/resources/standards_practice.asp), and the Journal of Child Custody published a special issue on this topic in February 2012. 

References

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Judge Gould-Saltman sits in family court in Los Angeles County and is a member of the AFCC Board of Directors. Prior to her appointment to the bench she practiced family law for 25 years, representing both children and parents. In 2008, she was recognized by APA Division 43 for her work with psychologists.

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