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## Psychology and Family Law

By Mark Baer, Esq.



From my friends in psychology, I know that that good communication is at the heart of good relationships. As an attorney, I can tell you that good communication is vital to successful legal proceedings as well. Perhaps nowhere is this more true than in family law. However, in my experience, good communication is all too rare between individuals involved in family proceedings, which leads to a variety of unfortunate consequences.

After years of working in transactional law (that is, writing contracts related to creating business entities, or sometimes dissolving them, as well as creating estate planning documents), I began practicing family law in 1995. In transactional law, there is typically no overt conflict, and my work there focused on helping my clients make good business and contract choices, and otherwise protecting their interests. Family law, on the other hand, is a completely different ballgame. As a transactional attorney, I was typically hired to put something together, to create or renew a certain “relationship.” As a family law attorney, I am hired to help clients break a relationship apart. Somewhat ironically, “family law” is about dissolving a marriage or non-marital family involving children. Thus, whereas emotions are not typically problematic in transactional law-- where the work is largely about creating or renewing relationships-- painful and conflictual emotions are unfortunately the norm in family law.

Representing my clients as a family law attorney, most of the time, I am working with people who loved each other very much at one time, or who may still love each other, even though the relationship failed. As a result of the pain and anger involved in that failure, the parties very often no longer communicate (constructively) at all any more, and instead leave crucial communications up to their respective attorneys. This can be disastrous on a number of levels.

I believe that the best way I can serve my clients is to help them to make as many of the important decisions in the dissolution of their relationship *outside* of the court system. This demands clear, accurate communication between the parties to a divorce, as well as between their respective attorneys.

Unfortunately, many attorneys make themselves practically unreachable for the purpose of negotiating settlements. I have found that sometimes attorneys run family law mills, and have so many cases that they don't have the time (or make the time) to resolve cases outside of court. In other cases, an attorney sees only the financial incentives involved in dragging out a case, so that it has to go to court again and again. He has little interest in effectuating a timely settlement. (In the current economic climate, fewer people will be able to hire divorce attorneys, and I suspect that some attorneys will be seeking “cash cow” opportunities to meet their own financial goals. Such an attorney may fail to return phone calls and/or fail to respond to letters. Ultimately, the opposing attorney will of necessity resort to attempting to resolve the case through court proceedings, or and/or trial.

A good attorney also manages his or her client's best interests by promoting realistic expectations concerning what they may *want*, versus what they are likely to get in a negotiated settlement. For a variety of reasons, attorneys sometimes fail in that regard. They let their clients down by promoting unrealistic expectations, such that the clients want to keep fighting—through litigation, involving skyrocketing legal fees as well as high emotional tolls—for decisions that are unreasonable and ultimately unattainable. Clients who insist on having their “day in court” are often very disappointed with the results—especially considering the expense involved. They completely lose control over the resolution of a matter when they put it in the hands of a judge. A judge, after all, is only human and may have a very different perception from the client's.

Regardless of the reason, if one or both attorneys are unable or unwilling to make every effort to assist the clients in settling the matter out of court, the true losers are the parties involved in the divorce. In such cases, the only way that a case can be resolved outside court is by the clients communicating directly with each other and resolving the matter on their own based on the information they each learned in the course of the proceedings. Such resolution is only possible if the clients are ready, willing and able to communicate with each other. This is why I firmly believe that good legal representation involves diffusing powerful emotions and encouraging realistic, if not conciliatory goals in a divorce settlement. As difficult as it may be—and often, a supportive and constructive relationship with a mental health professional is key—the parties involved need to try and keep their emotions under control and maintain good communication with each other. In the end, the positive resolution is more than worth it.

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and likely to be violent toward his wife and daughter in the future. Pressing him to accept the very limited custody arrangement was her way of advocating for them, over and above her own client, my family member.

Ironically, the criminal charges were indeed found to be fabricated only a week later, and the matter was dropped at the hearing in the City Attorney's Office. This thoroughly exonerated my family member from any culpability for the violence he'd been charged with. Nevertheless, he'd had to pay the price for his own attorney's bias. Had she believed in and respected him, she might have advocated for him more diligently in the family law situation.

In any event, the damage had been done. If my family member is able to have custody of his daughter restored to him the next time around, it will be far more costly than if his original attorney had believed him and represented him accordingly.

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## **ETHICS BRIEF: Personal freedom vs. Professional Responsibility**

### **Personal information on the Internet**

By Ethics Committee Alan Karbelnig, PhD, Chair

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Stephanie Law, PsyD, Phillip Pannell, PhD, Colleen Warnesky, PsyD

*This is part of a series of bi-monthly articles written by the SGVPA Ethics Committee. The articles reflect research from a variety of sources, including Ethical Principles of Psychologists and Code of Conduct from the American Psychological Association and other sources. These articles are intended to provide education, not actual legal advice.*

Suppose a client shows up at your house for a first therapy session after finding your personal address through the internet. Suppose a client requests you as a "friend" on *Facebook*. How would you handle these situations? In this age of technological advances, access to one's personal data via the internet is a reality. Those of us in the mental health arena must consider the ethical responsibility our profession requires as well as the type of safeguards we wish to implement.

During a recent ethics seminar sponsored by the Los Angeles County Psychological Association (LACPA), a robust discussion took place regarding the ethics of joining online dating services (*eHarmony* or *Match.com* for instance) or *Facebook*, the latest rage in online communities, and the tension between professional responsibility and personal freedom. Therapists hold a wide range of opinions, from the most orthodox who offer no personal information during the course of psychotherapy, to those with a moderate view that some amount of personal disclosure is "grist for the mill." Those in this latter camp would argue that a degree of personal disclosure during the course of psychotherapy can be skillfully processed in such a way that the client's projections are addressed and personal insight is achieved. Others maintain that no matter how skilled the therapist might be at addressing personal data in therapy, one is still subject to unconscious processes that interfere with the therapeutic process.

Do therapists hold an ethical and professional responsibility for material on the internet regarding their personal lives? Should mental health practitioners be especially vigilant about disclosing certain aspects of their private lives (by not joining *Facebook* or *eHarmony*)? Some might argue that being a therapist will inherently impinge on some facets of personal freedom and there is no way around it.

No matter where you stand on this issue, it is worth thinking about. Have you taken the time to Google yourself on the web? If not, you should! Try to use varying aspects of your name – "Dr. Therapist", "Joe Therapist, PsyD," or "Therapist, Joe" – to name a few. You might be surprised at the information you find about yourself, and you may decide to take certain precautions, depending on your therapeutic stance with this issue. Like so many aspects of psychotherapy, there are no strict ethical guidelines about the limits of exposure on the Internet. We must seek a balance between personal freedom and professional responsibility.

#### **EARLY CAREER PROFESSIONALS (continued from page 3)**

we will post our events, have open discussion, and post photos from past events. If you have a Facebook account you can find us by searching San Gabriel Valley Psychological Association Early Career Psychologists. Another way you can get involved is by simply emailing Colleen at [drwarnesky@yahoo.com](mailto:drwarnesky@yahoo.com) or Deborah at [drdebepeters@gmail.com](mailto:drdebepeters@gmail.com). We look forward to hearing from you!