Critical Differences between Forensic and Therapeutic Roles

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Parents and attorneys representing families often request a letter to the court from the psychologist working in a therapeutic role with their children. They justify this request by noting the psychotherapist’s knowledge of the family and situation, although the psychotherapist has often met only one of the parents. While the psychotherapist often feels an obligation to provide input to the court, writing such a letter has many pitfalls and ethical implications. Taking this step becomes particularly problematic when psychotherapists make custody and parenting time recommendations. Such interventions by the psychotherapist can result in ethics and licensing board complaints by a parent.

As highlighted by scholars (e.g., Greenberg & Shuman, 1997, 2007; Greenberg, Gould, Gould-Saltman, & Stahl, 2003; Shuman, Greenberg, Heilbrun, & Foote, 1998; Strasburger, Gutheil, & Brodsky, 1997), therapeutic and forensic roles are clearly distinct from one another. A psychotherapist serves the client and provides treatment according to the standard of care, whereas a forensic evaluator is serving the court and addressing the psycho-legal issue. A psychotherapist has competency in clinical assessment, diagnosis, and treatment, while a forensic evaluator has expertise in forensic methodology and assessment techniques. A psychotherapist provides an accepting and supportive role; in contrast, a forensic evaluator maintains an objective and neutral role. A psychotherapist gathers self-report information and assumes such information is reliable. However, many times the self-report information is gathered from only one parent, which raises questions about its veracity. Because of the lack of collateral information from other sources, the psychotherapist might be receiving a biased view of the case, a circumstance that is not uncommon in contested divorce and other adversarial situations. An
important role for a forensic evaluator is to gather information from multiple sources and scrutinize the data closely. Additionally, hypothesis testing is utilized as a means of considering rival alternatives. Moreover, the court is an adversarial process, with competing and contentious parties. Consequently, involvement in the legal process requires knowledge of the legal process and rules of evidence.

In a therapeutic setting, informed consent is provided by the child’s parent(s). Therefore, the parent owns the privilege and a release of information must be signed by the parent for therapeutic information to be disclosed. In contrast, a forensic evaluator is appointed by the court or retained by an attorney, and the privilege resides with the court or attorney, respectively.

At the beginning of psychotherapy, confidentiality issues are reviewed with the child and parents to provide a clear understanding of the parameters of disclosure. In general, it is hoped that psychotherapy will be a safe haven for children to freely disclose their thought and feelings, without undue fear of their privacy being violated. When a psychotherapist becomes drawn into the parents’ custody battle, it will likely seriously impact the child’s relationship with the psychotherapist. The child will no longer view therapy as a safe place for self-revelation.

Additionally, writing a letter increases the likelihood that a psychotherapist is assuming a forensic role, which can include being called to testify in court. When a psychotherapist is subpoenaed, the legal rules apply. The psychotherapist may find direct examination by the requesting attorney straightforward and relatively easy. However, when the opposing attorney conducts the cross-examination, it is likely that sensitive and potentially harmful information will surface, which will impact the future client-therapist relationship.

The American Psychological Association (APA) Ethical Principles of Psychologists and Code of Conduct (2010a, hereinafter referred to as the Ethics Code) establishes mandatory
standards for practice, while the Specialty Guidelines for Forensic Psychology (APA, 2011) and APA Guidelines for Child Custody Evaluations in Family Court Proceedings (2010b) provide guidance rather than standards. Regarding the Ethics Code, pertinent standards include the Boundaries of Competence (2.01), Bases for Scientific and Professional Judgments (2.04), Multiple Relationships (3.05a), Conflict of Interests (3.06), and Bases for Assessment (9.01). Psychotherapists need to be aware of their areas of expertise and limits of their work domain. Venturing into the forensic area requires specialized knowledge, experience, and skills. In addition, when assuming forensic roles, psychologists need to become reasonably familiar with judicial rules governing their roles (2.01f). Furthermore, psychotherapists need to be aware of problems with potentially inappropriate multiple relationships and conflict of interest situations (i.e., psychotherapist and forensic evaluator), which may impair objectivity and cause harm to the client. Psychologists should give opinions only about those individuals whom they have examined; furthermore, sufficient techniques and information must be used and gathered, respectively, to substantiate their findings and opinions. As previously noted, forensic evaluators utilize multiple sources of information, closely scrutinize data, and utilize hypothesis testing, which is beyond the typical psychotherapeutic role.

The APA Guidelines for Child Custody Evaluations in Family Court Proceedings (2010b) were developed to provide guidance to psychologists conducting custody evaluations. The document highlights a clear distinction between the forensic/custody evaluator and the psychologist serving in a therapeutic role. The most pertinent guideline for psychotherapists is #7, “Psychologists strive to avoid conflicts of interests and multiple relationships in conducting evaluations” (p. 865). In addition, when conducting child custody evaluations psychologists need to obtain specialized competence in the area, obtain appropriate informed consent for the
evaluation, employ multiple methods of data collection, and interpret assessment data within the context of the forensic setting; all of these are beyond the psychotherapeutic role.

The Specialty Guidelines for Forensic Psychology (APA, 2013) provide direction in defining the two roles. In guideline 4.02.01: Therapeutic-Forensic Role Conflicts, it states that providing forensic and therapeutic services to the same individual (or closely related individual) involves a multiple relationship, which could impair objectivity and cause exploitation. Although not all multiple relationships are unethical or inappropriate, the potential for them to significantly impair objectivity and judgment, and risk exploitation or harm to the client, should create cautions. It is a subjective determination and the psychotherapist’s view of the situation might be considerably different than the client’s, or how a licensing board or ethics committee would perceive the situation. Guideline 4.02.02, Expert Testimony by Practitioners Providing Therapeutic Services, further addresses this issue. Providing expert testimony about a patient in a legal matter is not forensic practice as long as it is limited to the client’s status, diagnosis, progress, prognosis, and treatment. However, rendering an opinion about psycho-legal issues (i.e., custody and parenting time) would be considered forensic practice. Nevertheless, psychotherapists often find themselves providing such information because they want to assist a parent and/or family in difficult and stressful times.

The Ethics Code and other guidelines clearly establish limits on psychotherapists’ involvement in forensic matters, such as family court proceedings. Although parents and attorneys often request such involvement, psychotherapists need to consider such requests extremely carefully. It is also important to note that preventive efforts could have been utilized during the informed consent process to possibly avoid such situations. Clearly explaining the differences between therapeutic and forensic roles, and possible negative ramifications of a
psychotherapist testifying in court may alleviate this issue. Nevertheless, when drawn into such situations, psychotherapists should provide only basic facts (i.e., number and frequency of sessions, presenting problems, goals, and progress) and avoid any statements or opinions about the quality of parenting, best interests of the child, or custody/parenting time. When psychotherapists testify, attorneys will often press psychotherapists to go beyond the basic facts. It is imperative that psychotherapists refrain from being persuaded or intimidated by attorneys. They need to cite the Ethics Code and applicable guidelines, and maintain a firm stance. Distinguishing carefully between therapeutic and forensic roles protects psychotherapists and allows them to better serve their clients’ interests.
References


