

EFFECTIVE PSYCHOLOGICAL INTERVENTION IN HIGH-CONFLICT CASES: SELECTING AND DESIGNING THE RIGHT SERVICES

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Family law practitioners need to find effective strategies to assist our clients in dealing with complex custody issues – issues which are very emotional for the parties concerned and often require immediate intervention. While we are all familiar with the psychological issues presented, attorneys are not mental health professionals and often need to turn to these professionals for their expertise and guidance in navigating the difficult course of addressing and resolving custody disputes. Consulting with mental health experts can help address and stabilize a high-conflict custody situation or can help direct the course of custody litigation. Custody disputes can be expensive for clients and can be endless. The irony of the post-Elkins era is that, while litigants are entitled to evidentiary hearing, court resources are contracting, making it difficult to get prompt resolutions to very difficult issues which directly impact children.

Mental health professionals (hereafter, MHPs) have long been involved with divorcing families. Many attorneys only consider retaining mental health experts when they need a full custody evaluation, expert testimony to challenge a custody evaluation report, or an assessment of an evaluation

report. Many separating parents obtain psychotherapy for themselves and for their children, in most cases provided by therapists with little familiarity with the specifics of family court process. Recently, there has been an increased recognition of the variety of psychological services that may be useful in handling custody disputes. Innovative models have been developed that may offer more effective resolutions for families at lower costs. Careful attention needs to be paid by attorneys in selecting and structuring these services to maximize the value of these services for their clients.

We review some of the areas in which mental health services can be useful, beyond the traditional roles of evaluators or experts. Our review is not exhaustive, but focuses on areas in which the service models have recently been refined or are particularly relevant to families involved in high-conflict custody disputes in the post-Elkins era.

In economically challenging times, many families cannot afford to engage multiple MHPs. Parties may commit to the expense of a child custody evaluation, but then are unwilling

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or unable to sustain the specialized treatment or parenting interventions recommended by an evaluator or required to make progress in the case. Parties may not be able to afford both an expert and a consultant; careful consideration is needed as to which is more effective. Therapy and parenting interventions may be available at lower cost from less qualified practitioners, but may ultimately end up costing the family or parent much more, since poorly planned or inappropriately conducted treatment can be harmful. Most mental health interventions have a greater chance of success if adequate attention is devoted to structuring the role of the mental health professional, drafting the controlling stipulation, and obtaining the necessary consents.

Selection and planning of mental health interventions deserve as much attention as other aspects of a case, and potentially offer more value to the client than many other uses of attorney time. A traditional, undirected, or “generic” use of a particular MHP may offer less benefit to the case than careful structuring of the role for the specific needs of a client. For each of the roles described below, we discuss some of the relevant issues to be addressed during the consent process or the negotiation of a stipulation and order. Each role has distinct ethical requirements and we suggest approaches for attorneys to use in selecting or assessing the conduct of experts, but there are also many common issues to consider.

In general, attorneys should be wary of MHPs who make promises that they cannot explain, offer to “short cut” the informed consent process, violate professional boundaries, or are unable to articulate alternative courses of action. The professional objectivity of the MHP provides a critical balance, and often a synergistic partnership, to the attorney’s advocacy responsibilities. Each role has different characteristics, but core ethical principles underlie all mental health process and should be part of what the attorney expects when engaging with the mental health expert (Greenberg, Gould, Gould-Saltman & Martindale 2004).¹

New Realities, Increased Attention to Professional Roles

Recent changes in family law have increased emphasis on live testimony over courts relying on letters or declarations expressing professional opinions. Conversely, the economic stresses impacting both families and the courts provide an almost irresistible temptation to rely on mental health opinions generated from the most abbreviated procedures possible, even if these procedures result in very biased or incomplete information. While the post-Elkins emphasis on live testimony provides more opportunities to challenge poorly derived opinions, the practical reality is that trial dates may be difficult to obtain and few families have the resources to pay for both the initial full custody evaluation and a rebuttal expert to challenge evaluator’s conclusions.

Historically, it was not uncommon for judicial officers



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or counsel to request, and for MHPs to offer, opinions beyond the scope of their role in a particular case, or based on unreliable procedures or insufficient information. Regrettably, and too often, these practices continue. MHPs have long been expected to comply with professional guidelines and standards on common mental health issues such as informed consent and protection of confidential information. Although, historically, literature on involvement of MHPs in child custody cases was limited, recent years have seen an explosion in professional discussion of these issues, via professional literature, training and development of practice guidelines and standards for MHPs in child custody cases (American Psychological Association 2002, Fidnick, Koch, Greenberg, & Sullivan 2011).² Recent legislation, and professional liability cases, have underscored the authority held by licensing boards in these cases, even if an MHP's behavior was at the request of a judicial officer.³ These trends are based on solid scientific and ethical principles about the conditions that lead to reliable or unreliable opinions by MHPs, and the serious harm that can be done to children and families when courts or families rely on invalid mental health opinions (Gottlieb and Coleman, 2011).⁴ The economic pressures to do more with less are real, but MHPs have a responsibility to forthrightly assert the limits of their opinions and decline to express opinions compromised by bias or poor procedures. MHPs who ignore these obligations do so at their peril, as well as that of the family.

More effective results can be obtained for most families if MHPs are retained by counsel, or stipulated to by the parties, to provide services specifically structured to meet the needs of the specific family. Even if the MHP is appointed by the court over the opposition of a party, careful attention should be devoted to structuring the role so that appropriate services are provided. Some roles involve providing information to the court, while others emphasize providing information to an attorney or parent, assisting with decision-making, or creating problem-solving procedures that allow better functioning and resolution of problems. MHPs have a responsibility to "advertise" only what they can deliver within the bounds of ethical practice, and consistent with available science, and to provide the information necessary for informed consent. The boundaries and limits of the MHP's role should be transparent and clear. Attorneys have an essential role in the informed consent process. Clients need careful education about the type of MHP being engaged, the expectations for the client's cooperation with the process, potential benefits and risks of using a particular MHP. Counsel should also ensure that the client has reasonable expectations of what the MHP can and will provide. Counsel should also assist clients in having a clear understanding of their own responsibilities in the process.

Each of the roles described below has a historical basis, but each has also been the subject of increased professional attention, training, scholarly discussion and refinement, as professionals attempt to better serve conflicted families. While the general confines of the role may not be new to experienced attorneys, we suggest approaches for selecting, structuring and targeting the services to meet families' specific needs while preserving clients' rights and options for the future.

Parenting Coordination

Parenting Coordination (referred to as "Parenting Plan Coordination" in Southern California) has received increased attention as families need to consider alternative methods for resolving daily disputes without either resorting to litigation or engaging other MHPs inappropriately.

Parenting Plan Coordinators (PCs) can be helpful for assisting with decisions relating to time-sensitive issues that are important to a child's development, but which cannot be promptly addressed in court. From the child's perspective, conflict over daily issues such as the child's extracurricular activities may require more immediate attention than the issues that often consume parents, such as small adjustments in the custodial schedule. PCs can also be helpful in resolving complex issues for which specialized expertise may be needed, such as decisions about the best treatment plan for a child with special developmental or medical needs. Issues such as these may be better suited for the step-wise, consultative process of Parenting Coordination rather than the time-stressed atmosphere of the courtroom. Using a PC may also preserve some role for each parent in decisions about the child, whereas a trial process may lead only to a decision awarding control to one parent over the other. Studies have shown that parents who do not feel that they have a meaningful role in parenting are more likely to withdraw from the child, an outcome which may have appeal for a litigating parent, but over time, can deprive the child of an important relationship and lead to increased stress for the primary parent (Hetherington 1999, Lamb 2012).⁵ PC decisions can be made on a more timely basis and, if the PC is adequately qualified, can include input from other professionals.

The process of making decisions with a PC ultimately gives more power to the parents, and may create a "track record" of cooperative decision making that will pave the way for more global settlement of the case. The non-privileged setting of Parenting Plan Coordination may also create a record of the parents' efforts and problem solving abilities which could prove useful if the parents are unable to resolve issues and return to litigation. Information gathered over time also provides a basis for decisions made by the PC, and an opportunity to test the effectiveness of agreements more gradually than in the one-shot, pressured atmosphere of a contested hearing.

Parenting Coordinators can also be of use when other interventions, such as children's therapy, have become an area of mistrust or controversy between the parents. The fact that the PC has some decision-making authority allows at least minor issues to be resolved, avoiding the paralysis that sometimes results from counseling or negotiation with no time limit or process for decisions (Greenberg & Sullivan 2012).⁶ When one parent's emotional need to engage or provoke the other parent outweighs his/her interest in resolving issues for the child, such time limits may be useful.

When attorneys are reluctant to use PCs, common concerns include divergent expectations about decision-making. PCs are often accused of both making decisions too

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quickly, and of being too reluctant to make them. Counsel may be concerned about giving too much power to a PC, or about noncompliance by one of the parties. Most of these issues can be effectively managed if the order is structured carefully. Orders for PC should be carefully structured to manage the risks that can reasonably be foreseen based on the history of the case. Does one parent delay in providing necessary information? Consider an order that allows the PC to set reasonable deadlines and then make decisions. Worried that your own client will create problems with the PC process? Consider having your client see a therapist who specializes in family law disputes, or engage a consultant to help you mobilize the client toward cooperation, along with education reaching for the best aspects of a parent who wants to help the child. (These services are described in greater detail below.)

Counsel may be able to assist initially resistant clients by conceptualizing the PC process as a potential win-win strategy if the client makes a true effort. Either both parents will cooperate and the situation will improve, or the other parent's weaknesses will be clearly demonstrated. Parents who feel that the other parent will discuss matters endlessly may find the Parenting Plan Coordination process helpful as a time-limited process for minor decisions. Good PCs will both congratulate parents for the attempt and include parenting education as part of the process.

Nevertheless, the PC is neither a mediator nor a therapist; no privilege applies. The PC's "loyalty" is to the children's developmental needs – which, at least in initial stages, may not be the same as the child's expressed wishes. In the best of circumstances, the parents can adopt or learn better problem-solving skills and the PC will no longer be needed. In other cases, the PC can serve as a buffer to redirect conflict away from the child and resolve enough daily issues to give the child "space" to grow up.

Use of a PC is unlikely to be helpful when one or both parents has untreated mental illness, is actively abusing substances, or has enduring personality traits that cannot be managed by structured interventions. A history of failed interventions, or of repeated violations of court orders with no consequences, raise caution about the possibility of success. Practically, if a parent is convinced that prolonged conflict, or litigation, is likely to create a clear "victory" without the need for negotiation, that parent is less likely to engage in any alternative dispute resolution procedure. Counsel have an essential role in educating parents as to what can reasonably be expected from either course.

Parenting Plan Coordination is more likely to be engaged, and effective, in situations less well resolved in the litigation context – complex medical or educational issues, long-distance parenting, or parents who never lived together and have little shared history before becoming parents. PC's can help decrease the emotionality, provide a buffer for the child, and assist parents in adjusting to the fact that they will not be permitted to micro-manage the other parent's time with

the child. In ideal situations, parents master these issues and the PC is no longer needed. In other cases, the PC continues to be needed but redirects conflict to that setting, providing enough of a buffer to give a child a chance at healthy development.

PCs may be able to assist in crafting stipulations appropriate for the issues to be addressed, in terms of issues such as the duration of the appointment and the scope of authority. The PC may advise on the minimum duration necessary to provide the services being requested. Often, however, PC's may be effective with a more limited scope of authority than parents or counsel fear they are surrendering.

Expert Testimony

In an arena focused on advocacy, the attorney's first instinct may be to present a counter-argument to the recommendation of an evaluator or an order made by a PC by presenting expert testimony. An expert can provide psychological information to the court about the procedures engaged in by another professional or the current status of psychological research on a specific issue. Contesting parties may engage in selective presentation of psychological literature or make overly broad generalizations about psychological research. An expert may be needed to articulate the connections, relevance, limitations and distinctions among psychological research, theory, and clinical information in order to assist that court in applying the information most relevant to the case (Greenberg, Drozd & Bohlen 2012).⁷ When a custody evaluator or PC's findings or recommendations are not sufficiently specific and problems arise as a result, a seasoned expert may be able to provide possible solutions or intervention plans that have been successful in similar cases. In such situations, the attorney would be wise to seek an expert with experience in actually enacting solutions with families who can articulate practical applications and implications of various outcomes being considered by the court.

While an ethical and effective expert may be able to provide valuable information to the court, expert testimony may be limited by the inescapable fact that the expert has been retained by one of the parties. While ethical experts would never "sell their opinions" and are aware of the dangers of having a reputation for doing so, experts have both a human and professional desire to be helpful to the attorneys who retain them, and may unwittingly form too close an alliance, based on incomplete information and/or the demands of the advocacy role. Psychologists are responsible to, and in some cases protected by, ethical principles and standards requiring they have adequate information to substantiate their reports, opinions and testimony. They are urged to avoid conduct that condones or contributes to unjust results, and to clarify the limits of their opinions, information and testimony. While it is understandable, and ethical, for an attorney to make the most persuasive presentation possible and to retain an expert who will take a strong position on behalf of the client, an expert is required to clarify the limits of information and research results. Experts are also considerably more credible when they acknowledge such limitations up front (after all, the court already knows that there is more

than one side to the case) rather than waiting to do so until challenged on cross examination.

Attorneys must properly vet experts to make sure that they are not retaining an expert compromised by a professional or personal agenda. Invaluable information can be obtained through talking to other family law practitioners and MHPs regarding the reputation and experience of the proposed expert, including experiences opposing or working with that expert and information regarding how that expert presents as a witness. When interviewing a potential expert, it may be helpful for the attorney to ask the expert to identify research or information that is contrary to the expert's initial opinion or may support an additional interpretation of research or events. Experts should be able to identify more than one plausible interpretation of events, as well as the information that supports one interpretation over others. This ability to form "multiple hypotheses" is the basis of professional objectivity and, increasingly, is the standard used to evaluate the conduct and qualifications of mental health experts. This also allows the attorney to properly prepare for the challenges that may be made to the opinion expressed by the expert at the time of trial.

An expert may consult on the best use of his or her own testimony and the types of information that may be helpful, although the attorney ultimately needs to make the strategic determinations in the case. The expert's testimony may be emotionally satisfying to the client and provide the evidence necessary to impact the court's opinion, but may also be limited in impact based on the court's time constraints, preference for relying on a neutral expert, or skepticism toward retained experts. Where resources are limited and the client is likely to need other services after the conclusion of litigation, the attorney may wish to consider limiting the scope of the expert's testimony to what is needed to lay the groundwork for the next phase of the case.

Mental Health Consultation

Historically, mental health consultants have been employed either to prepare a client for evaluation or to confidentially review a report completed by another professional. Consultants can be effectively used far beyond these contexts and may be most effective when they are engaged early in the legal process.⁸

Consultants may be able to assist parents in identifying and addressing psychological issues that may be relevant to children's adjustment or to the parent's success in the custody case. While it is not uncommon for parents to ask a consultant to "coach" them on what to say to a custody evaluator, this process is both unethical and, in most cases, ineffective since it is difficult for parents to maintain an illusion over time and under stress. Consultants can, however, provide a mix of educational and strategic information that addresses a parent's contribution to the process, provides information about children's needs, and engages the client's desire to prevail in the conflict. A consultant can also serve a vital function when a parent has had difficulty with another MHP,

or when the conduct of another MHP has raised concern (Hobbs-Minor & Sullivan 2008).⁹

Consultants can also assist attorneys in developing strategies for communicating with clients who have challenges with the family law process. Consultants can provide helpful information to attorneys as to how best structure the presentation of information to the client and to the other side and to come up with a workable and realistic plan for the presentation of the case.

The role of the consultant can overlap with that of a forensically sophisticated therapist, who can also assist a parent in coping effectively with the conflict and mobilizing to support the children. Traditional therapists, however, may adopt a supportive role and have difficulty confronting a litigant/parent. The consultant typically has greater involvement with the legal process, and may have greater freedom to confront dysfunctional behavior, because the parent perceives the consultant as assisting with the client's desire to prevail in the litigation. The consultant is employed by the attorney, provides services under the work-product privilege, and may be less constrained by the requirements of therapeutic alliance. It is important to note, however, that direction and strategic advice provided by a consultant may be undermined if a client is simultaneously seeing a therapist who uncritically supports the client's anger or dysfunctional behavior. Consultants may be useful in assisting less sophisticated therapists to provide more consistent and realistic assistance to clients, if counsel determines that it is appropriate to allow the consultant and the therapist to confer. Counsel must be mindful of the fact that allowing the consultant to speak to the client's treating therapist could lead to a waiver of the attorney work-product privilege. Also, if counsel allows the consultant to speak to the treating therapist and the client waives his or her psychotherapist privilege as part of the custody evaluation, the fact that the client is using a consultant would be out in the open, which could compromise the client's position in the custody evaluation and the litigation.

Specialized Treatment

Divorces and parenting conflicts are distressing and destabilizing situations; parents often present to their attorneys in emotional distress. Referrals to therapy are not uncommon and are often appropriate. Therapy may provide a safe place for the parent to vent and express feelings that should not be shared with children. To be effective and avoid harm, however, therapy must be adapted to the client's life situation, which includes involvement in a legal conflict, and the expectation that the parent will shield the child from the parental conflict. Parents may be in crisis and may need specific behavioral skills for managing their own emotions, assisting their children, addressing any safety concerns and, in most cases, supporting the child's relationship with the other parent. It is essential that the therapist maintain therapeutic objectivity, including the ability to critically evaluate incoming information and the client's perceptions, and to confront and assist the client in changing

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dysfunctional behavior. When a therapist confuses his/her role with that of the attorney and becomes a blind or over-zealous advocate of the client's expressed desires, that therapist may fail to address crucial clinical issues and may also undermine the attorney's attempts to manage the client's expectations.

For example, it is not uncommon for a separating parent to express the wish that he/she never have to interact with the other parent again. The parent may not believe that the other parent has anything of value to offer the child and, based on the client's information, the therapist may agree. Nevertheless, in most situations, parents are expected to support the child's relationship with the other parent; failure to do so may have real consequences to the parent and child. A forensically sophisticated therapist must be able to both empathize with the client's desires and provide realistic expectations and coping skills for what is actually going to be expected of the parents by the court. This may include discussing with the parent behaviors that will not serve the parent well in resolving the custody dispute, and how others are likely to perceive the parent's behavior. Failure to do so sets up the client for failure when he or she is confronted by an evaluator, or in cross examination, about issues that the therapist did not address.

Parents may already be involved in therapy before engaging an attorney, and may selectively seek a therapist who supports their own perspective, or is untrained in the intricacies of court-related therapy. Again, careful attention to consent and privilege issues is needed. Many conflicted parents may not need the services of other MHPs if they receive appropriate therapy from the beginning. Parents who are resistant to appropriate therapy may be assisted by use of a mental health consultant as described above, or with some of the same arguments useful in motivating a client's cooperation with Parenting Coordination – i.e., if the client can learn to address issues with his/her own behavior, the other party's faults will become more evident.

Children's Therapy

Children's therapy presents a unique set of opportunities and challenges. Proper procedures are essential. Parents are often eager to be the first to contact a child's therapist, and may sincerely believe that the other parent poses a risk to therapy and should be excluded. It is not uncommon in intact families for one parent to be primarily involved a child's treatment, although this is arguably less effective than involving both parents. Once parents separate, however, a therapist's involvement with only one parent can seriously bias treatment and escalate family conflict.

With increased emphasis on "children's voices" and their potential participation in the legal process, adults' responses to children's feelings become increasingly important. Conflicting parents may model and reinforce dysfunctional behavior in children, due to their own emotional issues or agendas in the custody conflict. An ethical and qualified

child's therapist refrains from expressing opinions regarding parenting plans or other psycho-legal issues, keeping focus on helping the child to master the behavioral and coping skills necessary for the child to achieve healthy emotional development. This may require that the therapist suggest changes in *each* parents' behavior to better support the child, including developmentally appropriate responses to the child's behavior or statements. Therapists who are not knowledgeable about family law dynamics can easily be drawn into the conflict or uncritically support the statements of a child who is not responding in a developmentally healthy way. There may be extraordinary pressures on the MHP to alter the child's treatment to support the agenda of a parent, or to express opinions that are beyond that therapist's role. Many specialized therapists will accept these cases only with a detailed stipulation and order, addressing the common issues that may complicate such treatment. Counsel should use equal caution in structuring these agreements, perhaps considering a conference call with the therapist to agree on the terms of the order. Counsel should be alert for, and avoid, therapists who are willing to abandon structured methodology or offer opinions beyond the therapeutic role.

While many community therapists can treat lower-conflict families, cases involving high-conflict and complex allegations often require therapists with specialized training. Families and even attorneys may be unfamiliar with the differences among therapists, or may direct resources to litigation rather than higher-quality treatment. While this may reduce costs in the short term, the result can be an escalation of conflict and costs associated with litigation, evaluation, or the need to engage additional experts or more complex services. Counsel should look for therapists who have careful consent processes, balanced and clear methods, familiarity with the relevant literature, and careful attention to role boundaries. Therapists for both adults and children should have knowledge of family systems and the ability to confront and redirect dysfunctional behavior. Therapy orders for children should be specific as to the behaviors to be addressed, and the rules regarding privilege issues and parents' cooperation should be clear. Sophisticated therapists often set structures that require both parents' participation in treatment, including bringing the child to sessions, as children may behave very differently depending on which parent is present. One-sided procedures may lead to biased and inappropriate treatment. Detailed guidelines for court-involved therapy have been produced by the Association of Family and Conciliation Courts, which are consistent with other professional ethics codes. (Fidnick, Koch, Greenberg, & Sullivan 2011, Greenberg, Doi Fick & Schneider 2012)¹⁰ The damage from poorly conducted treatment can escalate quickly; counsel concerned about inappropriate treatment would be wise to engage a consultant or otherwise address the issue promptly. This issue has been addressed in greater detail in other literature. (Greenberg, Gould, Gould-Saltman & Stahl 2003, Greenberg & Sullivan 2012).¹¹

The recent attention to the role of testimony from

children and the potential participation of children in custody litigation has raised complications regarding the role of children's treatment and the use of information generated in therapy. While one always hopes that children's statements during a child interview or testimony will be accurate, and developmentally healthy, the stresses on a child from the custody conflict may lead to much less reliable results. A therapist's observations of the family over time may provide a more realistic picture of the child's and family's functioning, but obtaining this information in the litigation context may compromise the child's privacy and the effectiveness of therapy. There is research to support the contention that children benefit from participating, in an age appropriate way, in the decisions that affect their lives (Dunn 2002).¹² The best path to accomplishing this is for the therapist to assist children and parents in addressing feelings over time, in the context of therapy, with clear messages as to which choices are available to the child and which decisions are made by adults. Therapists often wait too long to address issues with parents or to assist children in talking directly with parents. In high-conflict families, specialized skill may be needed to accomplish this.

Managed information sharing may help to avoid intrusions into the child's treatment or the child's involvement in litigation. (Fidnick, Koch, Greenberg, & Sullivan 2011). Where this does not occur, complex issues may arise as to how to assess, and respond to, preferences or even consents/waivers expressed or opposed by the child. These are areas in which parents need clear information about the potential implications of their decisions, children need coping skills, and the profession needs procedures and guidelines reflecting both the requirements of the law and psychological research about children's needs and development. Given the newness of the revision of Family Code 3042, such developments are just beginning.

Conclusion

Developments in both mental health practice and family law have impacted both the available types of mental health services and the factors to consider in matching the service to the family.

Endnotes:

1. Greenberg, L. R., Martindale, D. A., Gould, J. W., & Gould-Saltman, D. J. (2004). Ethical Issues in Child Custody and Dependency Cases: Enduring Principles and Emerging Challenges. *Journal of Child Custody*, 1, 7-30.

2. American Psychological Association (2002). American Psychological Association ethical principles of psychologists and code of conduct. Retrieved January 14, 2013, from <http://www.apa.org/ethics/code2002.html>.

Fidnick, L., Koch, K., Greenberg, L. R., & Sullivan, M. J. (2011). Guidelines for Court-Involved Therapy: A best practice approach for mental health professionals. *Family Court Review*, 49, 564-581.

3. *In Re Marriage of Adams & Jack A.* (2012) 209 Cal.App.4th 1542; *Rand v. Board of Psychology* (2012) 205 Cal.App.4th 1209

4. Gottlieb, M. C. and Coleman, A. A. (2011). Ethical challenges in forensic psychology. In S. Knapp et al. (Eds.). *APA Handbook of Ethics in Psychology, Volume 2*, (pp. 91-124). Washington, D.C: American Psychological Association.

5. Hetherington, E. M. (1999). Coping with divorce, single parenting and remarriage a risk and resiliency perspective. Mahwah, NJ: Lawrence Erlbaum Associates, Inc. Publishers.

Lamb, M. E. (2012). Critical analysis of research on parenting plans and children's well-being. In K. Kuehnle & L. Drozd (Eds.), *Parenting plan evaluations applied research for the family court* (pp. 214-246). New York: New York: Oxford University Press Inc.

6. Greenberg, L. R., & Sullivan, M. J. (2012). Parenting Coordinator and Therapist collaboration in high conflict shared custody cases. *Journal of Child Custody*, 9, 85-107.

7. Greenberg, L. R., Drozd, L. M., & Bohlen, M. C. (2012, July 19). Science and parenting plans: One size arrangement does not fit all. *San Francisco Daily Journal*, pp. 6.

8. The effective use of trial consultants will be addressed in greater detail in a companion article by Robert Simon, Ph.D., so in the current article we focus on the most effective use of parenting consultants.

9. Hobbs-Minor, E. & Sullivan, J. (2008). Mental health consultation in child custody cases. In L. B. Fieldstone & C. A. Coates (Eds.), *Innovations in interventions with high conflict families* (pp. 1-28). Association of Family and Conciliation Courts.

10. Fidnick, L., Koch, K., Greenberg, L. R., & Sullivan, M. J. (2011). Guidelines for Court-Involved Therapy: A best practice approach for mental health professionals. *Family Court Review*, 49, 564-581.

Greenberg, L. R., Doi Fick, L. & Schneider, R. (2012). Keeping the developmental frame: Child-centered conjoint therapy. *Journal of Child Custody*, 9, 1-30.

11. Greenberg, L. R., Gould, J. W., Gould-Saltman, D. J. & Stahl, P. M. (2003). Is the child's therapist part of the problem? What judges, attorneys and mental health professionals need to know about court related treatment for children. *American Bar Association*, 37 Fam, 241-271.

Greenberg, L. R. & Sullivan, M. J. (2012). Parenting Coordinator and Therapist collaboration in high conflict shared custody cases. *Journal of Child Custody*, 9, 85-107.

12. Dunn, J. (2002). The adjustment of children in step-families: Lessons from community studies. *Child & Adolescent Mental Health*, 7, 154-161