Mental Health Professionals in Family Law: Differentiating Roles and Responsibilities

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Learning Objectives

1. Identify and distinguish between the various roles for mental health professionals within the context of family law matters with particular focus on the purpose of the mental health professional's involvement, the client, as well as confidentiality and applicable professional standards.

2. Limits of Testimony for Court-Involved Therapist

Why Role Differentiation Matters?

An attorney says,

"Look Doc, I need you to testify about the weaknesses you found in that report…I also need help finding a witness about the attachment issue and with cross examining the therapist and the forensic. By the way, my client got picked up for a DWI but the other side doesn't know about it."

- Mental Health Professionals play diverse roles: therapist, evaluator, expert, consultant, reviewer, mediator.
- Diverse roles can lend to role confusion which in turn may result in ethical violations and evidentiary problems

References
APA Ethics Code (2017): clarify role, client, and limits.
Greenberg & Shuman (1997): therapeutic and forensic roles are fundamentally incompatible.

4

Helpful Hint

"In the best of all worlds, what are you hoping I would be able to testify to?"

The Therapeutic Role

- Purpose: Promote healing, not adjudication.
- Client: The patient.
- Parameters:
  - Confidential, supportive, non-adversarial.
  - Relies on patient's self-report.
  - Focus: subjective truth and well-being.
  - Relational privilege:
    - Governed by therapist–patient privilege with adults
    - Minor's privilege is determined by Court-appointed Best Interest Attorney or Child's Privilege Attorney
  - May testify (with appropriate releases) about treatment and clinical impressions but may not offer opinions about such matters as custody, access, parenting, etc.

References
AFCC Guidelines for Court-Involved Therapy
Greenberg & Shuman. Irreconcilable Conflict
Greenberg & Gould. Treating Expert

The Forensic Evaluator Role

- Purpose: Provide court with data-driven, neutral opinions.
- Client: The Court or attorney.
- Parameters
- There is no therapist/patient privilege for adults. An appointed attorney makes decisions re: privilege for children
- Objectivity and neutrality.
- Uses multiple data sources including interviews with the relevant parties, document review, collateral interviews, testing and observations.
- Reports focus on facts relevant to legal questions.

References
AFCC and APA Forensically-Related Guidelines
Greenberg & Shuman. Irreconcilable Conflict

The Testifying Expert Witness

- Purpose: Educate the trier of fact.
- Treating Expert: Can testify re: the treatment itself, clinical description of the patient and diagnostic formulation (if appropriate).
- Forensic Expert: Can offer opinions regarding case-specific matters based upon professional practice guidelines, social science literature and data-based evidence
- Ethical focus: integrity and impartiality.
- Avoid advocacy bias.
- Maybe Content Expert or Evaluation Expert

The Non-Testifying Consultant

- Purpose: Support attorney strategy without testifying.
  - Interprets psychological reports.
  - Aids with cross-examination.
- Protected: work-product privilege.
- Ethical guardrail: avoid advocacy.

The Work-Product Reviewer

Definition: Reviews another's evaluation for adequacy.

- Parameters - Reviewer Must Have:
  1. Evaluator's complete file – raw data, interview notes, (including collaterals) observational notes, records/documents relied upon by the evaluator.
  2. Referral questions and court orders.
  3. Not reviewed anything that is not in the original evaluator's file
  4. Both profession-specific standards, as well as generally accepted standards in the field of Forensic Mental Health to apply to the case

- Goal: Evaluate methodology—not litigant behavior.

References

Austin et al. Work-Product Review

Practice Tip Re: Role Distinctions

- The testimonial expert advocates for an opinion regarding the case-data or offers education for the court.
  - Goal: Assist the court.
- The Trial Consultant assists the attorney advocate for a litigation position.
  - Goal: Assist the legal team.

Practice Tip Re: Role Distinctions (cont'd)

- Once a decision is made to have the expert testify, the file contents, records of communications, etc. can become discoverable because of the right of the adverse party to explore the basis of an opinion.

- The Trial Consultant's file should be protected under attorney-client and attorney work-product protections.

The Mediator and Collaborative Roles

- Governed by: AFCC–ABA Model Standards (2025).
- Purpose: Facilitate informed agreement and self-determination.
- Not: Providing treatment or evaluation.
- Core principles: impartiality, confidentiality, voluntariness.

Comparison Chart - Mental Health Professional's Roles

Role	Purpose	Client	Objectivity	Discoverable?	Testify
Therapist	Treatment	Patient	Subjective	Possibly	Limited
Evaluator	Forensic Rpt.	Court	Objective	Yes	Yes
Expert	Educate court	Attorney	Objective	Yes	Yes
Consultant	Strategy	Attorney	Supportive	No	No
Reviewer	Assess Eval	Attorney	Objective	Depends	Possibly
Mediator	Facilitate	Both parties	Neutral	Limited	No

Ethical Safeguards

- Written engagement agreements.
- Avoid dual roles.
- Cite APA, AFCC, and state codes.
- Maintain transparency and documentation.

Bibliography

- APA (2017). Ethical Principles
- APA (2022). Child Custody Guidelines
- APA (2013). Forensic Psychology Guidelines
- AFCC (2011). Court-Involved Therapy
- AFCC (2022). Guidelines for Parenting Plan Evaluations in Family Law Cases
- AFCC–ABA (2025). Mediation Standards
- Austin et al. (2011). Work Product Review
- Dale & Gould (2014). Science and MH Consultants
- Goldenson, Kukor and Brodsky (2025). Consultation Guidelines
- Greenberg & Shuman (1997). Irreconcilable Conflict
- Greenberg & Gould (2001). The Treating Expert
- MD Code, Custody and Visitation-Related Assessment \ 9-205.3
- Wittmann (2021). Lawyer Needs a Psychologist
- Zervopoulos (2024). Psychology Law Brief