



Risk Management in Child Custody Cases

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Child custody cases often present unique ethical challenges and increased professional risks. Non-forensic psychologists interact with divorcing families frequently, and so may fail to distinguish when they need to adapt procedures to the legal context. The fact that most separating parents resolve differences without legal action, and that most cases settle without trial, may lead psychologists to a false sense of security about the responsibilities and potential risks in these cases, whether or not the psychologist testifies in court.

In many respects, psychological training is a good match for family law cases. We are trained in scientific thinking, psychological testing, and the ability to differentiate among procedures and quality of research. Our strong ethical foundation emphasizes these skills, our responsibilities in generating, using, and communicating psychological information, and role boundaries. Psychologists with family systems

and child development training have important knowledge and skills to contribute to these difficult cases, and may be an ideal match for recently developed roles such as that of parenting coordinator. That said, it is critical that psychologists involved in child custody cases, even peripherally, understand the differences that arise when working with a court-involved family. These issues impact every aspect of a psychologist's involvement in a child custody case, whether in the role of expert, evaluator, consultant, parenting coordinator, or therapist. A psychologist who fails to establish and maintain competence (APA, 2010) before practicing in this area creates risks to both his/her own practice and the involved families. Following are some of the key areas for anticipating and managing risk (APA, 2012, 2013).

Establishing Competence: Knowing the Rules and Literature

When psychology interacts with the legal system, our rules are not the only ones that apply. For work in child custody cases, the psychologist should be familiar with state and local rules of court, with the APA Ethical Code, and the practice guidelines in areas such as child custody evaluations, child protection evaluations, and forensic psychology. Additionally, I strongly recommend consulting the guidelines and practice standards established by the interdisciplinary Association of Family and Conciliation Courts (AFCC, 2011). AFCC Guidelines exist for a variety of mental health roles, including child custody evaluation, brief focused assessment, parenting coordination, and court-involved therapy. Only the APA Ethical Code is universally binding on psychologists in California; however, it is common for reviewing experts and opposing counsel to consult other applicable law and the guidelines of various organizations when evaluating professional conduct. Many of the relevant guidelines were written with the dual goals of confronting bad practice and providing a "road map" to safer and more effective practice for qualified mental health professionals (Greenberg & Gould-Saltman, 2012). Even if one was involved with a client or family before the separation or before legal action occurred, psychologists should consult the relevant guidelines as soon as it is reasonably anticipated that the family will be involved with a legal proceeding. Conflicts or lack of clarity between the various guidelines/standards and the findings or decisions by courts or regulatory agencies may be vexing for psychologists, but the wise psychologist is aware of these issues and addresses them early – seeking professional consultation if necessary. Most ethical conflicts can be anticipated and managed effectively, protecting both the psychologist and the family (Gottlieb & Coleman, 2011; Greenberg, Gould-Saltman & Gottlieb, 2008). This

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requires awareness of the various rules that may be applicable and the relevant literature. In some areas there is an emerging consensus; in others, greater variability of practice. Interdisciplinary training may be helpful in understanding current controversies and other perspectives.

Enhanced Informed Consent

Detailed informed consent is critical in these cases and can prevent problems as the work progresses. Requirements for some roles are detailed in law or court rule. Even when a child custody evaluator is appointed over the objections of a parent, certain information must be provided (California Rules of Court, 2013). Parenting coordinators may be appointed only by stipulation in California; procedures differ among jurisdictions. These issues are also addressed in both the AFCC and APA Guidelines for this role (APA, 2012; AFCC, 2006). Risks are increased when psychologists accept orders that don't adhere to established parameters and lack sufficient detail. Parents and attorneys entering into consultation relationships, or retaining a psychologist for expert testimony, should have a detailed agreement specifying the services to be provided, any limitations on the privacy of information, and the ethical standards that the consultant or expert will follow. Fewer standards exist for treating psychologists, although the AFCC Guidelines provide detailed suggestions of issues to consider and procedures to follow (AFCC, 2011).

Psychologists should consult the relevant professional literature, court rules, and specialty guidelines when developing informed consent procedures. Both attorneys and parents may resist detailed consents, or stipulations and orders for court-appointed roles, and pressure the psychologist to begin services without them. Sympathy for a family in need, or an eagerness to please counsel or the court, may tempt psychologists to short-cut consent procedures. This endangers the psychologist and, ultimately, may also harm the family.

Services Must Be Appropriate to the Context

Assessment and therapeutic procedures developed for other populations may not apply to custody-disputing parents or their children; services must be appropriate to the family and the surrounding legal context, and defensible in a legal setting. Common procedures may be inadequate to this setting, as legal conflicts fundamentally impact relationships and all areas of client information. Psychologists in neutral roles (including that of child therapist) should be able to document their attempts to engage both parents, have knowledge of the variables that can influence children's statements, and have the ability to consider multiple hypotheses about the meaning of information.

For example, unconditional support of a client's expressed views may be risky in a child custody case. Parents and children may need to develop certain coping skills or alter behavior to meet the demands of the legal system; failure to do so may impact custody evaluations or the court's decisions. Therapists appropriately rely primarily on information from the client, or the client and parents when the client is a child, but must also remain professionally objective and aware of the limits of therapeutic information. Opinions derived from one-sided information can quickly morph into inappropriate advocacy, and overly broad opinions can cause serious damage, even if offered only in the therapy office. It is unfortunately common for therapists treating one parent to offer diagnoses of the other parent, or for therapists to treat a child with only one parent's involvement and then draw inaccurate

conclusions about the child's functioning or the other parent-child relationship (Greenberg, Doi Fick & Schnider, 2012, Olesen & Drozd, 2008). The best defense, for the psychologist and the family, is to critically evaluate incoming information and adapt procedures to the court-related context. Further information can be found in the AFCC Guidelines, the 2012 special issue of the *Journal of Child Custody* (Sullivan & Greenberg, 2012) and other literature (Greenberg, Doi Fick & Schnider, 2012; Greenberg & Sullivan, 2012).

Conversely, in the current budget climate, courts may request opinions based on procedures that are inadequate to support them. Not all families require, or can afford, comprehensive custody evaluations – in fact, many might not need these services if they received appropriate treatment or other interventions early. Abbreviated or focused evaluations may be helpful for some families, if the procedures are sufficient to answer the questions posed. Psychologists should avoid promising more than they can deliver and resist offering opinions that are not professionally supportable. When an issue is being resolved by custody evaluation, someone will undoubtedly be unhappy, and that person may find expert support to challenge inadequate procedures (Cavallero & Hanks, 2012).

Limiting Opinions and Adhering to Role Boundaries

Disciplined procedures and role boundaries are critically important in child custody cases. As the attorney seeks to make the strongest presentation possible and the judge wishes to reach a faster decision, the psychologist may face pressure to express an opinion without sufficient

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objectivity or information. Stressed families may request that a trusted treating psychologist assume an additional role, such as making parenting plan recommendations. Consumers may not understand that violating role boundaries fundamentally changes the psychologist's relationship with the family, often leading to poor decisions, compromised objectivity, angry clients and complaints against psychologists. A psychologist may believe that he/she can assume multiple roles without encountering any of these problems, and some role distinctions are not absolute. At a minimum, psychologists should obtain professional consultation when faced with any of these issues or tempted to expand opinions or services.

Psychologists must limit their opinions to what can be adequately supported based on the psychologist's role and available data, and to articulate the difference between well-founded and poorly-founded opinions. At a minimum, psychologists risk being discredited in court for poor procedures or inappropriate opinions. Even when a court requests an expanded opinion, the psychologist who expresses one without adequate basis may mislead the court, harm the family, and risk professional sanction.

Conclusion

Psychologists providing quality services may be extremely helpful to conflicted families and their children. A healthy humility about our knowledge, combined with disciplined procedures and respect for the surrounding system, help psychologists anticipate and manage risks effectively. 



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