

Psychology and Family Law

By Mark Baer, Esq.



I have always recognized the importance of rapport, good faith and mutual respect, between a client and his/her attorney. However, it was only very recently that I came to realize just how important they are, and how significantly the psychological aspect of the attorney-client relationship may impact the ultimate outcome of a case. This realization only came to me after I had seen the *unfortunate* results that an otherwise well-qualified family law attorney obtained in handling a case for a close family member of mine.

I had referred my family member to an attorney who is a certified family law specialist, and who is listed as one of the 2009 Southern California Super Lawyers. I had been

impressed by this attorney at a prior time, while she was representing a spouse in a divorce against a client of mine. Although the details of my family member's situation were well within the scope of my own practice, because of our family tie, I felt it would be unwise to represent him myself.

My family member's case was challenging because, although he had always stayed at home as the primary custodial parent of their 3½ year old daughter, he was currently facing criminal domestic violence charges, and a domestic violence restraining order in civil court. His wife had taken over custody temporarily, based on the charges. He insisted no violence had ever occurred, despite his wife's allegations. Based on my knowledge of both of them, I believed she had fabricated her story, in the hope of having my family member be declared unfit as a parent, so that she could take primary custody and eventually move, with their daughter, to Oregon.

My family member retained the attorney I recommended, and paid her a \$15,000 non-refundable retainer. A few days later, she duly represented him in family law court with regard to the domestic violence retaining order. Because of the possibility that the City Attorney would be filing criminal charges as well on the domestic violence charge, my family member was advised by his attorney not to testify in family court, since the pending criminal matter signified that his statements could be used against him should he face criminal charges, and his only recourse would have been to plead the Fifth Amendment.

Although his attorney's recommendation was technically accurate, he had to forego the opportunity to testify on his own behalf. It would have been much more in my family member's interests to obtain a continuance, since the hearing to determine whether to pursue the criminal matter was set for only a week away. A week's continuance of the restraining order hearing would have opened up the possibility of my family member returning to testify, in the *likely* event the criminal charges were dropped. The fact that his attorney did not present him with this opportunity suggested that, for some reason, she might have a different agenda than to serve my family member's good faith interests.

In any event, at court, my family member's wife offered to dismiss the restraining order as it pertained to their daughter. On the other hand, she insisted that my family member's time with their daughter be severely limited, including just three hours of monitored visitation every other day, for an indefinite period of time. Despite the severity of the limited visitation, his attorney opined that this was a "very good" offer, and demanded that he accept it. In fact, she went so far as to threaten to resign on the spot (while keeping the non-refundable \$15,000 retainer), and leave him alone in court to finish representing himself in the hearing that day. Under duress, my family member agreed to the proposal. He then fired his attorney, and retained new counsel the next day.

I was shocked to learn of this result. My family member told me that he felt as though his attorney was representing his wife and not him. The manner in which the case was handled and the terms of the settlement led me to believe that my family member was indeed justified in feeling that way. This was a situation in which the mutual trust and respect between attorney and client had been seriously compromised.

I am convinced that my family member's attorney treated him poorly, and failed to properly represent him, because she believed the allegations that he was a wife beater. With this bias, she treated him as if he were in fact, a criminal

(continued on next page)

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.

Mark Baer, Esq. can be reached at (626) 683-8869 or by email at mbaer@rrjlaw.com

ETHICS BRIEF: Personal freedom vs. Professional Responsibility Personal information on the Internet

By Ethics Committee Alan Karbelnig, PhD, Chair

Linda Bortell, PsyD, Isabel Green, PhD, Don Hoagland, PhD, Toni Cavanagh Johnson, PhD,
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 or Deborah at drdebepeters@gmail.com. We look forward to hearing from you!