

This article was written in 2012 for a series that used to appear on the Texas AFCC Chapter web page. While that series is no longer available, I've preserved the short article here, including the original bio that went along with it. – Dr. Robb

Child custody coaches, consultants and advisors in contested cases – hidden resources or lurking menaces?

Coaching in the divorce and child custody field is nothing new; collaborative lawyers have been using “divorce coaches” and “communication consultants” to help conflicted parents resolve their disputes and learn to co-parent their children. This idea has had growing purchase in the world of contested custody litigation as well.¹ However unlike in collaborative cases, where transparency is valued, a mental health professional (MHP) retained as a consultant may be an undisclosed factor on a litigation team.² While we certainly expect attorneys to prepare their clients for what to expect in the litigation process (everything from how to dress and behave in court to rehearsing so clients do not ramble during testimony) an undisclosed MHP involved in a case may present unique challenges.

There are clear advantages for parents in being well-prepared as they head in to the emotionally charged process of custody litigation: a good overview of the process helps them stay organized, reasonable expectations help them frame requests, and ultimately parents understanding the harm of protracted conflict may lead to better outcomes for the children involved. Examples of poorly prepared litigants and the extra difficulties they face abound. It seems hard to have worked in the family court arena for any length of time and not encountered a parent with expectations more influenced by Judge Judy than any reasonable idea of modern jurisprudence. Certainly many of our lives would be easier if more of our clients had quality professional help in their lives.

Example: One colleague who works extensively with parenting facilitation cases noted that he uses essentially the same techniques and curriculum when retained by an attorney to help out a struggling parent as he does when working a court ordered case with the entire family. He reports seeing positive results in one sided work as these parents, who might otherwise be resistant to outside input, know they are receiving unvarnished advice on how to parent better (which my colleague considers the basis of what it really takes to ethically improve one's position in court, and the attorneys referring to him agree).

But while educating clients about the family court process, helping them develop reasonable expectations, and assisting in improving co-parenting relationships are laudable goals for MHPs working with families in litigation, there exists a darker side to this role when MHPs begin to focus on helping clients present themselves in a positive manner while maintaining their maladaptive behaviors. These kinds of services can range from preparing parents for psychological tests by walking them through the questions before hand (invalidating whatever information the tests might have provided), to actually serving as a “ghostwriter” for communication allegedly from the parent.

¹ See for instance Family Mediation News, Spring 2006, published by the Association for Conflict Resolution

² The attorney work product privilege may attach in many cases, much like communications with paralegals and other professionals working for the attorney may be covered.

Example: A colleague received a request by an attorney to assist a client in “translating their thoughts” in a more productive fashion so they would do better in an evaluation. The attorney was clear that the parent did not want to work on changing their behavior³ – it was essentially a request to help the parent hide their deficiencies more effectively than they had done in the past. Needless to say my colleague declined to “help” in that case.

Example: A misdirected e-mail arrived showing the responses the coach wrote based on the parent’s suggestions. Rather than teaching the parent how to improve their communications skills the e-mail revealed the coach was essentially representing themselves as the parent.

Although it seems that few ethical MHPs would intentionally allow themselves to become used to perpetrate a deception upon the court⁴ there are those MHPs who may be talked into questionable services by attorneys willing to push boundaries. Worse are those providers that purport to be “professionals” but who subscribe to no professional code of ethics and essentially do whatever they can get paid for. Multiple web sites exist offering various advice on how to “win” custody litigation that refer to these type of “professionals” and the services they sell.⁵ Unfortunately if this author’s anecdotal experience holds true we are seeing an increase in the use of these services and the confounding problems they bring to making assessments and recommendations that are truly reflective of what is in the best interest of the children involved.

What we as professionals can do:

- The front line in combating unethical coaches appears to be in raising this issue with local bar associations. While attorneys will always retain experts to assist their clients, by educating on the differences between professionals who actually help parents change and those who are essentially suborning perjury attorneys will be better able to select ethical providers.
- Coupled with this is raising the issue of ethical boundaries with professionals who provide consultation services to attorneys. When professionals are aware of gray areas they can then better identify when they are risking crossing the line into them.
- Those who conduct evaluations for the courts need to be asking parents what resources they have availed themselves of – books, web pages, professional consultations, etc. Failing to ask leaves a gap in data gathering and may actually be a disservice to both parents and children involved.

³ Indeed, it was in part the parent’s instance that they did not need to change their own inappropriate behavior that they needed help “translating.”

⁴ Psychologists, for instance, are enjoined from permitting misuse of their services by others (TAC 465.14).

⁵ While there have always been books on such subjects the individualized nature of personal coaching, combined with the new networking opportunities presented by the world wide web seem to represent a fundamental shift in how such flawed advice is being dispensed.

Example: One parent I worked with received extremely bad advice on how to approach a situation from a web page. They essentially copied and pasted sample letters that, from my perspective, seemed only designed to further inflame the conflict rather than resolve it. This was certainly not the parent's intent, they just lacked appropriate resources.

As roles for MHPs in the legal system continue to evolve there are sure to be new challenges. By advocating for high levels of ethical practice we can continue to help families in conflict receive the best services possible.

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