

What Court Professionals Want Therapists to Know

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Over half of all marriages in the United States ultimately end in divorce. In some cases, parents elect not to marry or may not ever live together. In response mental health professionals often find themselves working with children and families during the sometimes-difficult transition of establishing two separate households. In working with court-involved families, mental health practitioners often find themselves lost to know appropriate policies and procedures for working with court-involved families and how to best be responsive to their needs and court professionals who may be in contact with requests for records or possible testimony as part of litigation.

Although mental health professionals who inadvertently find themselves working with families who are court-involved aim to provide support and guidance, they may inadvertently struggle if they lack an understanding of the unique challenges associated with working with court-involved families. Inexperience and a lack of knowledge needed when families are court-involved by mental health professionals can have lasting negative effects on the children and families they are attempting to assist. A mental health professional's credibility can also be jeopardized if a therapist does not seek proper guidance for best practices when litigation becomes part of a family's divorce experience.

Legal entities, including courts, attorneys, and forensic professionals, recognize the value that therapists bring in navigating the complexities of transitions stemming from divorce or separation, as well as the nuances of coparenting situations. To aid therapists in this challenging landscape, the Association of Family and Conciliation Courts (AFCC) has developed guidelines outlining, which serve as a crucial resource for those who may find themselves entangled in cases with legal implications:

<https://www.afccnet.org/Resource-Center/Practice-Guidelines>

The AFCC guidelines provide a thorough framework; however, courts, attorneys, and forensic professionals often encounter shared challenges when engaging with therapists, obtaining records, collaborating effectively, or clarifying therapeutic roles and treatment processes. In addition to the AFCC guidelines, a list of best practices from various experts in the field is assembled for mental health professionals who are not forensically trained so they can know their professional responsibilities when a family becomes court involved. It is important for mental health professionals who are not forensically trained to consider the information to manage their involvement when they are brought into litigation. The information is also designed to assist therapists to know how to best respond and possibly avoid license complaints by helping them be better informed.

The following is what court professionals want therapists to know when working with court-involved families:

Professional Boundaries & Role Conflicts

- Failure to recognize the forensic nature of a task may lead to a therapist providing incompetent opinions or recommendations.
- Therapists who do not maintain clear professional boundaries often act outside the appropriate scope of their role. An example includes when a mental health professional serves as both the child's therapist and the parent's therapist. This would be inappropriate because it involves taking on multiple roles within the same family and may cause harm due to a conflict of interest.
- It is inappropriate for a mental health professional to confuse their professional responsibilities as a therapist with those of a legal advocate. A therapist is acting inappropriately when prioritizing the child's perspective in a case, positioning themselves more as an advocate for that narrative, rather than maintaining the role of a neutral third party. It is inappropriate for a mental health professional who provides therapy services to a parent to serve as an advocate for that parent.
- A therapist fails to maintain professional boundaries when they allow an attorney to recruit them to become involved in providing custody-related testimony without that therapist conducting a formal child custody evaluation.
- It is inappropriate for therapists to make custody recommendations as a therapist is not a child custody evaluator.

Adherence to Forensic Standards & Use of Information

- Not knowing (and not being interested in) the literature relevant to working with court-involved families can create unrealistic expectations for members of a family in therapy. A mental health professional using their own limited experience and personal beliefs is damaging to families. Proper training, proper experience and specialized skills and knowledge are required and necessary when working with court-involved families, especially when Parent-Child Contact Problems are present.
- Children involved in custody disputes may use strong language to describe their parents, such as calling them "mean" or saying they are "screaming." Older siblings often provide more specific descriptions, like referring to a parent as "strict" or saying they are "talking loudly." This underscores the need to investigate the true meaning and the parental behaviors that may influence the language a child uses.
- A therapist must recognize that a person's subjective experience or "psychic reality" may differ from objective facts. For instance, a child's behavior might suggest that child is anxious or fearful toward one parent due to the influence or reactions of the other parent. This can be true even if those behaviors are not or are not fully representative of the child's feelings.
- It is important for all therapists to consider alternative perspectives including the perspective that children may experience fear even when there is no actual threat or danger. It is inappropriate and unethical to draw conclusions about a child's fear of a

parent as reasonable or justified without having complete and objective facts from multiple sources.

- A therapist fails to adhere to basic professional standards by neglecting to access multiple sources of information when forming opinions.
- Therapists are expected to use an orientation of personal growth, problem solving, and moving a family forward rather than an orientation of blame and fault.
- It is inappropriate for a mental health professional to assign a label and possible diagnosis for a client they have never seen. It is inappropriate for a therapist to conclude, “His wife is a batterer and my client is a survivor of her abuse.” It is more appropriate to state, “According to my client...”.

Record Release and Confidentiality

- Do not falsely inform clients that their records cannot be subpoenaed or requested for the purpose of litigation. You cannot go radio silent and deny access to the entire file in response to a request for records, a subpoena, or court order. Know your state laws and where HIPAA regulations specify your obligations and responsibilities. It is a mental health professional’s ethical responsibility to know what information may be withheld and the procedures to follow if records are denied.
- Therapists are not permitted to withhold records when they are legally and ethically required to provide them. If you receive a properly authorized consent form from another professional-regardless of who obtained the consent-you must release the records to that professional in accordance with state law and HIPAA regulations.
- Therapy records play a significant role in court proceedings related to a child’s best interests, even if the therapist believes the records are not relevant or should remain confidential.

Documentation

- It is important that therapists create, follow, and update treatment plans with clearly defined goals and that the treatment plan be included in progress reports to the court. When it is a child who is involved in therapy, when court orders allow both parents to have access to a child’s therapist and records, both parents are expected to contribute to the development of treatment goals and both parents should be kept informed.
- It is inappropriate for therapists to limit their note taking to reflecting only what is reported in therapy and for therapy to be used as a “reporting opportunity” for the purpose of litigation. It is expected that therapy for children and adults who are court-involved include a focus on building coping skills as part of their work.
- In their initial paperwork for their practice, it is important for therapists to include the appropriate information regarding informed consent, to include a detailed description of services, to define goals for treatment, and their policies and procedures should say, member of a family receiving services become court-involved at any time.
- It is inappropriate and unethical for therapists to write letters that will be submitted to the court that diagnose or make recommendations about individuals involved in child custody cases, without having sufficient or complete information to support their opinions or recommendations. This is true whether the letters are formally or informally provided.

- It is inappropriate for mental health professionals to sign affidavits on the request of one attorney.

Court Policies & Procedures

- All mental health professionals benefit from developing established policies for court-related work in their initial paperwork for all families they serve whether they present as court-involved or not. Poor initial paperwork on the front end of services makes things very difficult for a therapist and the families they serve when a family becomes court-involved either before or after therapy begins with a mental health professional.
- Therapists who become involved in litigation when families become court-involved, must be attentive to their own courtroom behavior. It is necessary to promote your neutral role by refraining from sitting with a parent or one side of the family, aligning with a parent, aligning with another professional, or communicating with only one attorney and not the opposing counsel.
- It is a disservice to families to require exploitive costs for records or time in court.

Any client you serve can become involved in litigation at some point. We hope you find this list helpful as you consider your own policies and procedures in advance of a family becoming court-involved. It is best to protect yourself by learning best practices in advance and including in your initial paperwork for every new client what your policies are should any member of the family become court-involved.

It is very important to seek consultation from trusted colleagues who can provide professional support and help you navigate working with families who are court-involved. It is in your best interest and the best interest of families that you educate yourself with what court professionals want therapists to know.

What Court Professionals Want Therapists to Know Therapist

Checklist

- ☐ Maintain clear professional boundaries, stick to one role
- ☐ Provide therapy and not legal advocacy, but help cope with legal outcomes Do not allow an attorney to recruit you to one side or the other
- ☐ Do not make custody recommendations, that is the role of a custody evaluator
- ☐ Do not provide incompetent opinions or recommendations
- ☐ Do continue professional education for working with court-involved families Explore the true meaning and the parental behaviors that may influence the language a child uses
- ☐ Consider alternative perspectives including the perspective that children may experience fear even when there is no actual threat or danger
- ☐ Do not draw conclusions about a child's fear of a parent as reasonable or justified without having complete and objective facts from multiple sources
- ☐ Access multiple sources of information before forming and presenting opinions
- ☐ Use an orientation of personal growth, problem solving, and moving a family forward rather than an orientation of blame and fault
- ☐ Do not report secondhand information as fact, instead report, "According to my client..."
- ☐ Do not falsely inform clients that their records cannot be subpoenaed or requested for the purpose of litigation
- ☐ Recall a client's records are the client's and not yours or your agencies
- ☐ Know your state laws and where HIPAA regulations specify your obligations and responsibilities when records are requested to know what information may be withheld and the procedures to follow if records are denied
- ☐ Recall if you receive a properly authorized consent form from another professional—regardless of who obtained the consent—you must release the records to that professional in accordance with state law and HIPAA regulations.
- ☐ Remember, your input is important and therapy records play a significant role in court proceedings related to a child's best interests, even if the therapist believes the records are not relevant or should remain confidential
- ☐ Create, follow, and update treatment plans with clearly defined goals and that the treatment plan be included in progress reports
- ☐ When it is a child who is involved in therapy, when court orders allow both parents to have access to a child's therapist and records, attempt to have each parent involved in the development of treatment goals and keep both parents informed

- ☐ Do not limit your note taking to reflecting only what is reported in therapy and for therapy to be used as a “reporting opportunity” for the purpose of litigation
- ☐ Focus on building coping skills as part of their work when working with children Include the appropriate information regarding informed consent, to include a
- ☐ detailed description of services, to define goals for treatment
- ☐ Recognize a member of a family receiving services may become court-involved at any time, consider this when you tell a client you will not work with court connected cases
- ☐ Do not, formally or informally, write letters that will be submitted to the court that diagnose or make recommendations about individuals involved in child custody
- ☐ cases, without having sufficient or complete information to support your opinions or recommendations
- ☐ Do not sign affidavits on the request of one attorney
- ☐ Develop and maintain established policies for court-related work in your initial intake paperwork, even if you do not specialize in this area
- ☐ Be attentive to your own courtroom behavior
- ☐ To promote your neutral role, refrain from sitting with a parent or one side of the family, aligning with a parent, aligning with another professional, or communicating with only one attorney and not the opposing counsel
- ☐ Do not charge exploitive costs for records or time in court