

CHAPTER 5

MENTAL HEALTH CONSULTATION IN CHILD CUSTODY CASES

Elena Hobbs-Minor, M.A. and Matthew J. Sullivan, Ph.D.

The changing structure of family law and the use of alternative dispute resolution have made the role of mental health professionals increasingly integral in assisting parents and children through the legal and psychological divorce transition. In family law, as divorce and custody cases have become more complex, attorneys are collaborating with mental health professionals more frequently to assist their clients.¹ For divorcing parents to enter into “meaningful negotiations” they must surrender their myths of the court system (Saposnek & Rose, 1990, p. 14) and have realistic expectations of the family courts, understand the needs of their children, and learn how to become effective co-parents. Attorneys often hire mental health professionals with child custody expertise to teach parents how to engage in productive dialogue and help them function optimally with their divorce transition or child custody proceedings.

The proliferation of research on children's adjustment to parents' separation and divorce (Amato, 2001; Kelly & Emery, 2003), conflict resolution in divorce (Ellis, 2000; Kelly, 2003), and current controversies in the child custody evaluation process (Tippins & Wittmann, 2005; Kelly & Johnston, 2005) are amplifying the need for consultation with mental health professionals who are experts in the child custody field for divorcing parents. The information about topics related to divorce and the children's adjustment are overwhelming and confusing enough, without the added complexities of the legal adversarial process. The confidential mental health consultative role, ideally utilized very early in the divorce transition or custody dispute, can assist parents to resolve their issues in the best interest of their children and reduce on-going parental conflict. This confidential process, however, which falls under attorney-client work product privilege, should be carefully described as it is controversial, expanding rapidly, and is relatively unexamined.

MENTAL HEALTH CONSULTATION ROLE IN CHILD CUSTODY DISPUTES

Child custody disputes are often resolved with the assistance of mental health professionals acting as mediators, evaluators, and parenting coordinators, without the direct representation of attorneys. These neutral, often court-appointed, professionals typically have a prominent bearing on the outcome of a case. Lorie Nachlis, J.D., describes custody evaluations as having "considerable influence within the legal system" and that "many courts will accept the evaluator's recommendations without the challenge despite the lack of procedural protections" (Coates, Flens, Hobbs-Minor, Nachlis, 2004). In addition, the use of a mental health professional expert hired by one attorney to review the work of the court-ordered evaluator has been used for a number of years (Gould, Kirkpatrick, Austin, & Martindale, 2004; Stahl, 1999). What is new in the child custody field is the increased use of *mental health consultants* that assist parents directly.

Typically the consultant becomes involved with one parent at the onset of a case to help support that parent's functioning through the divorce transition or any child custody proceedings and prepare him or her for whatever dispute resolution processes they may face during this transition.

A number of professionals involved in this new conflict resolution role call themselves coaches. The authors do not advise or recommend using the term “coach” for this role since it has been associated with unprofessional practices that specifically prepare parents to present themselves favorably in child custody evaluations. Inappropriate and potentially unethical “coaching” practices may include providing specific strategies to prepare for interviews and observations, psychological tests, custody evaluator questionnaires, home visits, and other procedures. These practices should not be associated with legitimate mental health consultation described in this article.

Mental health consultation in family law is a confidential professional service provided to one parent and his or her attorney, if the parent is represented, in a divorce or child custody dispute. The consultant is privately retained by the attorney and/or the parent to provide confidential mental health and forensic services. The mental health services include parent education and/or psychological support as the parent deals with the challenges and stresses of the divorce transition or child custody disputes. The forensic services include sharing specialized child custody knowledge relevant to the various dispute resolution processes with the parent and the attorney. These services are provided confidentially, and the use of a consultant is not “disclosed” to anyone beyond the attorney and parent (with the statutory limitations for mandatory disclosure still applicable for the mental health consultant, i.e. child abuse, elder abuse, and necessary Tarasoff warnings) (The California Tarasoff Statute, 2007). The attorney work product relationship must actively be protected as it can be easily breached by copying emails to anyone other than the attorney, sending incorrect faxes, or by disclosing the use of a mental health consultant. The confidentiality of this role is one of its most effective and controversial aspects of consultation.

According to Cinnie Noble, C.M., B.S.W., LL.B., LL.M., a former social worker and an attorney-mediator, this type of role combines alternative dispute resolution (ADR), and coaching principles. She states the individuals who look for assistance want “to work on ways to prevent a dispute from unnecessarily escalating, to improve their competency in conflict management, to develop stronger communication skills for a difficult conversation, and other objectives that are often more about managing than resolving” (Noble, 2006, p.1). It is estimated that there are currently twenty-one different mental health professional roles associated with divorce, varying in scope from pre-divorce, therapeutic, supportive,

post-divorce, and educational roles which have evolved over the last thirty years (Saposnek, Hobbs-Minor, & Pearson, 2007). Approaches to the consultation role in child custody disputes originated from forensic psychological consultation, therapeutic, and educational roles that integrate concepts from conflict resolution research.

Mental health consultation is based on the premise that ultimately conflict is resolved “by the disputants themselves, with the assistance of their advocates, advisors, and allies,” and that the “help disputants want and genuinely trust, is not neutral, process oriented, or facilitative,” (Mayer, 2004, p. 217). Often, the disputant is afraid of conflict and his or her opponent. In family law the feared opponent is the other parent, which is problematic, as it impacts their children who need a healthy relationship with each parent and a functional relationship between both parents.

Mayer (2004) states that there are three different types of assistance that can be provided to resolve conflict:

1. “The *ally roles* – roles in which we assist particular parties to engage more effectively. These are normally non-neutral roles (advocate, organizer, strategist, consultant and coach).”
2. “The *third-party roles* – roles in which we assist conflicting parties to engage more effectively. These are usually neutral roles (facilitator, mediator, fact finder, evaluator, and arbitrator).”
3. “The *system roles* – roles in which we try to have impact on the system and culture within which a conflict takes places. These are potentially neutral or non-neutral roles (process designer, case manager, trainer, researcher, system adviser).” (p. 221.)

In the consulting model, the mental health professional becomes an ally and part of the matrimonial “home team” when hired by the attorney. The mental health consultant partners with the parent and teaches practical tools and strategies to manage conflict and prioritize the children’s needs. As an ally, the mental health consultant is better able to access the parent’s defenses and teach him or her to become a more effective parent and co-parent. This “home team” approach creates safety for parents to reveal vulnerabilities, let down defenses, confront

unrealistic expectations, and learn to make more effective choices for their children. Ultimately, the goal of mental health consultation is to assist the parent to learn to make emotionally intelligent and well-informed decisions that are in the best interest of their children.

Attorneys typically recommend the use of a mental health consultant at the onset of a case, before mediation, child custody evaluation, or when a case appears likely to be complex, highly conflicted and/or protracted. At whatever point the consultant becomes involved, the work typically begins with analyzing the conflict from a family systems point of view, while teaching and coaching the parent in new ways to effectively engage with the other parent and to make collaborative decisions based on the needs of children with two homes.

The immediate goal is to provide a parent emotional relief, so that the parent can regain equilibrium, separate his or her emotions from the legal issues, and become capable of effective parental decision-making. The mental health consultant focuses on educating and helping the divorcing parent to take responsibility for his or her actions (Kochman, 2003). Sometimes they act like a “coach” in guiding and teaching healthy responses to verbal attacks or written intimidation. This “coaching” *does not* include giving the “right” answers to the custody evaluator or any other neutral professional. When in the “coaching” mode the consultant offers the parent clear *new* productive behavioral approaches and functional communication responses.

The mental health consultant must have good communication skills, understand conflict from a systems perspective, grasp cultural and gender issues, have the ability to quickly understand the psychological and other issues involved with conflict escalation and power struggles, and be able to suggest alternatives to move towards resolution (Mayer, 2004). The mental health consultant needs to have full knowledge of the complexity of the child custody evaluation, mediation and other dispute resolution alternatives.

The mental health consultant assists with organizing relevant data, provides research findings, advises about age appropriate parenting plans, and assists with strategizing about how best to resolve the current conflict with minimum legal involvement. It is also essential for the mental health consultant to clearly understand the attorney’s role in the mediation and court process and be able to partner in case preparation for litigation.

The consultant is better equipped to assist the parent and the attorney when

knowing the parameters and guidelines of the roles of the mediator, custody evaluator, coparent counselor, parenting coordinator or any of the other mental health roles involved in parent disputes. The mental health consultant must be able to keep a neutral systemic perspective on the parental conflict and present a realistic picture of the possible outcomes. Unlike the attorney's role that "zealously" represents the parent, the role of the consultant is to stay neutral and "de-escalate" the emotions of the team to enable conflict resolution. Another critical part of the process is to educate and make sure that appropriate boundaries are kept by all the professionals involved, which is especially true in high-conflict cases that easily can become polarized. One of the most difficult parts of the consultation role is to be capable of staying neutral and not aligning with either the parent and/or, the attorney.

MENTAL HEALTH CONSULTATION ROLE

Most often the mental health consultant is a professional who is also trained to perform other roles in the family court system or who can bring forensic expertise to both attorney and parent. Training and experience may be derived from having served in previous roles for families in the divorce transition, such as child, family and individual therapist, parenting coordinator, co-parent counselor, mediator, custody evaluator, and mental health expert during litigation. Though the mental health consultant may draw upon the knowledge and expertise derived from the other expert roles, the confidential consultation role is distinct from these roles.

The mental health consultant: (1) provides support to the parent and to the attorney in obtaining the most recent information and expertise that can assist with the specifics needed on the case; (2) teaches the parent new skills to move towards resolution of custody issues; (3) collaborates with the attorney and the parent as a team throughout the mediation and/or family court process; (4) remains under the confidentiality of the attorney-client privileged relationship; and (5) serves as a parenting plan advisor (Hobbs-Minor, 1998).

In mental health consultation, the attorney retains a professional under the attorney work product relationship, a legal designation that creates confidentiality for the consultant's work, to prepare and educate the parent, and possibly to strategize with the attorney. The mental health consultant may assist with briefs

and motions, prepare for depositions, and assist in selecting professionals who may perform mediation, evaluation, and expert testimony in the case. The goal of consultation is to facilitate resolution of child custody disputes in the best interests of the children.

Mental health consultants are private practitioners who work out of their own offices and may have face-to-face sessions or phone and email contact on a regular or “as needed” basis with parents and/or attorneys. This involvement can be quite extensive, at times up to several hours a week, intermittent and/or time-limited (e.g. just to prepare a parent for a custody mediation or child custody evaluation). Mental health consultants are usually hired by the attorney, though some consultants will agree to work directly with an unrepresented client.

The extent of the consultation varies by attorney, the needs of the case, the ethical beliefs of the mental health professional, and the funds available. Some attorneys prefer a directive mental health professional, and others prefer to be in charge of their case, but desire input from a mental health professional. To create the right team, the attorney and the mental health consultant need to be in alignment with values, methods, and goals.

Two sample service agreements are included as appendices to this article. They both specify:

1. the confidential nature of the role (the attorney-client “privilege” is extended to include the consultant);
2. that the agreement is with the attorney, not the client, which helps preserve the confidentiality as billing to the client goes through the attorney’s office;
3. the understanding that the client is paying for the consultant’s objective, expert consultation which is informed by current research as to what is in the best interest of children;
4. the limits of confidentiality; and
5. the fee agreement.

With informed consent for these basic parameters of the initial service agreement in place, the consultant can then undertake his or her work.

THE CURRENT VOID THAT MENTAL HEALTH CONSULTATION ADDRESSES

In recent years, there has been an exponential increase of information about divorce and child custody available in books, on television, and on the Internet. For example, Table 1 shows that in September of 2004, an Internet search for “divorce coaching” generated 4,921 links. Sixteen months later, in January 2006, the number had sky-rocketed to over 1,420,000 matches. The other entries in Table 1 illustrate that Internet information and misinformation have exploded over the past two years as professionals and parents eagerly seek child custody information made available by new information technologies.

Table 1:
Search Matches for Various Child Custody Topics on the Internet

Google Search terms	September 2004	May 2005	January 2006
Child custody	1,920,000	5,740,000	15,600,000
Child custody coaching	20,700	81,100	783,000
Child custody evaluation coaching	30,700	158,000	2,820,000
Child custody evaluators	10,600	40,100	1,890,000
Child Custody mediation coaching	9,890	43,900	603,000
Child custody preparation	8,467	559,000	1,730,000
Divorce coaching	4,921	243,000	1,420,000
How to take the MMPI	714	49,300	112,000
How to talk to a CC evaluator	2,274	26,600	644,000
Preparing clients for CCE	25,500	90,700	3,740,000
Win child custody evaluations	2,101	124,000	452,000
Winning child custody	6,007	494,000	1,790,000

The rising breadth and specialization of information generated in the field of child custody research has made the task of the family attorney more demanding (Hedeen & Salem, 2006). For example, when a complex child custody case is sent for a custody evaluation, how does an attorney guide his or her client through this already challenging and difficult process? Parents are often emotionally distraught from the impact of the separation or divorce; they can lack knowledge of their child(ren)'s needs in this context and do not know how to deal with their emotionally charged situation. Parents and attorneys cannot be expected to keep current with the relevant literature on child custody or divorce.

To participate competently in the dispute resolution processes, the parent and the attorney should know the research relevant to the case, as well as what divorcing parents need to learn in order to optimally engage in co-parenting. For instance, particularly salient research suggests that children of divorce need the positive involvement of both parents (Amato & Gilbreth, 1999; Lamb, 1999), and do better with collaboration in their shared parenting roles (Johnston, 1995; Kelly, 2000). The literature suggests that children, even in high-conflict families, do well with access to both parents in a parallel parenting model (Kelly, 2000), and also addresses specific and controversial issues such as when it is recommended that young children begin having overnights with the non-custodial parent (Lamb & Kelly, 2001).

Empowering parents through divorce education, communication and conflict resolution skills can enable them to effectively move through negotiations (Saposnek & Rose 1990). A mental health consultant can assist parents by teaching them how to manage their anxieties and alleviate fears so they can function more competently. The consultant can employ practical techniques in a safe, one-on-one working relationship to assist parents in communicating more productively with the other parent. This may include rehearsing difficult co-parent interactions, overcoming blocks to cooperation, identifying common problem areas, and brainstorming different options available when disputes arise (Noble, 2006). What is unique in this process is that within the safety of an attorney work product relationship the parent can let down his or her defenses and admit his or her fears. The mental health consultant is able to safely explore and address the parent's unrealistic expectations, his or her demonization of the other parent, and understanding of his or her role in the conflict.

THE MENTAL HEALTH CONSULTATION PROCESS

Mental health consultation, whether during the divorce transition or at any point of a child custody disagreement, has a variety of possible functions which can be tailored to the needs of the case. These involve working with the client, ideally from the time he or she begins the divorce process (contemplating initiating separation and divorce or responding to the other parent's intention to divorce), working with the attorney, and working with the relationship between the attorney and client. In these functions the consultant blends the psychological expertise derived from previous work in the family court system with the therapeutic skills crucial to support the client's functioning during the divorce transition or a child custody dispute.

The following sections will explain the essential functions of the mental health consultant, with the assistance of case examples that will highlight common issues that consultants address in their work with parents and attorneys.

THE PARENT-MENTAL HEALTH CONSULTANT RELATIONSHIP

Challenging a Parent's Unrealistic Expectations

In a one to one confidential working relationship, the mental health consultant can orient the parent to understand the complex legal and psychological aspects of the divorce transition. Advocating and teaching the parent how to utilize the least adversarial means to resolve custody disputes can be a vital service to the parent. The mental health consultant may provide basic information about the available dispute resolution processes, such as mediation, custody evaluation, and litigation. Helping the parent prepare a proposed parenting plan prior to mediation can open a fertile dialogue about the child(ren)'s development and the parenting characteristics relevant to creating an optimal custody arrangement for their children. Orienting the parent to the custody evaluation process and the importance of providing accurate, well-organized, and comprehensive information to the evaluator is a service that mental health consultants provide in their direct work with parents.

Example: A father whose stay-at-home spouse left him after he had been fully immersed in a start-up high technology company for several years proposed a parenting plan to the consultant that provided an equal time-share for his two, young school-aged children. His basic rationale was that since he was the father, he had the right to have the children with him one-half the time.

Intervention: The consultant challenged the client's rationale of "fairness" and "equality" in parenting after divorce as both not necessarily in the children's best interests and not likely to be persuasive in the court process. Testing his commitment to becoming more involved in his children's lives (which necessitated re-thinking his career demands), the consultant encouraged the father to negotiate an evolving time-share plan comprised of small increases in his time with the children. From a fairly modest beginning, the time share increase was more acceptable to his former spouse.

Exploring Strengths and Weaknesses of Parenting

Similarly, an important aspect of mental health consultation work with parents is an exploration of the strengths and weaknesses of their parenting and co-parenting. The consultant assists parents in examining these roles in preparation for family court processes and as an ongoing support for their functioning as parents during this transition. This period is often the most challenging time for parents and children, and the support that a consultant can provide is often essential to keeping their clients focused on being the best parents and co-parents possible.

Example: Discussing the complaint of a client that his four-year-old daughter was resistant to visiting him at his new apartment, the father shared the concern that his co-parent was not being supportive of his parenting time with their child. This belief was causing an escalation of conflict between the parents that was impacting the mediation process.

Intervention: After a thorough discussion of the parent's concerns and description of his residential environment, the mental health consultant

learned that the apartment was a “bachelor’s pad” that was in stark contrast to the child-friendly environment in the family home. The consultant framed the child’s reluctance as understandable, and not caused by the other parent. The parent agreed that it was important to take steps to make the child more comfortable when spending time at his home, such as taking the child shopping to select toys, games, activities, and favorite foods, and to request some materials from the family home to make the apartment more child-friendly and familiar.

Highlighting a Parent’s Escalation of Conflict

Working with a parent’s frequent and on-going day-to-day struggles with the co-parent in the high conflict cases the mental health consultant can highlight how the parent escalates conflict, brings the children into the middle of parental struggles and jeopardizes a favorable outcome in his or her custody case.

Example: A review of the parent’s email communications to the co-parent exposed a pattern of angry, demanding, and demeaning “editorializing.” The sequence of emails over specific issues revealed an escalation of hostility that became the focus of communication, rather than the child-focused information that needed to be exchanged.

Intervention: The mental health consultant worked with the parent to understand that the lack of cooperation from her co-parent was predictable, as they were responding to the attacks contained in the communication, not the substance of the requests being made. Over time, after thorough reviews of emails prior to sending them, the parent was able to remove the provocative “jabs” from her communications and, not surprisingly, the co-parenting exchanges became more productive.

Working with a Victim of Domestic Violence

Mental health consultation can provide extremely effective interventions in divorce situations that involve complex issues, such as domestic violence, from

both the victim's and perpetrator's positions.

Example: An attorney contacted a consultant in a case where her female client was contemplating leaving her husband. This mother was quite distraught, confused, and scattered as she described a pattern of intimate partner violence.

Though the husband had never been physically violent, he was described as having engaged in a pattern of coercive control, intimidation and threats over the years that resulted in his wife's being fearful of separation, afraid that he would both leave her financially destitute and take their children from her.

Intervention: The mental health consultant worked with the parent for several sessions, providing information about the dynamics of domestic violence, victimization, safety plans for separation (such as seeking restraining orders and a safe residential situation, either in a shelter or with extended family or friends), and the impact of this traumatic family situation on their children. Working closely with the attorney, a separation plan was developed that reduced the risk of violence and threat during the delicate period of initial separation by utilizing a relative's residence and protective orders. A battered women's counseling program provided emotional support to both the mother and her children.

Providing Accurate Information

Parents can benefit from specialized information in professional literature related to divorce and children's adjustment, such as developmentally appropriate parenting plans, interventions with alienated children, relocation, and dealing with special needs children.

Example: After reading a magazine article on "The Horror of Parental Alienation Syndrome," a father did considerable research on the Internet on the subject and was convinced that he was a victim of "parental alienation syndrome (PAS)." The PAS literature seemed to perfectly describe both his child's unreasonable rejection of him and his ex-spouse's hostile

attitudes towards him. It was his intent to seek a change in custody through an adversarial proceeding in the court, even though his parental role had been marginal during the marriage.

Intervention: The mental health consultant in this case provided a more comprehensive and systemic understanding of his child's current resistance to visiting him and helped the father understand his own contributions to his child's resistance and the likelihood that an adversarial approach would only further polarize the situation. The consultant provided ways for the father to appeal to his former spouse in a more collaborative manner, such as using mediation and engaging a specialist in reunification counseling whom the consultant knew from the professional community.

Providing Therapeutic Support

Finally, the mental health consultant may provide confrontation and/or therapeutic support to the parent, often facilitating his or her involvement in appropriate treatment to address personal issues that may be chronic, arise out of, or be exacerbated, by the divorce transition. Issues such as substance abuse, psychiatric conditions, a parent's commitment to parenting, and the introduction of a new partner to the children are examples of issues that divorcing parents are often working through during the divorce transition.

Example: An attorney referred a father to a consultant as they were contemplating filing a motion on his behalf, seeking sole custody of his four-year-old daughter, whom he had been visiting twice a month on weekend visits. His former wife struggled with a methamphetamine addiction. Their daughter was currently residing with the maternal grandparents. The father was considering whether to initiate legal action to assume a primary parenting role or to support his daughter's placement with her grandparents.

Intervention: The mental health consultant worked with the father to appreciate the importance of a father's role in his child's development, and

to understand the risks of the grandparent's potential inability to set appropriate limits to the mother when she reappeared and demanded visitation from the grandparents. The father also worked on his ambivalence regarding altering his lifestyle to accommodate the role of full-time parent. The father proceeded with the legal motion with a more realistic and committed stance during the ensuing legal process.

THE ATTORNEY-MENTAL HEALTH CONSULTANT RELATIONSHIP

Assisting in Litigation and Settlement

When mental health consultants are hired and paid by the family law attorneys, they perform under the confidentiality of the attorney-client privilege and/or attorney work product privilege. Consultants can be invaluable in working with attorneys and their clients to evaluate their positions in court processes, thereby enhancing the persuasiveness of the attorneys' arguments in litigation and in creating additional opportunities for settlement in situations where clients and/or attorneys may be taking unreasonable positions. In this role, the consultant may assist attorneys in presenting their client's case, suggesting the composition of legal motions, responsive papers, declarations, and briefs, and preparing attorneys for depositions of other experts and trial.

Example: An attorney and client had a conference call with their consultant during a break in a settlement conference to determine whether a settlement was possible or if the case would proceed to trial.

Intervention: The mental health consultant was able to suggest a creative time-share schedule during the summer months that addressed the impasse that was propelling the case to trial. The consultant (who had developed the trust and confidence of the parent over the previous months) discussed the merits of the proposal to the initially reluctant parent, highlighting the crucial benefit of resolving the dispute collaboratively and avoiding the financial and emotional "costs" of litigation. After the break, the attorney

presented the proposal in the settlement meeting with the judge, and the parties were able to settle the dispute with the guidance of the judge.

Providing Research and Psychological Education

Mental health consultants may provide on-going research and psychological education to the legal professionals when they are working jointly on cases. Even devoted family law practitioners rarely have specialized knowledge about many complex child custody issues. The respect that attorneys have for mental health consultants they retain, and the close collaborative work that occurs on these cases, provides the consultant with an opportunity to transfer in-depth knowledge about sophisticated child custody issues that can enhance the practice of the family attorney. These attorneys, in turn, educate judges and their opposing counsel, elevating the practice of family law in the local communities.

Example: A 14 year-old child in a high conflict joint custody situation was failing in his current special education placement in public school. His father had filed a motion with the court to obtain sole custody alleging that the mother was primarily responsible for the child's functional deterioration. The mother and her attorney were in the process of preparing a response to that motion.

Intervention: The mother's mental health consultant had worked in the Special Education system and had specialized knowledge about Individualized Education Plans (IEP's), options for alternative placements (day treatment and residential programs), and strategies for advocating for the minor child special education needs in that system. When the Court was provided this information by the attorney on behalf of the mother, not only did the Court adopt the mother's position, but the judge's knowledge base about how the special education system functions and the types of resources available to students in Special Education was significantly increased. The Judge was able to use this specialized information in many other cases that then came before the court.

Resolving Parent-Attorney Tensions

Finally, the mental health consultant can sometimes intervene in the predictable conflicts and tensions that arise in the attorney-parent relationship. These tensions, which can otherwise lead to less effective collaboration and even termination of the relationship (with either the parent or attorney “firing” the other), can be caused by the personal issues of either the parent or attorney or dysfunctional relationship a process that becomes evident in their working relationship. A divorce is often the parent’s first experience working with an attorney, and the parent may not understand the expectations and rules that structure this professional relationship.

The attorney may experience a parent’s behaviors as frustrating, demanding, or as undermining the progression of the case. A mental health consultant, often precipitated by the complaint of the attorney or parent, can intervene to address these tensions and improve the collaboration between them.

Example: A parent called his mental health consultant quite distraught that his attorney had not returned several calls about his upcoming hearing. The attorney had already voiced concern to the consultant that the parent was calling several times a day with emotional needs that had little bearing on the substantive work the attorney was trying to accomplish.

Intervention: The mental health consultant intervened with both the parent and attorney to help them realize that the attorney was not the parent’s therapist. With this clarification of roles for parent and attorney (much to the relief of the attorney), the parent was able to engage a counselor (with more relevant skill and at considerably less cost), to address the intense emotional issues that were emerging during the divorce process.

CURRENT CONTROVERSIES AND PROFESSIONAL PRACTICE ISSUES FOR MENTAL HEALTH CONSULTANTS

Mental health consultation is a controversial role among professionals who deal with child custody issues in the courts. In preparing for this article, Elena Hobbs-

Minor, MA conducted a survey to ascertain professionals' views regarding client preparation. In the survey, 59 attorneys and 42 mental health professionals (MHP) were asked 11 questions on the practice of mental health consultation (termed "coaching" in this survey), in the specific context of preparation for child custody evaluations (CCE's). The term "coach" used in the survey was in response to the trend of the "coaching" field in general and the frequent use of "divorce coaching" by mental health professionals. In this article the authors are specifically not using the term "coaching" as it can imply "coaching" a litigant to have the right answers.

The results (see Table 2) show a divergence in responses between attorneys and MHPs, with MHPs being more conservative in the use of the role. Although almost 3/4 of attorneys and 2/3 of MHPs believed that mental health consultation used to prepare clients for child custody evaluations is "here to stay;" attorneys endorsed the role more than MHPs. The high frequency of "maybe" responses points to the numerous ethical, gray areas inherent in this role. Looking at the more specific characteristics of this role, less than half of both groups felt that a mental health professional (MHP) who has served as a custody evaluator in other cases, should act as a coach to prepare clients for an evaluation. The implications, reflected in other parts of the questionnaire, are concerns that a consultant might "coach" the client about specific psychological testing administration (potentially even pre-administering tests), see the client's children, help prepare the client's home for a visit, and assist with the preparation of the custody evaluator's questionnaire.

This survey feedback raises numerous concerns about the possibility that a mental health consultant may intervene in the evaluation process in a manner that "distort" the findings in a way that are favorable to the parent and potentially not in the best interests of the child(ren). This dilemma is particularly thorny as parents involved in the family court process routinely solicit information and advice from their attorneys, therapists, the Internet, other literature, and their family, friends, and acquaintances. The information retrieved by parents runs the gamut from highly accurate to highly distorted, from general and orienting (for example, helpful tips to remember as you prepare for a child custody evaluation) to highly specific, including particular evaluative procedures (for example, viewing Rorschach cards on the Internet).

Given the exponential increase in available information, the concern should no

Table 2: Attorney and MHP Views on Client Preparation²

Question	MHP/ attorney - YES	MHP/ attorney - NO	MHP/ attorney - MAYBE
Should a MHP ever prepare clients for CCEs?	44 / 74	14 / 8	42 / 17
Is the practice of MHP preparing clients for CCE here to stay?	64 / 73	3 / 4	33 / 24
Should a MHP who is also a CCE ever take a role in preparing clients for CCEs?	33 / 43	19 / 28	48 / 29
Should a MHP who is preparing a client for CCE ever meet the children?	0 / 5	74 / 66	26 / 29
Should a MHP who is preparing clients for CCE do a home visit?	0 / 19	73 / 45	27 / 36
Should a MHP preparing a client for a CCE discuss expectations and possible questions the CCE could ask of him/her?	55 / 81	24 / 7	21 / 12
Should a MHP who is preparing clients for CCE review tests commonly used by CC Evaluators?	26 / 53	58 / 26	16 / 21
Should a MHP give clients tests (MMPI-2, Rorschach) as a way to pre-screen the client for the attorney?	11 / 0	83 / 51	17 / 38
Should a MHP give tests to clients as a part of their preparation work for CCE?	0 / 7	83 / 69	17 / 24
Should a MHP who is preparing clients for CCE work for the same attorney as a CCE on some cases?	16 / 15	46 / 54	38 / 31
Should a MHP who is preparing clients for CCE also go to court to testify on behalf of the client for whom the consultation has been done, if the evaluation is not in favor of the client?	5 / 19	75 / 52	20 / 29

Note: all numbers in the table are the percentage of the total sample

longer be about preserving the un-altered, “natural” state of the parents, so that court processes are not tainted by parents who have been influenced by information, but rather about making sure that the information sources are of the best quality and are not too specific to an evaluation procedure. In fact, parents who do not obtain consulting information may be unfairly disadvantaged in these processes. Both attorneys and mental health professionals agree that inaccurate and unethical consultation should not occur. However, the question remains as to what is and isn’t ethical, as there are currently no established guidelines.

The mental health consultant faces numerous dilemmas as he or she struggles with balancing the advocacy role for which they are hired (to assist the parent) and maintaining a professional stance of doing no harm. The mental health consultant should always be guided by enhancing the healthy functioning of all members of the family, not just the parent that they are assisting. While the mental health consultant in the consulting role never sees the children, he or she must always keep their needs in the forefront. Parents and attorneys who seek consultation will want to learn “ways to prevent a dispute from unnecessarily escalating, to improve their competency in conflict management, to develop stronger communication skills for a difficult conversation” (Noble, 2006, p. 1). Mental health consultants can teach parents to how avoid responding in provocative ways to the co-parent by teaching more productive communication approaches.

The mental health consultant provides knowledge and power to the parent in the divorce process. Since power can be used for good or corrupt purposes, consultation always creates the risk that the parent will use well-intentioned and appropriate information for corrupt purposes. Given this risk, the consultant is guided by the intention that he or she works towards making parents better parents to their children and co-parents with the other parent, rather than helping them look like the “better” party in the divorce process. The more focused and specific the consultation is as it relates to family court processes (mediation, evaluation, testimony), the more risk that a client may “look” better than he or she is in reality. On the other hand, parents do need specifics on how to effectively set boundaries, negotiate and understand their options.

Unethical Consultation Example: A mental health consultant hired to assist an attorney prepare a parent for a child custody evaluation interviewed the parent multiple times to review her personal, marital, parenting, and co-parenting history. The parent provided the consultant with a

several page questionnaire, which was required to be completed for the child custody evaluator in the case. The consultant wrote the answers to the questionnaire, framing each response to carefully minimize deficits, and maximize characteristics of that parent that the consultant felt would create the most positive impression to the evaluator. The parent then submitted the questionnaire prepared by the mental health consultant to the evaluator.

This is a clear example of unethical consultation to a parent, which has been defined in psychological assessment literature as “any attempt to alter the results of psychological or neuropsychological tests in such a way that distorts the true representation of the examinee’s cognitive, emotional, or behavioral status or hinders an accurate assessment of such attributes” (Victor & Abeles, 2004, p. 374). Victor and Abeles assert that there may be conflict between the ethical obligations of the legal and psychological professionals working with a shared client in a case. This conflict may create ethical dilemmas for the mental health consultant and, depending on how they are handled by the individual practitioner, may threaten the legitimacy of the practice of consultation.

Besides the clearly problematic example of mental health consultation described above, other variations make this questionable practice less evident. For instance, what if the parent filled out the questionnaire and the consultant simply reviewed it and made comments? What if the consultant met with the parent to help him or her organize his or her thoughts about what is relevant information for the evaluator? What if the consultant had been working with the parent for several months, not focused on the evaluation, but assisting with the parent’s healthy transition to parenting after divorce and with orientation to the family court processes in which they were involved? As apparent in these variations, the consultant is faced with decisions about the types of intervention they employ. These interventions may become increasingly inappropriate as they may alter data gathered by family court assessors and decision makers as “representative” of the parent. This is particularly concerning in the custody evaluation process, when the evaluator is not likely to be aware that the parent is receiving consultation.

Another risk during a child custody evaluation is that the evaluator may directly ask if the parent is using a mental health consultant. Given the range of attitudes about consultation that exists among child custody evaluators, an affirmative

answer may seriously bias the evaluator against the parent. The parent may be placed in a difficult position of having to lie or place himself or herself at risk for this prejudicial position in the evaluation. Certainly, as part of the informed consent for mental health consultation, the potential impact of either concealing or disclosing the use of a consultant to a child custody evaluator should be thoroughly discussed with the parent prior to beginning the process.

Issues with professional boundaries can be problematic in consultation practice. As mentioned earlier, the tension inherent in the forensic/therapeutic aspects of this role must be handled thoughtfully. Some of the more obvious and problematic dual roles to address are 1) when the therapist working with a parent becomes a consultant, 2) when a consultant becomes a therapist for a parent, and 3) when a consultant becomes a disclosed expert in the case. Clearly, a consultant's intimate work with a parent compromises the essential impartiality and objectivity required of the expert witness who is rendering an opinion in a legal proceeding (Gould, et. al., 2004). Moreover, a shift in roles from consultant to becoming a disclosed expert may violate the parameters of the consulting role (in this case, its confidentiality) that are delineated in the informed consent of the service agreement.

Multiple Role Problem Example: At the request of the attorney, the mental health consultant on a case agreed to assume the role of the parent's expert in trial, to provide a critique of the court-appointed child custody evaluation. The consultant, who had worked directly with the parent and attorney for several months, meeting frequently with the parent to create a more functional co-parenting communication process and assisting the attorney with deposition preparation, wrote a declaration for the court vehemently critiquing the evaluation. Once subpoenaed, the consultant was compelled to provide his entire file for discovery and was forced to respond to questions about the consulting work. Although the consultant, parent, and attorney had assumed at the time of informed consent that the work of the consultant was protected by the attorney-client privilege, his on the record critique took him outside of the privilege.

Further consideration for mental health consultants relates to disclosing prior or concurrent consulting relationships with an attorney. For example, if opposing

attorneys in a case contact a psychologist to determine his or her interest and availability to perform a neutral custody evaluation and that psychologist has worked with one or both of the attorneys as a consultant in an unrelated case is there an obligation to disclose this prior relationship? If so, does this not possibly violate the confidentiality of the prior role? Does such a prior or current consulting role then require the potential evaluator to disqualify him or herself on the basis of this conflict? There are no clear guidelines to address this ethical dilemma.

Another tricky issue often occurs when consultants are asked by their parent-clients about which particular professional would be the best choice to serve as a mediator or evaluator. There is little concern about a mental health consultant providing recommendations based on some general comparison of experience and competence of potential professionals. There is, however, increased concern about the ethics of providing more personal information about close colleagues that may result in a preferential result for that parent.

Finally, the mental health consulting role is distinctly different from therapy, although there may be overlapping functions. Mental health consultation involves educational and behavioral interventions designed to assist the parent in his or her best functioning as parent and co-parent during the divorce transition. The parent should be referred, however, to a therapist or counseling support group to work on the personal issues that require psychological treatment. Consultation is rarely effective when the individual has significant underlying psychological issues that they are not willing to work on in mental health treatment (Noble, 2006).

The mental health consulting role is also distinctly forensic and carries an expectation of specialized knowledge in family law and a higher professional expectation of objectivity and accountability than a clinical role (Greenberg, Martindale, Gould, and Gould-Saltman, 2004). In order to effectively assist a parent, a mental health consultant must gather information beyond what the parent provides. Examples might include written motions from the other parent, communications from the other parent or attorney, information from the client's attorney, the child's school information, and medical or educational testing results. The gathered information can be utilized to challenge a parent's distortions about his or her functioning, which can then serve as a powerful change agent for that parent.

The mental health consultant needs extensive knowledge and training in the child custody world. Consultants can acquire this knowledge through education

and experience in mediation and child custody evaluations, negotiation, conflict resolution, involvement in the family courts, and through experience with attorneys and other family court professionals. Currently, no professional practice guidelines or ethical standards exist for mental health consultation. Furthermore, there is a need for education, experience and training recommendations or training programs that specifically address this forensic role. In the formal, legal-adversarial context, attorneys represent their clients. Mental health involvement in the legal process comes from traditional neutral or client-hired expert roles. Today, in most family courts, the parent is referred for mediation and evaluation without the attorney's direct involvement, even if the client is represented. It is, therefore, critical for parents to understand as much as possible about parenting and co-parenting after divorce, children's adjustment after divorce, and effective engagement in dispute resolution processes (mediation, child custody evaluation, settlement processes, and litigation).

Having a mental health consultant as part of the family law team can assist in preventing the attorney from colluding with the parent in unnecessary legal conflict, and can assist parents with their skills deficits and emotional distress. The parents then can move through the difficult transition through divorce and focus on the best interests of their children (Saposnek & Rose, 1990). The mental health consultation role described in this article is a natural evolution of the changing nature and complexity of the family law process and the broadening role of a mental health professional.

FUNDING FOR THE CONSULTATION ROLE

Mental health consultation is a private fee-for-service role. Consultation, as described in this article, is predominantly a mental health role, and fees for the service tend to track professional rates charged by forensic mental health professionals who work in the variety of roles in the family courts. The range of fees is \$100-400 per hour and mental health consultants usually bill for direct contact with their clients (attorneys/parents) and for any additional work on the case: email and telephone communications with clients, reviewing documents, drafting documents, etc. Fees are usually paid through the attorney's office on behalf of the parent to further protect the confidentiality of the mental health consultant's

work. Because there is no public funding for this role, consultation tends to be utilized by clients with who are financially capable to hire an attorney. Nonetheless, there are consultants that work in this role when parents are unrepresented or without informing the parent's attorney that they have been retained by their client. Mental health consultation services are not covered by health insurance programs as it is not considered mental health treatment for a diagnosed mental health condition, the normal criterion for insurance reimbursement.

CONCLUSION

Separating or divorcing parents, especially in high-conflict situations, need education and support about how to effectively co-parent and resolve conflicts. Parents facing the challenges of the divorce transition and/or a child custody dispute can regain their emotional equilibrium through education, empathy and practical support offered by a mental health consultant. The practice of mental health consultation as it pertains to strategizing, coaching, or advising by mental health professionals has not been addressed in the professional literature, and a wide range of acceptable consultation practice exists; with little accountability provided to safeguard the consumer.

Controversies exist among professionals about where the boundaries of ethical and unethical practice in mental health consultation lie. These controversies impact the role's legitimacy and, therefore, require more substantive dialogue to help define acceptable practice parameters. Without more specific research to describe consulting work and the development of professional practice guidelines, the role will remain controversial and the benefits it can offer to parents who seek mental health consultation will be limited. Family law and mental health professionals must come to terms with the fact that this rapidly expanding conflict resolution role is here to stay, and that it can decrease parental conflict along with the emotional and financial tolls on families, particularly when this intervention occurs in the early stages of parental disputes.

APPENDICES

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Appendix 1: Consultant Agreement and Fee Policies

Appendix 2: Statement of Understanding and Fee Agreement

ENDNOTES

1. In 1997, the American Bar Association Family Law Section *The Future of Family Law: Modified Programs for 2020*, predicted the increased use of mental health professionals as part of the matrimonial law team to meet the challenge of the new century. "How we handle our clients' emotional reactions to the legal and financial proceedings will be our biggest challenges in the next century. The matrimonial law team is a new concept that has emerged in response to this challenge." (Burrows & Buzzinotti, 1997, p. 33)
2. Hobbs-Minor, E. (Spring, 2006), *The Future of Child Custody Coaching*, *Family Mediation News*.

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