



THERAPEUTIC VS. FORENSIC ROLES: Avoiding Nonsexual Boundary Violations with Clients



AARON ROBB, PHD

Social workers understand that having clients who are involved in family court is an inevitable part of professional life. Regardless of whether you work with adults or children, issues of divorce, remarriage, and blending families are common. While divorce rates appear to be declining, so are rates of marriage; rates of cohabitation are experiencing a rapid rise, neutralizing any expected gains in family stability tied to the declining divorce rate (Kennedy & Ruggles, 2014). Even social workers who work specifically with older adults are seeing new challenges: the rates of divorce among the geriatric population have hit an all-time high and the number of grandparents raising grandchildren continues to grow. Inevitably, these situations may lead to a social worker being asked to offer opinions and recommendations on various legal arrangements—for example, “What parenting time plan should little Jonny be on, now that his mothers have separated?” “Should Sally have supervised visits with her father

when he gets out of the detox program?” Unfortunately, many social workers will inevitably overstep the boundaries their clinical information, overreaching into giving psycho-legal opinions without ever fully understanding what they are really saying to the courts.

As noted in the *NASW Code of Ethics*, section 1.06, on conflicts of interest:

(d) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties which individuals will be considered clients and the nature of social workers’ professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings

involving clients) should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

Other professional groups have addressed this issue more directly. For instance, the American Counseling Association Code of Ethics states that “Counselors do not evaluate current or former clients, clients’ romantic partners, or clients’ family members for forensic purposes. Counselors do not counsel individuals they are evaluating” (E.13.c. Client Evaluation Prohibited). And the American Association for Marriage and Family Therapy also takes up this concern:

Marriage and family therapists avoid conflicts of interest in treating minors or adults involved in custody or visitation actions by not performing evaluations for custody, residence, or visitation of the minor. Marriage and family therapists who treat minors may provide the court or mental health professional performing the evaluation with

information about the minor from the marriage and family therapist’s perspective as a treating marriage and family therapist, so long as the marriage and family therapist obtains appropriate consents to release information. (7.7 Separation of Custody Evaluation from Therapy)

Social workers are experts with regard to their professional assessments, treatment plans, and clinical approaches, but the job of a social worker, when pulled into a client’s legal case, is not to advocate for his or her client’s legal position in court—that’s the role of an attorney—but to advocate for the data (that is, what he or she knows about the client or family, and how he or she came to know it). These data help explain to the court why the social worker did what he or she did with that client. Social workers who are able to explain their work and their role may be helpful to, or even critical of, their clients (for example, when a social worker explains triage for services when he or she encountered the client in a shelter, or the client’s

improvement during treatment for mental health issues). On the other hand, social workers who are misperceived (or, frankly, sometimes correctly perceived) as putting a client's legal goals first and then building facts to support those goals move into the role of a "hired gun," and the courts have little time for those kind of professionals: "An expert's credibility is an essential component of being an effective advocate, and that credibility derives from the expert's impartiality" (Shuman & Greenberg, 2003, p. 221).

Social work training focuses on the need to accept and support clients while advocating for their needs. Often this work is done from the client's point of view (accepting clients "where they are") rather than from the standards and expectations of others (Greenberg & Gould, 2001). Social workers appear to have a clear advantage over other helping professionals. Social work's history of involvement with child welfare/child protection issues and with involuntary clients means that social workers not only serve the client at hand but also assume broader societal and legal roles; however, the world of family court, and the expectations therein, can be a very different playing field. By understanding and acknowledging the differences in approach between client-helping roles and forensic-evaluator roles (specifically appointed to answer those "psycho-legal questions" mentioned earlier), social workers can better avoid overstepping boundaries and negatively impacting their credibility in court.

Greenberg and Shuman first wrote about these roles in their (now seminal) 1997 article,

"Irreconcilable Conflict Between Therapeutic and Forensic Roles." The initial focus almost two decades ago was on therapists versus retained experts, but the discussion of these roles has evolved to encompass the difference between those doing care provision (helper roles) and those doing forensic evaluation (of psycho-legal questions). Side-by-side examples of these differences may help us to understand the boundaries better:

ROLE DIFFERENCE:
Cognitive Set and Approach Used by the Social Worker

Care provision (helper role)

Traditionally supportive, accepting, empathic (taking the client "where they are")

Forensic evaluation (psycho-legal questions)

Neutral, objective, detached (a "show me" mentality; often records/verifiable data driven)

Case example: A client reports in therapy that he or she has been dealing better with depression and hopes to reestablish a healthier relationship with his or her children following an extended period of absence from their lives. A social worker in a care-provider role (as a therapist or manager of an aftercare program) will, ideally, approach this work with empathy and sympathy as part of a genuine desire to help facilitate such a reunification. A forensic evaluator, on the other hand, must remain detached from the client's stated goal and assess the client's abilities to mitigate whatever issues led to the court limiting the client's involvement in the first place. It is not that the forensic evaluator

does not care about the importance of that relationship (indeed, it is because many forensic evaluators understand how critical these issues are that they may have gotten involved in such work), but forensic evaluators do not begin with a priori conclusions as to what should be occurring.

Bad case example: Social workers may err when they allow their empathy to get ahead of their data. It is surprisingly common to see recommendations for changes in supervised visitation from treating professionals when they have nothing more than their client's word to go on. Such social workers often look foolish at best—and incompetent at worst—when they find out during cross examination that there are police or hospital records that show that the client is not as stable as he or she appears. In shedding that treating role, where empathy can be a helpful tool, and crossing over into making psycho-legal recommendations regarding parenting time, social workers not only have exceeded their role but also have gone beyond what anyone properly filling that role is expected to address. Unfortunately, such boundary violations harm clients and social workers alike.

ROLE DIFFERENCE:
Nature of Hypotheses Tested

Care provision (helper role)

Diagnostic criteria for treatment; eligibility for various community programs (person-in-environment, DSM, and ICD categorization; socioeconomic condition, etc.)

Forensic evaluation (psycho-legal questions)

Psycho-legal criteria for

adjudication (criteria specific to the issue being litigated—often highly specialized to include case law in addition to statutes)

Case example: Continuing with our same client referenced above, the social worker in a helping role may be examining—in order to maximize treatment outcomes—whether the client suffers from a major depressive disorder or may be dealing with a dysthymic disorder. In a less clinical position, the social worker may be helping the client with job and housing placements. On the other hand, the social worker serving as a forensic evaluator may be addressing various statutory factors as to how that parent's rights and duties regarding his or her children will be allocated.

Bad case example: The treating social worker may correctly conclude that the client's depression is in full remission, and then go on to opine that as a result the client should be granted additional blocks of parenting time. Unfortunately, such an assessment misses issues related to the needs of the children or the co-parenting ability of the client, both of which may need to be factored into whatever decisions are to be made by the court. Again, by sticking to the boundaries of their original role, the treating social workers can help their clients by speaking to progress made in therapy, for example, and leave to the court how to integrate that information into a final decision regarding parenting time. To be clear, it is not that the treating social worker gets the conclusion wrong here (the court may also reach a similar conclusion), it is that *any* conclusion on such psycho-legal issues is beyond the boundaries

of what the treating social worker could competently address.

These are but two of many examples of the roles social workers doing care provision (helper roles) and those doing forensic evaluation (of psycho-legal questions) might fill with the same client. Being aware of the fundamental difference in focus—and the clear conflicts identified both in legal literature and in multiple professional ethics codes—can help you to avoid unnecessary missteps that might damage both your professional credibility and your client's legal case.

¹ Although more involved than this brief article can address, there is a related error from the forensic-evaluator side, where the evaluator

loses detachment and crosses over into an advocacy or helping role, with equally poor results in the long run.

Aaron Robb, PhD, has worked extensively with children and families involved in the family court system, specializing in divorce and custody modification cases. In addition to his National Counselor Certification and license to practice as a professional counselor in the state of Texas, he is trained as a family law mediator and is an approved provider of continuing education for professional counselors, marriage and family therapists, and social workers. He has taught at the University of Texas at Arlington and has been a lecturer at various state and national conferences. He serves as a reviewer for the Journal of Forensic Social Work, and is a member of the editorial board of the Journal of Child Custody and is on NASW's Social Work and the Courts Section Committee.

REFERENCES

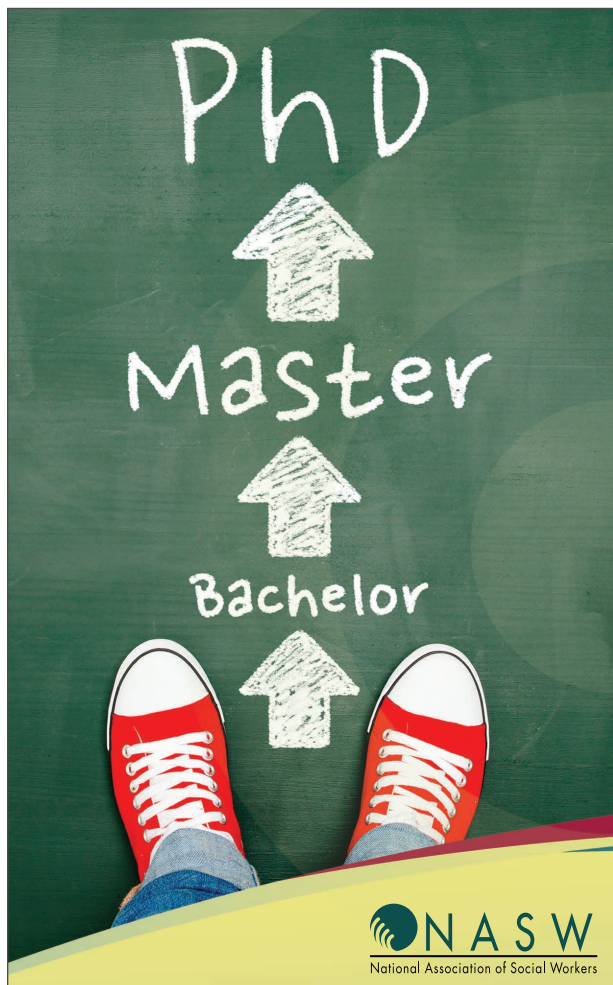
Greenberg, L.R. & Gould, J.W. (2001). *The treating expert in family law matters*. JM Craig Press, 2(2).

Kennedy, S. & Ruggles, S. (2014). Breaking up is hard to count: The rise of divorce in the United States, 1980–2010, *Demography*, 51, 2, 587–598. doi: 10.1007/s13524-013-0270-9.

National Association of Social Workers. (2015). *Code of ethics of the National Association of Social Workers*. Washington, DC: Author.

Shuman, D.W. & Greenberg, S.A. (1997). *Irreconcilable conflict between therapeutic and forensic roles*. American Psychological Association. Retrieved from: http://drbevsmallwood.com/Forensic_vs_Therapeutic.pdf

Shuman D.W. & Greenberg, S.A. (2003). The expert witness, the advocacy system, and the voice of reason: reconciling impartiality with advocacy. *Professional Psychology: Research and Practice*, 34, 219–224.



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