MiPSAC

Newsletter of the Michigan Professional Society on the Abuse of Children, Inc., the Michigan Chapter of APSAC.

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PRESIDENT'S CORNER

By Annamaria Church, MD
Henry Ford Health System

In this MiPSAC newsletter, various disciplines will explore the courtroom experience from their perspective. Lawyers frequently ask me why doctors find appearances in court such a stressful experience. My response: imagine you, as a lawyer, are forced to go into an examining room to do a physical examination on a patient. Now imagine your actions are scrutinized not only by the patient but also by a very attentive audience. Testifying in court is stressful to most of us because we have had no training. Hopefully, this newsletter will help you understand the dynamics of the court process and help make your next experience in court a little easier.

In this Special Issue on Subpoenas and Court Appearance…

MiPSAC ANNOUNCEMENTS AND UPCOMING MEETINGS

7th MiPSAC Annual Meeting
Monday, October 28, 2002, 5-7 P.M.
Ypsilanti Marriott / 1275 Huron Street South
Ypsilanti, MI 48197 Info: (734) 487-2000
1. Election of 2003 Officers/Board
2. Presentation of 2002 MiPSAC Child Advocate Award

21st Annual Michigan Statewide Conference on Abuse and Neglect
October 28-29, 2002, Ypsilanti, MI
University of Michigan (734) 763-0215 sasmi@umich.edu

4th Annual Midwest Regional Conference on Child Abuse
November 6-7, 2002 Bloomington, IN
National Children's Alliance, Midwest CRC: 651-220-6065

19th National Symposium on Child Abuse
March 11-14, 2003 Huntsville, AL
www.ncac-hsv.org

14th National Conference on Child Abuse and Neglect
March 31 – April 5, 2003 Saint Louis, MO
Office of Child Abuse and Neglect
Pcamissouri@earthlink.net

7th Bi-Annual Child Maltreatment Conference DeVos Children's Hospital at Spectrum Health
April 29, 2003 Grand Rapids, MI
Contact: Tracy.Cyrus@Spectrum-Health.org

9th Annual ISPCAN Regional European Conference on Child Abuse and Neglect
August 29-31, 2003 Warsaw Poland
www.fdn.pl; fdm@fdn.pl

15th ISPCAN International Congress on Child Abuse and Neglect
September 19-22, 2004 Brisbane, Australia
ISPCAN2004@icms.com.au

Join the MiPSAC email list by contacting Vince Palusci at Vincent.Palusci@Spectrum-Health.org or leave a message for MiPSAC at (616) 391-2297.

Subpoenas – Some Basic Rules

Frank Vandervort, JD
University of Michigan
Michigan Child Welfare Law Resource Center

Professionals involved in child protection often receive subpoenas to appear in court or at depositions. This brief article is intended to introduce you to the basic rules relating to the issuance of subpoenas and possible responses when you are subpoenaed. A subpoena may be issued for one of three basic reasons, for you to: 1) appear and testify in court; 2) appear and testify at a deposition; or 3) produce documents or other tangible things (sometimes called a subpoena *duces tecum*).

If you are subpoenaed to appear, the subpoena should describe the time and place for your appearance. If the subpoena is seeking a tangible item, it should describe the item with enough detail that you can discern what is being sought (e.g., all medical records in your possession relating to Johnny Smith). A subpoena may be signed by an attorney, a judge, or the clerk of the court. If signed by one of these individuals, the subpoena is valid. Check this carefully. At a clinic where I consult, we received a subpoena signed by one of the parties to the case rather than by his attorney. This is *not* a valid subpoena and need not be complied with.

A subpoena must be issued "sufficiently in advance . . . to give the witness reasonable notice of the date and time the witness is to appear." Unless a court orders otherwise, a subpoena must be served at least two days before the individual subpoenaed is to appear. As a matter of professional courtesy, a lawyer who knows he or she will subpoena a professional as a witness for a given date should notify that professional as early as possible, even if the subpoena will not actually be issued until closer to the hearing date.

If a subpoena is validly issued, it remains in effect "until [the witness] is excused by the court." So, you may be required to return to court several times based upon that one subpoena, that is, a subpoena may be "continued" by the court. If the date or time for your appearance changes, the individual who subpoenaed you should notify you and issue a new subpoena. If it is "impossible" for a witness to attend, the party issuing the subpoena may excuse the witness or may seek a different date for the appearance.

There are two ways a subpoena may be served upon (i.e., delivered to) a witness: 1) personal service (i.e., handing the subpoena personally to the individual); or 2) registered mail, return receipt requested.

A subpoena is a court order and failure to comply may subject the individual subpoenaed to contempt of court charges. However, if you believe that you are not legally required to comply with a subpoena, for example, because the information the subpoena requests is confidential, you may contest a subpoena. Michigan law provides that "A person served with a subpoena or order to attend may appear before the court in person or by writing to explain why the person should not be compelled to comply." This is sometimes called a "motion to quash" the subpoena. If you believe that you should not be required to comply with the subpoena, you should consult a lawyer. NOTE: Michigan's child protection law broadly eliminates confidentiality and privilege (i.e., a form of confidentiality that protects confidential information from being disclosed in court).

So, whenever you receive a subpoena, *don't do nothing*. That is, when you receive a subpoena, you should take some action. The action will vary depending on a number of factors. If you wish to contest the subpoena, you should contact a lawyer. If you receive the subpoena late, or if it is for a time when you know it is impossible for you to appear, you should contact the individual who issued the subpoena to see what arrangements can be made. If you are being subpoenaed for a child protective proceeding, the law permits you to give testimony via speaker telephone of other electronic means, and you may wish to explore this possibility with the lawyer who subpoenaed you. If you do not wish to contest the subpoena, you will want to review your file carefully to reacquaint yourself with facts of the case. You will want to be in touch with the lawyer who issued the subpoena to discuss how she thinks your testimony will be helpful. Optimally, the lawyer will initiate such contact and will help you to prepare BEFORE appearance.

If you have questions about subpoenas, contact the Michigan Child Welfare Law Resource Center (734) 998-9191 or me at vort@umich.edu.

Suggestions for Court Testimony

Mary Uerling
Children's Protective Services Worker (retired)

Testifying in court does not have to be an unpleasant experience. I will offer several suggestions that should lessen the stress that is related to going to court and providing testimony.

Preparation

Review your records. As a Children's Protective Services worker, a report is prepared for every case you investigate or are involved with. Be familiar with that report. You may want to either take a summary of that report with you or take the actual report with notations around pertinent information. Remember, whatever you take to the stand is subject to review. **NEVER** take your notes that you used to write the report, as they are often sketchy compared to the contents of the report. (I always disposed of these after my report was finalized. It is not policy that these remain part of the official record.)

Meet with the Prosecutor prior to the hearing to review your testimony and the testimony of your witnesses.

Dress

Dress neatly and conservatively. Appropriate business attire should be acceptable. Your dress for a preliminary hearing (for removal) may be more casual as these hearings are often scheduled rather quickly and held within hours.

General Demeanor

From the time that you enter the courthouse (or anywhere the hearing may take place), your demeanor may be under scrutiny. Avoid loud laughter or any other behavior that may be considered undignified; you could be questioned about this during your testimony. Although your behavior may have nothing to do with the case, a defense attorney may use your actions to attempt to discredit your professionalism.

Testimony

Speak clearly from the time you are sworn in to the point of completion of your testimony. Remember that you are sworn to tell the truth, tell it! By being truthful, you should have nothing to fear during the examination. You may be asked a question during either direct examination or cross-examination that could require an answer that could put you or the investigation in a bad light. Answer honestly, not with an answer that may be correct, that could further compromise your future testimony. There is always the opportunity for the prosecuting attorney to ask for an explanation and rehabilitate your testimony.

During questioning, listen to the question and understand it before you answer. It is ok to ask to have the question repeated or to ask for clarification prior to answering. Also, this pause may give you time to formulate your answer. Unless you are asked to explain a situation or a question is formulated to provide a narrative answer, answer "yes" or "no". If more than a "yes" or "no" is required, the attorney will ask a follow-up question. There are also times that an attorney may try to limit your answer to either "yes" or "no". If you cannot answer the question with a simple "yes" or

"no", say that you can't answer the question that simply. It is possible that you will be directed to expand on your answer. Avoid statements such as, "I guess" or "I think". Avoid giving an opinion unless asked or qualified as an expert. There may be times when you testify to something that you remembered is not in your report. More than likely, an attorney will point this out to you. The best way to respond is something to the effect that you would hope that all information would be in your report, but that you have recalled something that was not in the report.

Be positive and definite in your testimony; you have the facts of the case. If you are asked about something that you don't remember, simply indicate that. Don't verbalize several different thoughts. For example, "He or she told me this, or was it something else?" You may correct previous testimony that may have been wrong or unclear by asking to do so.

Regardless of how you are treated on the stand, always be polite to all parties. Do **not** become defensive, argumentative or sarcastic.

Do not use jargon that is associated with your profession; clarify what you are speaking about.

Be familiar, able and prepared to explain the Forensic Interviewing Protocol. Its utilization is mandatory in Michigan during interviewing of victims. If you have an audio or videotape, have that available.

The Referral Source of a Children's Protective Services report cannot be released unless ordered by a judge.

WHAT YOU NEED TO KNOW ABOUT EVIDENCE WHEN TESTIFYING IN COURT

Carol A. Siemon, JD
Chance at Childhood Program, Michigan State University

Testifying in court is often an overwhelming prospect. While you may feel confident in your knowledge and preparation of the topic about which you will be testifying, years of television, novels, and movies, have highlighted the myriad of ways that a witness can be tripped up by a skilled, or lucky, attorney. While the best way to prepare remains a thorough review of your reports, observations, and other facts about which you will be testifying, it is helpful to have an understanding of evidence and other legal issues that may impact the effectiveness of your testimony.

Evidence is essentially anything that helps to support a particular position presented to the court and may include testimony as well as photographs, documents, x-rays, or other physical objects. In order for the court to admit and consider evidence, it must be **relevant** and **material**. **Relevant evidence** is evidence that logically supports the facts that are to be proven. **Material evidence** is evidence that has to do with an issue that is to be determined. If, for example, a CPS worker attempts to demonstrate that a child's environment causes a risk of imminent harm to the child, the worker will need to provide evidence that both has to do with the allegations of neglect (materiality) and demonstrates that there is some link or connection between the evidence and specific facts that prove neglect/harm.

Often, there is another requirement to meet in addition to relevance and materiality before evidence is admissible. **Hearsay evidence** is not usually admissible in an adjudication hearing unless it meets a **"hearsay exception."**

"Hearsay is statement, other than one made by the declarant, while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Michigan Rules of Evidence 801. A **statement** is a spoken or written assertion, or the nonverbal conduct of a person, if it is intended by the person as an assertion, such as, certain finger gestures. A **declarant** is a person who makes a statement. An example of hearsay evidence is if the CPS worker attempts to testify that the maternal grandmother saw a parent hit the child with an electrical cord instead of the grandmother herself testifying about what she witnessed. Hearsay evidence is viewed as usually less reliable than direct testimony from someone who actually witnessed the events because a person providing direct testimony of what he or she actually witnessed can be cross-examined about what he or she saw and heard, whereas, a person offering hearsay evidence cannot. Cross examination of a direct (non-hearsay) witness offers an opportunity to test memory, credibility, bias, perceptions, and reliability of a witness.

Sometimes hearsay evidence is found by the court to be of sufficient credibility that it is admissible in court even though it is hearsay evidence. Of the 24 hearsay exceptions found under Michigan Rules of Evidence 803, the most common of the hearsay exceptions related to child abuse/neglect cases include:

Present sense impression: a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter).

Excited utterance: A statement relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition.

Then existing mental, emotional, or physical condition: A statement about the declarant's state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), such as "I am furious."

Statements made for purposes of medical treatment or medical diagnosis in connection with treatment: Currently, the law in Michigan allows virtually any statement of a person made to a physician about injuries or their cause to be admissible under this exception.

Records of regularly conducted activity: Records kept in the course of a regularly conducted business activity, if it is the practice of that business activity to keep that type of record. A "business" includes business, institution, association, profession, and occupation, whether or not conducted for profit. Medical records, police records, and certain FIA records may come under this exception.

Deposition of an expert: The deposition is admissible if it was taken for the proceeding at which it is being admitted and is in compliance with law.

Judgment of a previous conviction: A conviction of a felony may be admissible to prove a fact alleged in the petition in a child protective proceeding, such as, a conviction for domestic assault by the father on the mother.

Residual hearsay rule: Allows the admission of a statement that is not specifically covered by any other exceptions if it has equivalent guarantees of trustworthiness.

An evidentiary rule unique to child protective proceedings is a **"tender years exception,"** Michigan Court Rules 5.972(C)(2) that allows a statement by a child under 10 years of age about an act of child abuse performed on or with the child to be admitted without the child testifying (this is different from Michigan Rules of Evidence 803A that allows a statement to be admitted about a sexual act perfomed with or on a child, but also requires that the child must testify before the statement is admissible). For a statement to be admissible under this rule, a hearing is held before the trial to determine if the circumstances under which the statement was made provide sufficient indications of trustworthiness and if there is sufficient corroborative evidence of the abuse.

Different kinds of hearings require/allow different kinds of testimony. If you are asked to testify in an **adjudication hearing** (the initial trial that gives the court jurisdiction to enter further orders about the family), because you provided a medical or clinical examination of a child or have other personal and direct information about the situation before the court, then you will be asked to provide **factual information** re: what you saw and heard and hearsay will not be admissible unless it falls under a "hearsay exception."

You may testify in a **dispositional hearing**. This may be testifying at the initial disposition about what programs and services will be provided to the client and what the client needs to do to comply. You may be asked to provide a combination of factual information and opinion testimony ("layperson opinion testimony") **Hearsay evidence** is typically allowed at dispositional hearings, as long as the evidence is **relevant and material**. Other types of dispositional hearings include emergency removal hearings, further dispositional hearings, permancency planning hearings, and termination of parental rights hearings. H**earsay evidence** is typically allowed at dispositional hearings, as long as the evidence is **relevant and material**.

You could be asked to provide **opinion testimony as an "expert witness**." An **expert witness** is a person qualified by knowledge, skill, experience, training, or education in a recognized scientific, technical, or other specialized area that will assist the judge or jury (Michigan Rules of Evidence 702)

Questions by the attorney who calls you as a witness are called **"direct examination." "Leading questions" are not generally permitted on direct examination. Leading questions** are questions that provide or suggest the answer to the question. Questioning by the other attorney(s) is known as **"cross examination." Leading questions usually are permitted on cross examination.** During your testimony, attorneys may make an **"objection." An objection** is an assertion by the attorney that there is a legal problem with the question asked or information that may be elicited from the question. When an objection is made, stop speaking immediately and wait for the judge (or referee) to rule. If the objection is **overruled**, answer the question. If the objection is **sustained**, do not answer.

Even if your testimony is admissible, the judge or other "finder of fact" (jury, judge, or referee) decides what weight to give your testimony, ie, if it is credible and persuasive.

While this article is a starting point for you, you have the right, and responsibility, to contact one or more of the attorneys on the case (usually the assistant prosecutor/attorney general who is the attorney for the state or the lawyer- GAL who is the attorney for the child) to discuss your testimony in more detail and prepare you for the possible hurdles you may encounter.

COURTROOM **DO'S** AND **DON'TS** FOR THE PHYSICIAN WITNESS/EXPERT

Colette Gushurst, MD
Professor of Pediatrics, MSU Kalamazoo Center for Medical Studies

DO:

- review your qualifications, graduation dates, years of experience, pertinent conferences attended, etc.
- speak clearly
- maintain good posture and poise
- listen carefully to the question. Ask the attorney to repeat it or clarify if the question is not clear or you are still formulating your response.
- stick to the facts
- educate the jury with explanations of terms
- refer to your notes, especially if you are quoting the victim's statements
- remain objective; the trial is a search for the truth and you should not take sides
- present your information during direct examination without qualifications. It is up to the cross-examiner to come up the questions that will clarify or qualify your testimony.
- turn to the judge if the defense tries to corner you into a 'yes' or 'no' answer when there is not a clear 'yes' or 'no' answer. Simply state, "Judge, I cannot answer that question as a yes or no. Would you allow me to explain?" Another strategy is to explain before the yes / no response.
- not be afraid to look at the jury or judge as you respond. It is for their benefit that you are answering these questions.
- answer questions that call for a yes or no answer with a simple 'yes' or 'no' since you will lose your audience by rambling in a narrative fashion.
- remain alert to tricky questions where an attorney may misquote you
- correct an attorney who rephrases your response since it may change the meaning of what you meant to say.

DON'T:

- be disturbed if the defense belittles your experience or expertise. You usually have a lot more education and medical knowledge than anyone else does in the courtroom. Avoid using the word 'only' for previous examinations or testimony.
- mumble or nod in response to a question
- get rattled, upset, angry, or nasty, even when a defense attorney is challenging you
- be afraid to be assertive and, if necessary, politely intimidating.
- be afraid to say "I don't know" since every question does not have an answer
- refer to a specific article in the literature if the attorneys have not had a chance to review it. Simply state that, "It is generally held……." or "Studies have shown…."
- be afraid to say you don't remember something
- continue talking once an objection has been voiced. Politely wait for the judge to make a decision as to whether or not you can proceed
- use a lot of phrases like "I think", "I guess", "maybe" or "sort of"
- be afraid to offer your opinion if asked. "In your opinion, is this fracture consistent with child abuse?", but do not offer any opinions unless asked

Note: partially summarized and augmented from Paul Stern's lecture notes and "Preparing and Presenting Expert Testimony in Child Abuse Litigation," (Sage Publications), 1997

Pointers for Effective Testimony

Annamaria Church, MD

Henry Ford Health System

The experience of testifying in court may be likened to acting in a stage play. This is not to say that the testimony is "make-believe" but rather that effective testimony requires playing to an audience. Most often though, one does not audition for the role but rather has it thrust upon them in the form of a subpoena.

Rehearsal: The first step is contacting your director, the person who has subpoenaed you. Although in some counties this is a very simple process of calling the number on the subpoena, in other counties it becomes a major task requiring frequent attempts and frequent messages left. Although one would hope the director contacts you, do not count on it. It is imperative that somehow *contact is made* between you. When you make contact, *arrange the rehearsal*, a meeting or a telephone conference to review the case with the attorney. At the time of the rehearsal, *teach the attorney* what you feel are the important points of the case. It is also useful to the attorney if you *identify any possible barriers* or difficult areas in your planned testimony. This allows the attorney to plan how best to address these barriers during rehearsal rather than learning of them during the actual "play".

Setting: Make sure you know which court you are appearing in and how to get there. Check with the "director" where to park. It is also important to know what security processes are in place in the courthouse. Some courthouses have long lists of banned items that may be lurking in your purse. They may confiscate such items as highlighter pens, cologne spray, badge holders, and otoscopes. Find out what to do when you get into the courthouse. Should you simply proceed to the courtroom or should you sign in elsewhere and go to a waiting area (or hallway)? The more you know of the setting before the day of the play, the less stage fright you will have.

Costume: Remember, you are playing to an audience. Your costume should be conservative business attire. Do not dress ostentatiously. You should be projecting "common man" so the jury can relate to you. Your "costume" should also be comfortable for you. You do not want to worry about your clothes while you are trying to concentrate on testimony. Finally, a practical point. You do not want to project your nervousness. If you tend to perspire profusely when tense or nervous, find a "costume" that will not show it. You want to project calm and cool.

The Show: Let your director do his job. He wants you to look good, be engaging and believable. Allow him the opportunity to bring out all of your wonderful credentials. Remember what you went over in "rehearsal". Your director will probably give you very open-ended questions and let you give the jury what information you have. *Engage the jury.* Look at them, make eye contact, talk *with* them, not the director. As you testify, gage the jury's response. Do they understand you? Are you connecting with them? If not, adjust your language and body language accordingly. *Do not try to show off your knowledge by quoting books and journals.* This may backfire on you unless you know every word of the quoted article as well as any subsequent publications related to the topic. You are qualified as an expert without these specific citations to back you up.

Improv: The questioning of opposing counsel may be likened to an improvisational experience. There has been no rehearsal. (If opposing counsel contacts you beforehand to discuss the case, it is usually all right. However, it is probably best to get the o.k. from your lawyer and make certain such discussion will not breach patient confidentiality.) There is a natural tendency to become adversarial during cross-testimony. Remain calm and friendly. Smile. Watch your body language- your arms and legs should remain un-crossed and "open". The opposing attorney's job is to attack your facts and your knowledge of facts. Failing that, he may attack you. *Do not take this personally!* If he is attacking you then it is actually a good sign- he cannot find anything in your testimony to attack. Remember it is his job to make you look bad. If you cannot handle the attack, make eye contact with your director. A good director should jump in and help with an "I object". Opposing counsel will try to disengage you from the jury by drawing your eyes toward him and away from the jury. Look at him as he asks the question but then reconnect with the jury as you answer him. Several techniques will be used to "ruffle you". Be aware of them: 1*) insisting on a yes or no*. There is no rule that says you must answer yes or no. If an answer requires more, do not get bullied into yes/no. Suggest that you cannot answer truthfully if he insists on a yes or no. 2) *interrupting your answer*. Look at the judge or your "director" and say very sweetly "I didn't get to complete my answer" 3) *asking a two part question*. Insist that the questions be separated so you can appropriately address each question. 4) *asking you what you consider an authoritative source*. If you identify a source, the opposing counsel will then attack your credibility by showing that you do not know every word of that source.

Cast Party: After your day(s) in court, contact the "director" for the reviews. None of us is perfect and all of us can learn. Find out what the jury thought and review what went well as well as what didn't.

Suggestions for Child and Family Therapists who Deal with the Legal System

Children and Families Committee
MPA
July, 2002

Child and family therapists often come into contact with the legal system whether they wish to or not. Examples include reporting to the child protection authorities, and subsequent actions; speaking to child custody evaluators; and responding to requests from patients to write or testify before the Court or the Friend of the Court. Here are some suggestions as to how to proceed. Please note that the following does not establish a code of conduct for psychologists, nor does it constitute legal advice.

1. Review the Forensic Guidelines from Division 41 of APA, whether you consider yourself a forensic psychologist or not. Also look over Beth and Charlie Clark's book (Law and Mental Health Professionals: Michigan, Washington, DC: APA Press, 2001). These resources will help you avoid pitfalls in the legal system. Also, if in doubt, seek consultations, whether from a supervisor, an experienced colleague, or a member of the MPA or APA Ethics Committee.

2. Remember that a therapist is always **not neutral.** The establishment and maintenance of a therapeutic alliance almost always requires that you be on the patient's side. This makes contact with the court in any form very tricky, for the court expects psychologists functioning as experts to be neutral.

3. As part of their informed consent procedure, therapists may consider warning patients at the beginning of therapy that they are required by law to report child abuse, serious threats to another individual, and serious danger to self and other. This might be done on a case by case basis, bearing in mind the patient's presentation and needs.

4. Reporting of child abuse and neglect is, of course, not optional in the state of Michigan. The standard for reporting is a very liberal one, i.e. "reasonable cause to suspect." Such reports are ostensibly confidential, and are protected by law against patient action for breach of confidentiality. In practice, however, many clients discover (or guess) who made the report, so that it may be good to discuss it ahead of

time with patients whom one is going to report. When reporting, try to get the name of the worker taking the report, so that you can call back later and ask whether Protective Services decided to follow up on it. Remember to file a 3200 Form to document the report within 24 hours. Ones duty to report to Protective Services does **not** extend to reporting to the police. Always secure a release before talking to the police about a family you are treating, even if the police call you about a criminal matter. If the family will not sign the release, the police may well try to subpoena your records. Michigan appellate law makes it increasingly easy to secure therapist records against the family's wishes, especially in criminal investigations. The alternative can be your arrest and incarceration for contempt of court, something many of us would not be very willing to do.

5. In treating children of divorce, it is best to meet with both parents and secure permission to treat the child from both. Always obtain the most recent custody and access order, to see if it specifies which parent or parents are entitled to make significant decisions for the child, such as the decision for the child to be in therapy. Do not rely on the word of the parents about this, as many parents misunderstand this part of the order. According to Clark and Clark (2001) "If there is no provision in the order and a divorced parent requests treatment for a child, it is clearly the wisest course to obtain permission of the other parent." It is often a good idea to obtain a release to move information from one parent (and/or stepparent) to another, as well.

6. In the event of divorce litigation, scrupulously avoid giving custody recommendations. Therapists have almost never done the kind of detailed forensic evaluation necessary to make these recommendations, which usually includes testing and talking to all parties and all children, as well as collateral sources. Even if the therapist considers that he or she has done such an evaluation, it may well be considered an inappropriate dual role to give custody recommendations. As already noted, therapists are not neutral.

7. Child therapists may be quite helpful to the evaluation process, however, in conversation with the child custody evaluator. When such conversations come up, the child therapist should think carefully about what to say to the evaluator that will not unduly compromise the child's trust in the confidentiality of the therapy, but provide the evaluator with useful information. This thinking will need to take into account the age of the child, the specific concerns of the child, and the potential for harm to the child in the custody dispute. At times, it may not be in the interests of the child for the therapist to talk to the evaluator, but this is relatively rare. This would

have to be worked out with the parents, as well as the lawyers, in that parents hold the child's legal privilege, not the child himself or herself. Talking to the child custody evaluator, who will summarize the therapist's thinking for the court and be available to testify, also, in our experience, markedly decreases the therapist's chance of being called to testify.

8. Therapists are wise rarely to testify about their patients in open court. Again, if asked, they might explain their bias in the direction of their own patient, which will affect the court's view of their credibility. Further, especially in the case of an adult patient, it is the rare therapy which survives the cross-examination of the therapist in front of the patient. We all have foibles - and so do our patients - and the cross-examining attorney will do his or her level best to have you talk about your patient's worst qualities, whether you wish to or not.

9. A therapist can feel alarmed if she receives a subpoena. It is important to realize that, intimidating as these documents may look, a therapist is not necessarily obligated to do what they propose. If a subpoena is from an attorney and requests confidential information, a therapist should not send it without a release from the client, or the client's parent. To do so could be to risk a claim against the therapist for breach of confidentiality. A reasonable course here is to first call your patient to find out if the patient wishes you to release information. If not, then call the attorney who is asking for the records or testimony and inform him that you cannot comply without a release. If a judge sends a subpoena along with a court order for privileged documents, you might consult an attorney about how to deal with the matter, as the judiciary can and has often over-ridden the privilege afforded mental health professionals.

10. The parent or guardian of a child holds that child's privilege, not the child himself or herself. Thus, if the legally defined parent or guardian requests information about a child's therapy, you must provide it, or negotiate a reasonable compromise with the parent. If divorced parents share legal custody of their child, both have a right to information about their child's treatment.

11. Never give an opinion which may reach the Court about an individual whom you have not evaluated. Child therapists are often asked to comment on the actions of a parent whom they have not met, and do so, relying on the word of the child and the other parent. To do so, though, may well misinform the Court and is generally considered unethical.

(Many thanks to Pam Ludolph and Pat Siegel for facilitating publication of this material from the Michigan Psychological Association---Ed.)