

CE

CONTINUING EDUCATION SHOULD THIS THERAPIST TESTIFY AT A DIVORCED COUPLE'S CUSTODY HEARING?

BY AMY NOVOTNEY

Several times a year, "CE Corner" presents a hypothetical ethical situation and asks ethics experts to offer insights on how to address it. Here is this month's vignette.

A divorced couple, Tom and Janet, begin seeing a psychologist for help with parenting issues. A month later at a court review hearing, where the psychologist was not present, the judge states that the couple should continue working with the therapist on parenting issues. The judge does not issue a written order; he merely relays the information to one of the client's attorneys. Not long after, the relationship between the psychologist and his clients breaks down and ends, primarily at Janet's insistence. The psychologist then receives a subpoena from Tom's

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Learning objectives: After reading this article, CE candidates will be able to:

1. Identify the APA Ethics Code standards around informed consent and limits of confidentiality.
2. Consider how scope of practice affects a therapist's ability to testify in court.
3. Discuss the importance of consultation with colleagues around these issues.

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attorney to testify in a custody hearing. The psychologist agrees, even though neither parent has signed a consent to treatment or a release of information.

Now, Janet asserts that the psychologist has been unethical, because she did not give permission for any testimony. Janet also claims that the psychologist testified beyond parenting issues and described and offered opinions about each parent's personality characteristics and parenting abilities.

Where did this psychologist go wrong?

While this scenario is fictional, the ethical issues of the case are common, says clinical and forensic psychologist Pamela Ludolph, PhD, who consults on psychology ethics cases in Michigan. "The case deals with a psychologist who is not anticipating what might happen in the future," Ludolph says. Psychologists who find themselves in such positions generally aren't bad or unethical, she says. "They just don't know what they're treading into."

Here's what therapists should do in this situation.

ELIMINATE THE AMBIGUITY

The first step to avoiding ethical conflicts in court is to be clear about the parameters of the case. While the lack of a written court order is not an ethical concern per se, ambiguity is a fertile breeding ground for making mistakes. "The psychologist needs to

have it clear what's going on with the court," says Jack P. Haynes, PhD, a Michigan forensic psychology consultant and vice chair of APA's Ethics Committee. "Is there an order to continue treating these clients or not? The psychologist doesn't know because nothing is in writing."

Ludolph agrees, noting that psychologists often don't assert themselves within the legal system. What's needed in such cases, she says, is for the psychologist to follow up in court with the judge and say, "Well, if you want me to do this, Judge, you have to write me an order."

Haynes adds that if the psychologist does not get a court order, he should not proceed haplessly in helping the clients with co-parenting because the court hasn't identified what the goals of therapy need to be.

ASSERT CLIENT PRIVILEGE

After Tom's attorney issued the subpoena, the psychologist should not have agreed to testify. Instead, he should have responded that, due to client-therapist privilege, he could not disclose confidential information from his therapy sessions, says Matthew Sullivan, PhD, a clinical psychologist in private practice in Palo Alto, California, who specializes in forensic child and family psychology. Ultimately, the psychologist takes direction from the patient concerning this privilege.

Testifying without patient

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To avoid ethical conflicts in court, psychologists need to be clear about the parameters of any case.



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consent and agreement to waive the privilege is a breach of standard of practice and an ethical lapse in terms of confidentiality of treatment information, as spelled out in **Section 4: Privacy and Confidentiality** of the Ethics Code.

In fact, anytime a psychologist gets pulled into a legal matter, he or she should consult a colleague who has experience in this area and talk with his or her malpractice insurance carrier.

GET CONSENT

The psychologist's dilemma could have been avoided if he had required his clients to complete an informed consent form before they began to receive therapy. Because he failed to do this, his clients were not aware of the limits on his ability to protect their confidentiality, Sullivan says. This is contrary to **Standard 10.01, Informed Consent to Therapy; Standard 10.02, Therapy Involving Couples or Families; and Standard 3.10, Informed Consent**, specifically sections (c) and (d), which state that at the outset

of therapy, the psychologist must inform clients about the nature and anticipated course of therapy, the limits of confidentiality, and exactly what the psychologist is and is not qualified to do.

"Without that informed consent, it's not clear whether the psychologist in this case was doing counseling, consulting or therapy, and without that clarification, you're probably not going to accomplish much," says Haynes, who also served on the Michigan Psychological Association Ethics Committee for 10 years. Informed consent documents enable all parties to agree to the goals of therapy and whether the psychologist is qualified to testify about custody issues. If the psychologist had obtained and appropriately documented informed consent, the document would have clearly stated that Jane had not given him consent to testify.

AVOID GOING OUTSIDE YOUR SCOPE OF PRACTICE

The psychologist also had a lapse in judgment when he testified at

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the court hearing, specifically by "describing and opining about the clients' personality characteristics," Sullivan says. The psychologist should have been aware of **Standard 3.05(c), Multiple Relationships**, which states that a psychologist can only testify within the scope of his or her role in working with a client. In court, this psychologist should have testified as a treating psychologist, but he discussed factors beyond the parenting issues for which the couple had hired him.

This case also raises issues related to **Standard 9.01, Bases for Assessments**. "The code is about whether you have sufficient information from your involvement to render a competent, well-informed opinion," Sullivan says. It's unlikely that in the context of this kind of therapy, the psychologist would have done a full evaluation of each parent to know what each parent's psychological problems might be, Ludolph notes.

"Plus, when you're working with a divorced couple around parenting issues, nobody's going to be at their best," she says. "You're going to have people who sound perhaps more angry or more paranoid, which wouldn't necessarily reflect their basic personalities."

Sullivan adds that when psychologists testify on child custody issues, it's important for them to remember that parenting is a relationship dynamic: "If you've never observed the parent and the child together—and it sounds unlikely that this psychologist did in this case—there are limitations to what you can say because it's all self-report." ■

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