

DUAL RELATIONSHIPS FOR THE PSYCHOLOGIST WHEN CUSTODY IS AN ISSUE

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For the psychologist conducting a custody evaluation, the issue of dual relationships may surface in several different ways. The most frequent one involves being both therapist and evaluator in a custody dispute. The Guidelines clearly state that a treating psychologist should not assume the role of evaluator. This seems reasonably straightforward. Sometimes, however, boundaries are not so clear. When dealing with attorneys and laymen, it may sometimes be difficult to keep these roles separate, especially if the client and his/her attorney focus on the facts, enabling them to evaluate the situation accordingly.

The function and goal of the role of therapist and evaluator differ. The role of the therapist is to be a support and advocate for his or her client. This may mean different things to different therapists depending on their theoretical orientation, but is likely to involve confidentiality issues, helping the client deal with concerns, doubts, anger, and insecurities as well as other negative feelings. There are difficulties in assuming both roles whether the psychologist is the therapist for the parent, the child, or the family. Looking at them separately helps make this clearer:

If they (psychologists) are therapists, their prime concern is their clients. If they are custody/visitation evaluators, their prime concern is providing the court with an objective evaluation related to the best interests of the children. (Esquilin, 1995)

Therapist for the parent

In the role of therapist for the parent, the psychologist will hear concerns and events from the perspective of the parent. While there is likely to be an attempt to do some reality testing with and for the client, the therapist rarely goes out into the world to test the accuracy of much of what

is said during therapy sessions. His/her view may be linked to the patient's view even if somewhat more tempered. A parent who has confided doubts, concerns, and insecurities to a therapist may feel betrayed if these are raised in court. In an evaluation, such issues that are often the basis of decisions made. Issues of betrayal are likely whether or not the patient gains custody. If the psychologist is the parent's therapist and the evaluator, taking a position supportive to the client can be undermined in court. If the psychologist makes a negative recommendation regarding the client, he/she probably may have ended the therapeutic trust in the relationship. In court, the psychologist may need to discuss insecurities and worries which were confided with the expectation of privacy; things that would not have been said publicly to other people and certainly not to the ex-spouse.

Therapist for the child

Children in divorce cases often feel caught in a loyalty conflict between their parents. Therapy can be a safe place to deal with this and to address both the positive and negative aspects of their feelings about their parents without repercussions. To feel that this is violated is likely to undermine ongoing therapy and perhaps any future therapeutic relationships. While there are times when the therapist needs to share information and therapeutic issues with the parents, how this is done is very important. The child needs to feel that he or she can trust the therapist to maintain confidentiality and that the therapist provides a safe setting where conflicts and concerns can be sorted out and processed. This aspect of privacy cannot be protected in a custody evaluation.

Therapist for the family

A family therapist who has had contact with the children and the parents may, of course, have important insights regarding the family situation which may be difficult to assess in a short and time-limited evaluation in which everyone is likely to be on their “best behavior” to impress the evaluator. Many times the family therapist is likely to have a systemic perspective of how things in the family have functioned and not functioned over time. Suggestions may have been made and met with various degrees of compliance and success. There needs to be a difference between making a suggestion or trying something with the family in the context of family therapy and making a formal or written recommendation about custody. The latter is likely to lead to being seen as an ally for one parent and an “enemy” of the other. While it may be clear in treatment that one parent is seen as primary in the children’s lives, or that one is the better parent, actually making a written recommendation to that effect can create problems. It makes further therapeutic work very difficult, to say the least. A way of dealing with this is, of course, to give information about such observations to the person who is in the evaluator role.

The custody evaluator role

As an evaluator, the psychologist has a different goal than he/she would have as a therapist. Here the role is to do an evaluation that looks at the functioning of the parents and of the children, trying to assess the accuracy of reports, gathering information from various sources, and making a recommendation within the guidelines of “the best interest of the child.” This is different than being an advocate for a parent or the child. A major issue, of course, is that confidentiality is not protected in custody evaluations although it is an important part of therapy. While the evaluator may view him/ herself as “an advocate of the children,” with their welfare, needs, and issues being foremost, it is a different role than being the child’s therapist.

“Any treating therapist who becomes a custody evaluator loses his/her ability to provide for the child a safe environment in which ambivalence about parents can be explored, and loses his/her ability to provide for the parents a neutral place to discuss parenting issues. If the treating therapist writes an evaluation report that heavily favors one parent, the therapy itself is likely to become part of the emotional battle between the parents. One parent will see the therapist...as an ally and the other parent will see the psychologist as an enemy.” (Esquilin, 1995)

The therapist tries to provide a safe environment for the child to express his or her worries and positive as well as negative feelings about his/her parents. Whether a child views this as a safe environment in which he/she can deal with the dilemmas of being caught in the middle of his/her parents depends to a great measure on how this is handled. Helping the child deal with things with one of his/her parents may be appropriate to a therapy context but is not the same as writing it in a report that will be public and available to both parents.

The therapist providing information to the evaluator

The Guidelines refer to evaluators contacting therapists and getting information from them. Therapists can be helpful to an evaluator without moving into that role themselves. Care needs to be taken by the evaluator as well. What kind of information does the therapist need to relay? What is appropriate to say and what is not? At what point does the therapist risk violating the client’s confidentiality? Is it better to give information in a telephone conversation or in a written summary? How can you give information without making a recommendation about custody? How should the evaluator handle the information given? Keep in mind that you don’t want the situation to get any more difficult.

What constitutes “the best interest of the child” is certainly not likely to be served by taking away one of the limited places where a child can raise problems and concerns. As the child’s therapist, the psychologist may be helpful to the evaluator by sharing observations, issues,

and some history of how things have been handled. There may be some pressure to get involved, perhaps from the clients, perhaps from the desire to rescue or, said more euphemistically, to “help”. Clearly limiting roles is essential. Realistically, there is likely to be important information known by the therapist. How this information is framed and conveyed is important.

What the therapist is not in a position to do is to make a recommendation about custody.

Care needs to be taken about wording. Avoid the word “recommend.” In some respects, the issue involves semantics as well as roles.

When asked by a client to prepare a summary or provide information, the psychologist should discuss the matter with the client. Care needs to be taken not to make statements about parties only known by report. The child’s therapist or the family therapist is likely to have a sense of the child’s relationship with the parents as well as ambivalences and conflicts. In some ways, this enables an understanding of the child’s needs and concerns that are pivotal in the conflict. For the evaluator, speaking to a therapist who has worked with the individual or the family can be invaluable in terms of understanding how information is used and processed, whether the parents follow through with stated goals and intentions, and how they deal with the child. If the information received is very different from what is observed in joint meetings, or from that described by the parties, this may raise important and interesting issues and concerns. Care needs to be taken to respect the therapeutic relationship, addressing issues, for instance, without being explicit as to details. Keep in mind that the parties need to be able to continue to function and that, given the level of anger involved, things may be taken from the report and used as weapons.

As the parent’s therapist, what kind of information can be provided? This can be a bit sticky. It is relevant to let the evaluator know who in the family was seen, for how long, and how

recently. Issues of parental overinvolvement and seeing the child as a narcissistic extension of themselves are certainly worth mentioning. Sensitivity to the child's needs and style and an awareness of what is involved in parenting is relevant. Similarly so are major personality weaknesses, personality disorders, and psychotic behavior. Taking care to talk about the positive aspects of the person's parenting skills is probably a good bet. The evaluator may hear what is not said as well as what is.

As the child's therapist communicating with the evaluator, it is helpful to mention the child's style, anxieties, ability to function in various aspects of his/her life, and conflicts related to the divorce. Obviously, particular pathology, therapeutic interventions, and personality or stylistic patterns are helpful to mention. Any educational or developmental issues may be helpful in terms of addressing these needs in any recommendations.

As the family therapist, one has access to information about the interaction patterns and the parenting styles of both parents. He/she is aware of who has attended treatment and followed through with suggestions made. In considering the kind of information shared with the evaluator, the following data should indicate: who has been the primary source of parenting (dealing with school and medical issues, being the parent to whom the child comes with concerns), what is the affective and nurturing nature of both parents' interactions, and parents' sensitivity and respect for the child's style and personality. Violence issues are certainly relevant.

Writing a summary has the advantage of minimizing the danger of being misquoted although it may pose other dangers. Be careful to be able to back up what is said, to avoid overstating the case, and to avoid making a recommendation about custody.

Other kinds of dual roles in custody situations

The basic policy that one cannot be the evaluator when one has been the therapist seems clear. Other aspects of dual roles that affect custody litigation are sometimes not as clear. The goal of maintaining clear boundaries and role definition arises in various ways. Sometimes this is fairly obvious. It is not appropriate to do a custody evaluation for people that are known personally: friends, neighbors, one's child's teacher, or a child in his/her class. It is important to be seen as making an objective evaluation within the guidelines. Situations brought up in Court that are likely to question the report, the evaluation process and ethics as an objective professional, can compromise the position taken. Also, the evaluator needs to be aware of his/her issues in terms of political beliefs, value judgments, and perhaps their personal family situation.

There are situations, especially in the case of a Court appointed evaluator, that may make confidentiality a little more complicated. For example, if the treating therapist is appointed by the Court to be the evaluator, he/she obviously cannot fulfill the second role. Notifying the Court of the reason violates the client's confidentiality. The therapist needs to let the client know that he/she has been appointed and let them decide how to present this to his/her attorney. There may be contact with one of the parties in another context: for example, when the client is a child's teacher, neighbor, or soccer coach. Here confidentiality is not an issue and withdrawing from the evaluator position is easier.

Since objectivity and lack of bias are important concerns, there are situations that can be encountered in other settings, not clearly formal dual roles, but ones that might later create questions about objectivity. Consider encountering one of the parties at a school or social function or finding out that one of the parties has an office within the same building. Obviously, it depends how big the building is and how and if paths cross. Extensive conversation or contact

in these situations may begin to feel compromising. This is especially true if it seems that the parties try to prolong or repeat the contact. Drawing the boundary in a clear and civil way is important and requires a clear awareness of the situation. More intense and borderline clients may be more difficult.

And, after the evaluation...

Sometimes the evaluator is the only mental health contact for the family. The Guidelines indicate that sometimes the court may order the psychologist to be in a therapeutic role after the evaluation. Starting over and retelling the situation to someone new can be difficult and seem overwhelming. The family may ask if the evaluator can continue as the therapist if a recommendation for treatment has been made. A family member may try to do this by him/herself. For example, one parent may contact the evaluator after the evaluation has been completed, detailing an incident that has occurred in which the other parent has behaved unfairly with a question about how to handle the situation. (The actual goal here may be unclear and may not really be a question. Sometimes it is used to increase your support of that parent or to convince the evaluator to change the recommendation rather than to make the recommended changes). After the resolution of the custody situation, a major goal is to move on with one's life and to deal with the ongoing negotiations involved in co-parenting after the divorce. Should the evaluator become the therapist after the evaluation, being asked to make further recommendations puts him/her in the position of evaluating the success of one's own work, making things even more complex. As an evaluator, it is helpful to have the names of several colleagues who work with families or with children and who can provide the kind of therapeutic assistance that might be helpful. As psychologists, it may be hard to let go. We may have a clear sense of what we think

should happen therapeutically. We may feel we want to rescue and protect the children. It is important not to get pulled into providing this function.

Reasons for this are, frankly, pragmatic. Situations that go to the point of having a custody evaluation are likely to return to court sometime in the future. Many times there will be a return to litigation one, two, or five years later. Obviously if one has become the therapist, he/she cannot do an update or revisit the custody issue. The family would need to start over with someone who does not know them, who has not contact with them, and who does not have the information the evaluator would have.

What is an appropriate length of time before accepting a previous evaluation client as a therapy client? One recommendation made was “one year if there has been no further trouble.” I am not sure what “no further trouble” really means. Since many custody matters remain in litigation for several years, it may be wise to stay clear of a therapy role until the legal matters are resolved. (Keep in mind, however, that many times they feel like they are never resolved). It is probably wise to avoid moving into a therapy role at all if it is a very contentious situation. There are times when, many years after the evaluation, one of the parties may contact the psychologist who had done the evaluation about therapy. If the children are older and things seem more settled, shifting to this role may be conflict free – but, be careful.

The basic issues involve boundaries, clear roles, and care about the pull to rescue everyone - an occupational hazard that has a high base rate in our profession. When in doubt about how to proceed, talk to a colleague. Mixing roles may cause trouble for the psychologist and may ultimately not be helpful to your clients.

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