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Therapy Can Be Helpful in Family Law Cases – If it’s set up correctly

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Family separation or divorce can be an extremely destabilizing experience for both adults and children. While most children negotiate this family crisis successfully, for some families distress and dysfunction can linger for years. Particularly when conflict is high, or the parents’ separation is associated with substance abuse, mental illness or interpersonal violence parental separation or divorce can become one of the Adverse Child Experiences (ACE factors) known to pose severe, long term risks to children’s emotional and physical health. Parents may be less attentive or effective in parenting, and their own coping skills may deteriorate at least temporarily.

None of this is news to experienced family lawyers, but there is often less clarity about the best ways to assist parents and children. On a system-wide basis, parents are encouraged to use alternative dispute resolution, mediation and settlement conferences, but are often poorly equipped to identify priorities, frame child-centered solutions, or problem solve effectively. Learned counsel certainly assist parents in some of these areas, but the parent’s ability to hear and profit from counsel’s advice may also be impacted by emotional distress.

Moreover, global agreements on issues such as parenting schedules may not be specific enough to protect children from conflict even if the agreement is adhered to. Up to 85% of “divorced” children continue to be exposed to frequent parental conflict, even if some global issues have been settled (Kelly, 2012). And it is the disruption of children’s daily routines, activities and developmental needs that can be most toxic over the long term. Such conflict is particularly likely if parents were poorly equipped or too emotionally distressed to participate effectively in the initial negotiation. Similarly, delays in addressing children’s emotional distress can lead to more entrenched dysfunction and psychological issues that are more difficult, complicated and expensive to treat. Effective and early attention to these issues may make

it easier to achieve both global settlements and daily routines that are supportive of the transitioning family, reducing the need for costly custody evaluations and litigation. Even when settlement is not possible, many judges respond more favorably to parents who have engaged in good-faith efforts to solve problems, shield children from conflict, and cooperate in attending to children's distress.

The last two decades have seen an explosion of psychological research and other professional literature that can provide guidance in referring parents to the best services and appropriately structuring treatment involving a child. Some of this literature strongly challenges historical assumptions about what is necessary to promote positive change and the types of services that are likely to be effective with this population. While it is beyond the scope of this article to completely review this literature, following are some tips and core issues that may be helpful in obtaining effective services. Updated treatment models, based on the most current research, can be found in the recent edited volume, *Evidence-Informed Interventions for Court-Involved Children and Families* (Oxford, 2019).

Think tools, not venting. Therapists frequently receive referrals from attorneys whose clients are “venting” to counsel, based on either a generalized perception that the client needs more support or, in some cases, a desire to reduce client calls and stress in the attorney-client relationship. Parents may be referred in the hope that the therapist can assist them to better manage emotions and present better in an anticipated custody evaluation or hearing. Children and especially adolescents may also be referred into family therapy with the expectation that they can vent anger at a parent.

Generally speaking, these types of referrals represent missed opportunities. The purpose of any therapy (and most other intervention services, such as parenting education and groups for children) is to *create change*. At a time when the family is in transition, specific demands will emerge that require healthy coping abilities (tools). Parents need to be able to manage their emotions, shield children from conflict, and help their children accomplish daily tasks (chores, activities, homework) and, in most cases, resolve any issues that arise from a transition to two households. Children need independent skills and tools for managing stress, separating themselves from the parental conflict, resolving problems in relationships, differentiating their own feelings from parents' feelings, etc. Current treatments for trauma also emphasize these abilities. Many treatment approaches and psychoeducational programs have been developed to promote these types of abilities, but these approaches may feel more challenging than a therapeutic setting in which a client just “vents” and is never challenged or encouraged to think differently (Drozd, Saini, & Vellucci-Cook, 2019). Many attorneys are familiar with the challenge of attempting to help a client focus on realistic expectations when there is a therapist in the background escalating conflict. For that reason, counsel's influence in directing a client to the right kind of service may be critical. Attorneys have strong knowledge of the timetable for resolving legal issues and the types of abilities that parents need to demonstrate. While no service model is foolproof, attorneys may enhance their likelihood of success by guiding parents toward tools-focused therapeutic or educational settings. Consultation with a mental health professional may be helpful to counsel in understanding current models of therapy and making referrals appropriately.

Don't neglect services for children – but structure them carefully. In ideal circumstances, parents who can cooperate and prioritize children's needs *may* prevent the kinds of psychological distress that require children to receive therapy. This is not always the case, and the fact that a child needs help should not be construed as a failure on the part of the parents. In fact, prompt intervention to alleviate children's distress may be the greatest gift that separating parents can give to a child. It is often most effective to select a therapist who is familiar with the dynamics of divorce and can engage with both the child individually and in conjoint sessions with the child and members of each household (separately). The focus should be on helping the child resume a healthy developmental path, solve problems by interacting with others, engage in the daily activities typical of childhood, and establish healthy relationships with others both in and outside the family.

Children are not in control of their environments, so parent engagement with the therapist is often critical. For this reason, it is essential that children's treatment be carefully structured, with both parents being informed and able to participate. The most qualified therapists will insist on a detailed consent, specifying the procedures for therapy and the expectations of all involved. While it may be tempting for a parent to engage a child in therapy without notifying the other parent, doing so may fatally undermine the effectiveness of treatment and so taint the process with bias that it does more harm than good. Counsel can be enormously helpful in persuading parents to cooperate in setting up children's therapy and focus on getting relief for the child rather than establishing blame. Even when parents have concerns about each other's parenting, important information can emerge and many problems can be resolved via a carefully structured, child focused family therapy. Even when problems cannot be resolved in this setting, parents can establish a track record of cooperating with the therapist – or refusing to do so – that may illuminate underlying issues. Therapists are not investigators and should not be treated as such, but they can equip children with essential coping skills to help the child continue to function while allegations between the parents are being investigated and resolved. Further information about these issues and approaches can be found in (Greenberg, 2019; Greenberg, Doi Fick, & Schnider, 2016; Greenberg, Gould, Gould-Saltman, & Stahl, 2003; Greenberg, Schnider, & Jackson, 2019; Greenberg & Schnider, in press; Lebow, 2019). Established professional guidelines, particularly the *AFCC Guidelines for Court-Involved Therapy* (2011), address these issues and can be a useful resource for both establishing quality treatment and recognizing when a therapy process has gone awry.

Considerations in Selecting a Therapist. One obstacle to prompt and effective treatment is the difficulty and confusion families may encounter in selecting a therapist. One positive development in recent years has been improvement in the quality of training that early-career therapists receive. More of them are now being trained in scientifically supported methods for treating a variety of psychological issues. That being said, there are some basic competencies to look for when selecting a therapist to work with a separating or divorcing family. The *AFCC Guidelines for Court-Involved Therapy* (2011) outline the skills and areas of knowledge essential for working with this population.

Particularly when under financial stress, parents are often inclined to first look at therapists who have accepted contracted (generally reduced) rates to work with the parents' insurance company. When services are provided promptly and problems are uncomplicated, these therapists may be able to offer

assistance. Some HMO's even offer psychoeducational groups for separating parents and their children. But parents can, and should, still inquire about the training of the therapist they are considering and the scope of services that are covered. Some insurance companies, for example, severely limit coverage for family therapy, which is often the treatment of choice for these families.

Families characterized by higher levels of conflict, serious allegations about children's safety, resist-refuse dynamics or other serious problems need therapists with a high level of expertise. Too often, parents who will spend heavily on custody evaluations or litigation services "skimp" when it comes to treatment. Unfortunately, failed or poorly conducted treatment can have serious consequences, entrenching the family's problems and making it more difficult to engage with a more highly qualified therapist. Moreover, a highly qualified therapist is more likely to help the family resolve issues with less litigation and protect children's development while those issues are being resolved. Counsel can be invaluable in helping clients to select someone who is actually qualified for the task at hand.

Remember life outside the court case. Effective therapy can help parents successfully complete the legal process, while also supporting families in continuing to participate in life outside of the court case. It is one of the greatest gift that parents can give to their children during a stressful time.

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