

The Psychologist's Roles in Family Law

...a discussion on working with high conflict divorcing families.

Goals for this presentation:

- 1. DISCUSS** the patterns of difficult/high conflict family therapy with Family Law clients.
- 2. ANSWER YOUR QUESTIONS** so we improve service delivery to this demographic.

Take notes on your observations of the approach we use. Compare the tenets of our protocol against your expectations and experiences. Ask questions!

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Please forgive me.

For the sake of an expeditious presentation, please forgive the heterosexual and often, traditional qualifications made throughout this presentation.

It is not my intention to exclude any family structure or relationship; only to relay the information in the time allotted for the presentation.

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Viewing Families through a "Relational/Developmental Lens"

Developmental expectations of in-tact families:

- a) Navigating childbirth and early bonding
- b) Establishing and Enriching Family Beliefs
- c) Reciprocating the endorsement of parent-child relationships with all kids
- d) Promoting children's interests while encouraging exploration (i.e. – "Try the Brussel Sprouts, you might like them.")

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Viewing Families through a "Relational Lens" (continued)

Developmental expectations of in-tact families:

- e) Encouraging family and individual time
- f) Attending to the partnership
- g) Determining child's readiness for independency, supporting collaborative discipline
- h) Promoting individuality – differentiation both in the executive and sibling subsystem.

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Potential areas of conflict

Developmental expectations of in-tact families:

- a) Navigating childbirth and early bonding
Different expectations, desire to expand family, child-rearing frustrations, parent-child "fit"
- b) Establishing and Enriching Family Beliefs
Conflictual beliefs, poor contract negotiation and communication, disorganized/unbalanced execution
- c) Reciprocating the endorsement of parent-child relationships with all kids
Personal agendas, family of origin "intimacy patterns" (one parent squeezed out), fear/distrust, "fit" again.
- d) Promoting children's interests while encouraging exploration (i.e. – "Try the Brussel Sprouts, you might like them.")
Rigid expectations, living vicariously, conflictual interests

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Potential areas of conflict (continued)

Developmental expectations of in-tact families:

- e) Encouraging family and individual time

Overly protective/controlling partners, poor communication of needs, lack of self-awareness, developmental anxiety

- f) Attending to the partnership

Not giving the relationship time, poor contract renegotiation, poorly negotiated developmental tasks

- g) Determining child's readiness for independency, supporting collaborative discipline

Different expectations, inability to "let go", different discipline styles, poorly managed parent/child relationship, family traumas (illness, tragedy, loss)

- h) Promoting individuality – differentiation both in the executive and sibling subsystem

Lack of individuality, enmeshed family/executive system, unbalanced self-care, disconnected couple, inability to let go, fear of "life without kids"

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Reasons for Divorce/Separation

1. Inability to Contract - which most often leads to...

- a) Sexual Affairs
- b) Emotional Affairs
- c) "other" relational breeches (money, time, friends, "partying", unsupportive family)
- d) Resentment
- e) "Cold" relationships (*see "Affairs"*)
- f) Physical/Emotional Abuse

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Other Reasons...

- 2. Sick/Disabled Child/Partner
- 3. Job Loss, Money/Spending, Economy
- 4. External Interference
- 5. Immaturity

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The Referral

First, if the marriage/relationship can be saved

TRY!

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On Self-Determination

This is NOT about promoting your beliefs.

This is about the careful/respectful understanding that couples do not enter into intimate relationships with the intention to end them.

Sometimes, the request for help in dissolving a relationship is really a veiled request to explore the viability of the relationship.

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"The Ambivalent Couple"

Cues that the couple may want to try:

- 1. Lack of conviction
- 2. Lack of plan
- 3. Seem to be easily influenced by partner who is being left
- 4. Statements like "I don't want to end it" or "I don't know what to do"

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“How do you tell the difference?”

In the immortal words of Regis Philbin:

“Is that your final answer?”
 ...in other words, just ask.

“Marriages are so delicate that they can shatter at the hands of a “clumsy” therapist.”
 Dr. Wayne Jones, Philadelphia Child Guidance, 1992

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The Phone Call

Assuming we hear no hesitancy around the issue of the termination of the relationship this is the protocol we use:

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You: “Hello, how can I help you?”
 Client: “My husband and I are going through a divorce.”

OR:
 “My wife and I are separated”
 “My children are struggling with our separation”
 “My husband and I separated 3 years ago and...”

 Regardless of the initial complaint, this is the RED FLAG to go into “CUSTODY MODE”.

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CUSTODY MODE: “Starting RIGHT”

START WITH MOM **AND DAD FROM THE BEGINNING**

We expect that most parents with shared custody have the LEGAL RIGHT to retain counseling services for their child/ren and that their only legal obligation is to alert the other parent of the decision.

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CUSTODY MODE: “Starting RIGHT”

Even though this is true...

...it is our practice to explore the status of ALL relationships in the family. Further, it is ESSENTIAL that we attempt to involve all members from the FIRST appointment.

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CUSTODY MODE: “Starting RIGHT”

RATIONALE

1. Very often these families DO end up in custody conciliation and/or adversarial hearings.
2. Very often the issues involve the parent who is uninvolved or who the complainant doesn't want involved.
3. We believe that beginning without both parents present jeopardizes a counselor's ability to remain objective. And if the family goes to court it compromises the connected position with both parents.

WE RARELY WILL PURPOSEFULLY SEE A SINGLE PARENT ALONE. WHEN WE DO, IT IS GENERALLY ONLY AFTER HAVING GOTTEN PERMISSION FROM THE OTHER PARENT TO BEGIN TREATMENT.

(This is not to say we don't get “snookered” from time to time.)

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CUSTODY MODE: "Starting RIGHT"

OUR SCRIPT:

Me: "Do you think Mr. Smith would consider attending the first meeting?"
 Client: "Maybe, but this is for the kids."
 Me: "I understand, but I've found that when I involve both parents from the beginning, things seem to go better."
 Client: "Ok, but do I have to be there?"
 Me: "Yes, the goal is allow you both to speak to your concerns in front of one another."
 Client: "I'd rather not."
 Me: "I understand. There are a number of my colleagues who also specialize in this work, I'd be happy to refer you to them."
 Client: "No, that's ok, I guess we could come together."
 Me: "Great, would you please give me Mr. Smith's phone number so that I can contact him to invite him as well?"

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CUSTODY MODE: "Starting RIGHT"

OTHER THOUGHTS:

We ask the caller what they hope we will help them do. If they allude in any way to needing us to write a report on their behalf, represent their children in court and most importantly, EVALUATE or ASSESS the child or parents, we are very clear that as Graduate Level Counselors, we cannot provide psychological reports to the court.

We explain that our role in the custody process is solely to provide emotional support and clinical services. Custody evaluations require very specific training, evaluation tools and certification. If they need an evaluation, we refer them back to you for a referral to a psychologist who specializes in custody evaluations.

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CUSTODY MODE: The 1st Appointment

MOM AND DAD, NO KIDS

1. We have both parents sign our treatment agreement. We are clear in our treatment agreement that although there is some precedent in case law, the judge has the final determination about our ability to maintain confidentiality. Parents should know that we may have to testify regarding delicate information shared in confidence. **YOU SHOULD TELL YOUR CLIENTS THE SAME.**
2. We prepare consent forms for their attorney's if they have them. (Please understand that we need consents to speak to you AND we need consents to speak to you about minor children as well. If you can get a consent for your client and separate one for the children, you help us a great deal.)
3. After seating them, we share our expectations of the meeting. This is contrary to common family therapy but establishing our legal/clinical position from the beginning is very important.
4. We tell them that we will allow each to tell their story of how they got to us but that we insist that they remain quiet while the other is speaking. (Parents are afraid that we will be swayed by the other's story-telling. This is the main reason why we meet with them together.)

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CUSTODY MODE: The 1st Appointment

MOM AND DAD, NO KIDS

5. We are patient and encourage patience. We want to show them that we can tolerate difficult topics (allegations of sexualized behavior, drug/alcohol abuse, anger/abuse) without being moved emotionally.
6. We will allow them to cut each other off once or twice, but kindly remind them that we expect them to remain quiet while the other is talking. We experience but ignore all non-verbal antics (throwing up hands, shifting in their seat, eye-rolling). If the other parent engages, we tell them to continue and tell the parent doing "couch gymnastics" that their behavior is "not helping".
7. If there is overt aggression, we engage it strongly with one warning only.
8. We ask them what they want. This question is crucial because this is the first time that we will be soliciting collaboration from the parents. Invariably, they "just want the kids to be ok".
9. Finally, we schedule an appointment to meet with the children BY THEMSELVES at the next meeting and we insist that both parents attend and sit in the lobby while we meet with the kids.

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CUSTODY MODE: The 2nd Appointment

KIDS, NO MOM AND DAD

...at least at the beginning.

The goal of this meeting is to join with the children, establish safety and credibility and most importantly, reaffirm that even though their lives are powerless, they have power with us.

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CUSTODY MODE: The 2nd Appointment

KIDS, NO MOM AND DAD

1. We meet with all of the kids together, at least at first. Sibling subsystems are a strong group. Leaning on each other are encouraged in early separations and in prolonged conflict.
2. We ask each child to explain the problem as they see it.
3. WE ARE VERY EMOTIONALLY BROAD!! Divorced kids need to see and hear our empathy. They need to know that we "get it". A "HOLY CRAP! How do you deal with that?" goes a long way for me.
4. We ask them, "If I could help you do anything, what would you want me to do?" Invariably, the response is "stop the fighting".

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CUSTODY MODE: The 2nd Appointment

KIDS, NO MOM AND DAD

5. We remind the kids that what they've said is safe with us. We tell them about mandated reporting, but otherwise, we will hold their confidence. (It is important for attorney's and the court to understand the expected safety of the clinical relationship, especially with kids.)
6. Finally, we ask for permission to break rule number 5. The goal is to carefully/strategically begin to prepare them and their parents to hear the pain that their parents are causing. We need them to know they have power because this whole experience is disempowering to kids.
7. We ask them if they would come back to see you again? (and hope that they say "yes"). Then we excuse them to the lobby, and bring Mom and Dad back.

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CUSTODY MODE: The 2nd Appointment

MOM AND DAD, NO KIDS

1. We remind Mom and Dad that we cannot tell them the contents of the meeting.
2. We DO tell them (in our very best terribly concerned voice) that the children are in a good deal of pain. It is important that they *feel* the impact of our concern.
3. We tell them that right now, all the kids want is for the fighting to stop. We often don't say a whole lot more. We want them sit with the weight of their behavior.

THEN, IT'S DECISION TIME...

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CUSTODY MODE: Decision Time

WHO IS YOUR CLIENT?

The goal here is to decide what the real problem is and who our client is. The most typical combinations are these:

1. Children caught in the middle (see #3 and 4)
2. One parent is and has been disconnected from the kids for a long time and needs us to help them reconnect.
3. Parents need to learn to collaborate but they cannot not communicate civilly. (see #1).
4. One parent is alienating the other and we need to assist in repairing the alienation and in reeling that parent in.
5. One parent is scorned, still in love, vindictive.

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CUSTODY MODE: Problem Types

1. **Children caught in the middle.**
Characteristics: Generally well-adjusted kids, anxious/nervous but clear about the issues and what/who causes them. May be aligning with one parent at this point, if there is alienation, it is minor.

Goals:

1. Assist children in learning how to address parents who "grill" them after visits, tell them things about the other parents (alienation), or punish them for split loyalties.
2. Assist children in learning how their behavior may keep them in the middle (reporting to parents, disparaging the other parent, sneaking to listen in on adult conversations).
3. Prepare parents to hear from the children about how their behavior is causing pain.
4. Prepare children to tell the parents in our meetings. Only have the indicated parent is present for those meetings.

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CUSTODY MODE: Problem Types

2. One parent is and has been disconnected from the kids for a long time and needs you to help them reconnect.
Characteristics: Children may be hesitant, angry, even aggressive. Usually, there really is some pathology in the disconnected parent, typically anger, work-a-holic personality, dismissive of children, out-of-touch.

Goals:

1. Get the connected parent to endorse the work.
2. Prepare the disconnected parent for "the worst". They need to learn how to endure the scrutiny of the kids.
3. Join with the kids, take an empathetic but determined stance with them.
4. Get the kids in the same room with the disconnected parent.
5. Lend our authority to the parent by keeping the peace. Endorse "playing nice".
6. Keep the kids talking, help them learn to advocate for their needs and negotiate the relationship.
7. Strongly discourage any rigid statements or positions (by parents or kids)

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CUSTODY MODE: Problem Types

3. Parents need to learn to collaborate but they cannot not communicate civilly.
Characteristics: Parents are generally rational with everyone else but their co-parent. They truly believe that the other parent is the problem. They have the shortest tolerance for what is said. They usually lace their comments with seething disdain.

Goals:

1. We get them in the room together, have them determine what are the general themes of issues that cause problems. The issues themselves aren't as important as getting them to discuss them in front of us.
2. "CATCH" them in the act of speaking in disparaging ways. Bring the way they speak to their attention and challenge them to say it again but "better". Keep them talking until the way they say it is kinder.
3. Speak directly to the idea of kindness. Discuss how frustration leads to bad behavior and unsuccessful communication. Keep hammering at the idea of "kind communication".

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CUSTODY MODE: Problem Types

4. One parent is alienating the other and we need to assist in repairing the alienation and in reeling that parent in.
Characteristics: Children are clearly aligned with one parent, children are overtly aggressive towards other, parent speaks disparagingly about the other parent directly to us in front of children and may claim that there is nothing wrong with it. Other parent may very well be out of touch.

Goals:

1. Directly identify the behavior as alienating in nature. We don't dance around it. Inform the alienating parent of the legal implications of the behavior. Don't bother discussing the impact on the kids, they are alienating because they think they are protecting the kids.
2. Work with the children and alienated parent as in #3.
3. Continue to assess covert alienation utilizing how resistant the children are to change.
4. We will contact the alienating parent's attorney if necessary, stating that we feel that there is clear evidence of alienation. Most family law attorneys recognize parental alienation as the kiss of death and will be very helpful in getting the parent reeled back in.
5. Encourage strict enforcement of the custody order, support and encourage the alienated parent emotionally and teach parenting skills.
6. This is long and often frustrating work. It is much like attachment disorder but isolated to the alienated parent.

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CUSTODY MODE: Problem Types

5. One parent is scorned, still in love, vindictive.
Characteristics: Children are grilled after visits, parent checks on other parent, parent demands that the children not recognize the other parent's paramour, verbal/physical confrontations, parent sometimes admits "they can't get over it".

Goals:

1. Identify this parent early in your work.
2. Assess their mental health. Promote individual therapy, medication if depression/anxiety is present and is warranted.
3. Determine if they can be successful in collaborative counseling.
4. If not, postpone parent counseling until individual therapy can be successful.
5. If so, hold the parent to keeping exchanges only to business, collaboration and trust building.
6. When the "you hurt me" statements begin, we softly remind the parent at first, then we take a more and more authoritative stance.

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The Clinical Summary

The Clinical Summary is not exhaustive. One to two pages is generally normal.

The following is our structure:

To:
 Re: Smith vs. Smith
 Court Doc. #
 Child/ren:
 Legal Warning on disclosure (see next slide)
 Introduction: Who we saw, for what and why.
 Summary of TREATMENT:
 Conclusions/Recommendations

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The Clinical Summary

Erie County Family Court has allotted the luxury of preventing parents from seeing our report unless a judge deems it necessary during an adversarial hearing. In order to protect our report we include the following language:

"The following summary contains information that may be emotionally damaging to the parties involved in this case and damaging the continuation of the professional relationship with said parties. Disclosure of the contents of this report is prohibited and may result in professional sanctions."

It has been decided that during the custody conciliation process, Social Workers can expect that their summaries will be protected from clients. But, the "conclusion/recommendation" section is admissible for review.

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PLEASE, PLEASE, PLEASE!!

...observe this protocol. Beyond legal sanctions, when you show our clients the entire report you effectively undermine our relationship and leave us with a big mess.

This (and being sued) is the number one reason why other therapists won't do forensic social work.

Summary of Treatment

In order to protect ourselves and our clients, it is imperative that we stick only to observable behaviors. WE **RARELY** DRAW CONCLUSIONS from what we've seen. We expect that you, conciliators and the judge are fully capable of drawing your own conclusions based on what we report.

Our goal is to write as if we are a "Fact Witness" NOT an "Expert Witness" (we hold that position until/unless sworn in as an expert witness).

In other words, we stick to just the facts.

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Conclusions/Recommendations

This section is meant to restate what we've said. This is the section that we expect our mutual clients WILL READ, so we are careful to use encouraging language.

Our recommendations are kept to only clinical issues and identifiable needs therein.

In 10 years of working directly on this population, I have recommended a custody change ONE TIME, and only as a result of a mother's disclosure leading to a report to OCY.

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Conclusions/Recommendations

Typical Recommendations:

1. Parent and child should continue to practice skills as discussed in treatment.
2. Although family has improved, they would benefit from continued intervention.
3. Mother continues to address adult issues in front of the children. The court should strongly encourage mother to understand the impact of this behavior on the children.
4. Father has been inconsistent with phone calls. The court should remind the father of the benefit of consistency in the child's life.
5. The child refused to attend visits with father despite mother's encouragement and father's consistent efforts. The court should remind the child of their responsibility in their relationship with their father.
6. Despite our discussions, the father continues to phone the mother on matters unrelated to the child. The court should remind the father of the legal implications of such behavior.
7. The father and child have consistently attended treatment. The child has reported independently that they are comfortable again with their father. The court may consider this in their determination of custody.

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