

# **GUIDELINES FOR COURT-INVOLVED THERAPY**

AFCC Task Force on Court-Involved Therapy\*

## **PREAMBLE**

The Guidelines for Court-Involved Therapists have been formulated to assist members of the Association of Family and Conciliation Courts (AFCC) and others who provide treatment to court-involved children and families. The Guidelines are also intended to assist those who rely on mental health services or on the opinions of mental health professionals in promoting effective treatment and assessing the quality of treatment services. The Guidelines are also intended to assist the Courts to develop clear and effective Court orders and parenting plans that may be necessary for treatment to be effective.

AFCC does not intend these Guidelines to define mandatory practice. They are a best-practice guide for therapists, attorneys, other professionals and judicial officers when there is a need for therapeutic interventions with court-involved children or parents. While available resources and local jurisdictional expectations may influence the types of therapeutic services provided by a Court-Involved Therapist (CIT), the purpose of these guidelines is to educate, highlight common concerns, and to apply relevant ethical and professional guidelines, standards, and research in handling court-involved families.

## **INTRODUCTION**

For the purposes of these guidelines, court-involved therapists are mental health professionals who provide therapeutic services to family members involved in child custody or juvenile dependency Court processes. Family and juvenile Court cases involving therapeutic services introduce unique factors and dynamics that require consideration in the treatment process. Both the treatment process and information provided to the therapist are likely to be influenced by the family's involvement in a legal process. While appropriate treatment can offer considerable benefit to children and families, inappropriate treatment may escalate family conflict and cause significant damage.

The Guidelines for Court-Involved Therapists are the product of the Court-Involved Therapist Task Force, appointed by AFCC President Robin Deutsch in 2009. Task force members were: Hon. Linda S. Fidnick, Co-Chair; Matthew Sullivan, Ph.D., Co-Chair; Lyn R. Greenberg, Ph.D., Reporter; Paul Berman, Ph.D.; Christopher Barrows, J.D.; Hon. R. John Harper; Hon. Anita Josey-Herring; Mindy Mitnick, M.Ed., M.A.; and Hon. Gail Perlman.

Correspondence: [trintran1210@gmail.com](mailto:trintran1210@gmail.com); [linda.fidnick@jud.state.ma.us](mailto:linda.fidnick@jud.state.ma.us); [sullydoc@aol.com](mailto:sullydoc@aol.com)

\* These Guidelines were authored by Hon. Linda S. Fidnick, Matthew Sullivan, Lyn R. Greenberg, Paul Berman, Christopher Barrows, Hon. R. John Harper, Hon. Anita Josey-Herring, Mindy Mitnick, and Hon. Gail Perlman.

## DEFINITIONS

### A. DEFINITIONS REGARDING PROFESSIONAL ROLES

**Community Therapist:** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family who is not involved with the legal system at any time during the treatment.

**Court-Involved Therapist (CIT):** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family who is, at any time during the treatment, involved with the legal system.

**Court-Appointed Therapist:** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family undertaken because the particular psychotherapist was ordered by a judge to provide treatment. The Court order designates the specific psychotherapist and may describe the expected treatment.

**Court-Ordered Therapist:** Any mental health professional providing psychotherapeutic treatment of a parent, child, couple or family undertaken because it was ordered by a judge. The Court order does not designate a specific therapist and may describe the expected treatment.

### B. DEFINITIONS REGARDING EXPERTS

**Expert:** The word expert generally refers to a person with specialized knowledge of a particular subject matter.

In the legal context, the word “expert” refers to a witness who has been specifically qualified by the Court in a particular case to provide opinion evidence within a circumscribed subject matter determined by the Court. To qualify an expert, the Court first reviews evidence of the witness’s expertise of that subject matter, unless the admissibility of the professional’s opinion as an expert has been previously stipulated to by the parties or established by the Court.

- (a) **Treating Expert:** A mental health professional, who currently serves or has served as the therapist for a parent, child, couple or family involved with the legal system. If the therapist is qualified by the Court as an expert, testimony should be limited to the therapist’s particular area of expertise and issues directly relevant to the treatment role. To the degree permitted by the Court in a specific case, the treating expert can provide expert opinion regarding a parent or child’s psychological functioning over time, progress, relationship dynamics, coping skills, development, co-parenting progress, or need for further treatment, as appropriate to the therapist’s role. In contrast to the forensic expert, the treating expert does not have the information base or objectivity necessary to make psycho-legal recommendations, such as specifying parenting plans, legal custody, or decision-making authority.
- (b) **Mental Health Forensic Expert:** A mental health professional hired by a party or appointed by a Court to answer a legal question through the application of psychological methods. A mental health forensic expert, for example, may perform a custody evaluation, a psychological evaluation to answer a particular question formulated by the Court, a competency evaluation, an evaluation to assist the Court in the decision-making process regarding custody and/or access. Their testimony might include psycho-legal issues such as recommendations about parenting plans, legal custody or decision-making authority.

### C. GENERAL DEFINITIONS

**Client/Patient:** A parent, child, couple or family receiving psychotherapeutic treatment from any of the mental health professionals defined in this section

**Collateral:** A person, not a client or patient, who has information bearing on the client or patient and whom a mental health professional, in any role defined in this section, interviews to obtain information or engages directly in the client or patient's treatment.

**Confidentiality:** An ethical duty, also established by statute, rules or case law in some jurisdictions, owed by a mental health professional to a client/patient, subject to some exceptions, to maintain the client/patient's privacy by not revealing information received from the client/patient.

**Privilege:** A legal right, conferred by statute in many jurisdictions and limited by exceptions, held by a mental health professional's client/patient to prevent the mental health professional from disclosing confidential information in a legal proceeding. Some jurisdictions have a formal process for determining whether or not and under what circumstances the privilege will be waived by or on behalf of the client/patient to allow testimony by the mental health professional in a court-related matter. (Issues regarding privilege and confidentiality are described in Guideline 7.)

**Conflict of Interest:** A situation in which personal, professional, legal or other interests or relationships have the potential to compromise or bias the mental health professional's judgment, effectiveness or objectivity. A conflict of interest may also occur in some jurisdictions based on the establishment of an appearance of conflict standard rather than an actual conflict.

#### **Informed Consent:**

- (a) A client/patient's decision to consent to a proposed treatment or a proposed release of confidential information by a mental health professional, after the client/patient has received reasonably full and accurate information from the mental health professional as to the risks, benefits and likely consequences of the decision to consent.
- (b) The term is used colloquially by mental health professionals to mean the *process* by which a client/patient receives the information needed to make an informed decision. The process usually includes discussion and a written agreement between the mental health professional and the client/patient as to the information provided and the client's understanding of it. (See Guideline 6.)

## **GUIDELINE 1: ASSESSING LEVELS OF COURT INVOLVEMENT**

### **1.1 A CIT should assess the degree to which legal processes will impact the treatment and consider issues that may impact the client or parent's functioning in treatment, and the implications of treatment interventions on the legal processes**

- (a) The CIT should be aware that cases may have different degrees of Court involvement, and may also change in their degree of Court involvement over time.
- (b) The CIT should obtain information about how the decision to enter therapy was made, who was involved in the decision, and what outcomes are expected from the treatment or the therapist by parents, other professionals, or the Court.

- (c) The CIT should consider the variety of mechanisms through which court-involved families can enter treatment, and the implications of each of those circumstances:
  - (1) A parent involved in a Court case recognizes his/her own or child's distress and seeks treatment.
  - (2) A parent seeks therapy for him/herself or a child, in hopes of improving his/her own position in the Court case and securing the therapist's direct or indirect participation (report to a custody evaluator, etc.).
  - (3) Parents are ordered to obtain therapy for themselves or a child, but select from community practitioners with no specific agenda, reporting expectation or requirement.
  - (4) The Court orders therapy to address particular issues, such as child distress, high-conflict dynamics, reunification, etc. The order may include some degree of reporting requirement, or contingencies allowing reporting.
- (d) The CIT should consider the potential impact of Court involvement on adults' functioning in treatment. The stress of Court involvement and the importance of the outcome to those involved can generate conscious or unconscious distortion of information and changes in the clients' or parents' expectations of the therapist.
- (e) The CIT should consider the impact of his/her natural working alliance with the client. This may lead the therapist to align with the client's position in the legal dispute, thus impairing the CIT's ability to prepare the client to cope with likely outcomes and stresses in the legal process. While a client may equate his/or her best interests with prevailing in the legal dispute, CITs must remain cognizant that their role is to promote successful psychological functioning in the client, not to serve as an advocate or a forensic expert or produce a particular outcome in the legal process.

## 1.2 Special considerations for court-involved roles with children

- (a) Children's behavior and statements may vary markedly based on the circumstances of treatment.
- (b) The CIT has an enhanced obligation to consider multiple treatment hypotheses and be knowledgeable about children's developmental tasks and needs.
- (c) The CIT should use particular caution to ensure that he/she has adequate data on which to base any opinions or assessments, and to form and express such opinions only within confines of the therapeutic role and available information, while remaining cognizant of the impact of Court involvement on the family and on treatment information.
- (d) The CIT must, whenever possible, obtain each parent's perspective in the treatment process and maintain professional objectivity when interpreting statements and behaviors of children. The CIT should use particular caution in interpreting statements, play or drawings that appear to express positions on adult issues to avoid inaccurate or incomplete assessment of a child's developmental needs, expressed thoughts and feelings.
- (e) The CIT should be aware of the potential impact of parental needs and expectations on treatment involving children or adolescents. The CIT should be particularly aware that:
  - (1) A parent may have a genuine desire to obtain treatment or provide it to a child, but may also have expectations that the therapy will support the parent's own goals in the legal conflict.
  - (2) A child or adolescent who is expressing a "position" regarding a contested issue in the legal conflict may have external influences on their perceptions, or that negatively impact their coping skills.
- (f) While it is common in traditional treatment for one parent to be more involved in child treatment than the other, this therapy structure creates a risk in court-involved treatment. A CIT should consider *both* parent-child relationships and each parent's perspective in court-involved treatment.

## GUIDELINE 2: PROFESSIONAL RESPONSIBILITIES

### 2.1 A CIT should establish and maintain appropriate role boundaries

- (a) A CIT should inform potential clients, and others who may be relying on the therapist's opinion or services, of the nature of the services that can be offered by the therapist and the limits thereof. This includes providing thorough informed consent to clients/parents and appropriate information to others who may rely on the therapist's information. (See Guideline 6 and Guideline 10.)
- (b) A CIT should resist pressure from anyone to provide services beyond or antithetical to the therapeutic role, as defined by recognized professional and ethical standards or guidelines.
- (c) A CIT should explain to clients any decisions to decline to provide certain services. If others (e.g., the Court guardian *ad litem*, minor's counsel or agency) have requested services that the CIT considers inappropriate, the CIT should also explain decisions to decline these requests, to the degree that information provided is not privileged or privilege has been waived.
- (d) A CIT should be prepared to modify elements of the therapeutic process, if appropriate, and to explain the necessity for the modification.
- (e) A CIT should apprise the Court of any conflicts between the Court's expectations and the ethical and professional obligations, or role limitations, of the therapist.

### 2.2 A CIT should demonstrate respect for parties, families, the legal process and its participants.

- (a) A CIT should communicate respect for the legal system to clients, collaterals, and others who may rely on the therapist's work, information or opinions.
- (b) A CIT should provide a thorough informed consent processes to parents, and age-appropriate explanations to children, as described in Guideline 6.
- (c) A CIT should communicate, within the limits of any applicable privilege, regarding the limits and responsibilities of the therapist's role.
- (d) A CIT should respect each parent's rights, as defined by relevant orders or law, regarding knowledge of, consenting to, and/or participating in a child's treatment.
- (e) A CIT should be knowledgeable about appropriate expectations for developmentally acceptable behavior in children while respecting their independent feelings, perceptions, and developmental needs.
- (f) A CIT should communicate with counsel in a balanced manner when in a neutral role and authorized to do so.

### 2.3 A CIT should provide clear, non-technical communication of observations and opinions to adult clients, parents of child clients, and other professionals when appropriate and permitted by applicable privilege

### 2.4 A CIT should maintain professional objectivity

- (a) A CIT should actively seek information that will provide the most thorough understanding of his/her client's circumstances and issues, while remaining within the limits of the therapist's assigned therapeutic role in the case.
- (b) When children are involved in treatment, a CIT has an enhanced obligation to consider multiple hypotheses, seek information and involvement from both parents and avoid the biasing effects of one-sided or limited information.
- (c) A CIT should make efforts to consider and assess treatment issues from the perspective of each involved individual. This does not preclude maintaining a strong therapeutic alliance with a parent client/patient in individual therapy, but may require exploring with the client how others may perceive the issues.
- (d) To the degree possible in the given therapeutic role, the CIT should remain aware of the information emerging in the legal process in order to assist the client in coping with it.

**2.5 The CIT should manage relationships responsibly**

- (a) A CIT should recognize that the therapeutic relationship may change as a family's involvement with the Court changes or as the therapist communicates to other professionals, collaterals or the Court.
- (b) If a parent or family who has not previously been court-involved becomes involved in a legal process and asks the therapist to continue services, the CIT should discuss with the relevant individuals and/or family members the potential effect of Court involvement on the therapy. This should include discussion of potential requests for release of therapeutic information to others including a child custody evaluator, parenting coordinator, other professionals, or the Court.
- (c) If a CIT who has not previously been involved with a client's ongoing litigation is asked to provide information or have other involvement in the legal process, the CIT should notify the client and/or the client's legal representative of such requests. If the CIT believes the release of information will adversely impact the client, the CIT should seek legal advice and notify the Court.
- (d) The CIT should clearly document informed consent on the above issues.

**2.6 A CIT should maintain accountability.**

- (a) The therapist in a child-centered role should recognize that active intervention may result in the dissatisfaction of one or both parents, but should nevertheless maintain focus on the welfare of the child client.
- (b) If disputes arise regarding interpretation of Court orders governing treatment, the CIT should seek direction or clarification from the Court, or an authorized Court representative in the case.
- (c) The CIT should recognize that others in the legal system (e.g., custody evaluator, parenting coordinator, child's counsel or the Court) may have a role in monitoring or reviewing the therapeutic process.
- (d) The CIT should recognize that his/her judgments, interventions, reports, testimony and opinions may have a profound impact on outcomes for children and families. The CIT should remain objective at all times, should use caution in forming and expressing opinions, and should use particular caution in drawing conclusions from limited observations or sources of information.
- (e) A CIT should recognize that the dynamics of a court-involved case may create conflicts or disagreements with litigating parents or lead to demands that the therapist withdraw from the case. The CIT should recognize that therapeutic confrontation of a parent or a child, or a refusal to accede to the wishes of a parent or child, may frustrate that individual's desires, but does not necessarily constitute a conflict of interest. Such therapeutic confrontation may be therapeutically appropriate or even essential. In such a situation, withdrawing from the case or abandoning the intervention, unless terminated by the client, may be antithetical to the interest of the child or family.

**GUIDELINE 3: COMPETENCE****3.1 A CIT has a responsibility to develop and maintain specialized competence sufficient for the roles they undertake****3.2 Gaining and maintaining competence**

- (a) A CIT has a responsibility to obtain education, training, and to maintain current knowledge, in areas including, but not limited to:
  - (1) Characteristics of divorcing/separated families and children
  - (2) Family systems and other systems in which court-involved families interact
  - (3) The impact of high interparental conflict on post-separation custody arrangements

- (4) Effective interventions with divorcing or separated families
- (5) Adaptations of traditional therapeutic approaches that may be necessary to work with divorcing or separated families
- (6) Characteristics and needs of special populations who may be involved in treatment
- (7) Ethical issues and applicable local legal standards
- (b) A CIT should utilize continuing education and professional development resources to maintain current knowledge of issues relevant to court-involved treatment.
- (c) A CIT may also gain some of the required knowledge through experience and consultation with colleagues; however, clinical experience should not be a substitute for knowledge of the underlying science, relevant research, legal issues and standards of practice.

### 3.3 Areas of competence

- (a) The CIT should maintain knowledge and familiarity with current research related to psychological issues in areas including, but not limited to:
  - (1) Child development and coping, including developmental tasks
  - (1) Child interviewing and suggestibility
  - (2) Children's decision-making ability, including appropriate means of understanding children's abilities and interpreting expressed preferences or opinions
  - (3) Factors in divorcing families that increase risk to children, or promote resilience in children
  - (4) Domestic violence
  - (5) Child abuse and child welfare
  - (6) High conflict dynamics, including risks to children from exposure to parental conflict, parental undermining, alienation and estrangement
  - (7) Treatment approaches, including both traditional methods and adaptations for divorcing or separated families
  - (8) Parenting and behavioral interventions
  - (9) Special needs issues, including medical issues, psychiatric diagnoses, substance abuse, learning or educational problems, developmental delays, etc.
  - (10) Ethnic, cultural, and sexual orientation differences among families
- (b) The CIT should maintain knowledge and familiarity with legal information and issues related to court-involved therapy, including, but not limited to:
  - (1) Statutes and local Court rules in the therapist's jurisdiction
  - (2) Case precedents relevant to court-involved treatment
  - (3) Interactions and potential conflicts between governing mental health practice and family Court expectations or family law statutes
  - (4) Ethical and professional guidelines and standards applicable to the role of the CIT, obtaining ethics consultation as appropriate
  - (5) Circumstances under which it may be necessary or appropriate for the therapist to consult an attorney
- (c) The CIT should seek appropriate consultations when issues arise that are outside of the CIT's expertise.

### 3.4 Understanding of professional roles and resources

- (a) The CIT should be familiar with the roles of other professionals with whom the CIT may interface while providing therapy in a case.
- (b) The CIT should understand the roles of the child custody evaluator and the parenting coordinator, and the impact that the appointment of such professionals may have on both the process of therapy and the privacy of therapeutic information.
- (c) The CIT should understand the roles of the minor's counsel or guardian *ad litem*, and should be aware of the laws governing confidentiality of treatment information when one of these professionals is appointed.

**3.5 Representation of competence, state of professional knowledge**

- (a) The CIT should accurately represent his/her areas of competence, advise clients/parents if an issue arises that is beyond the CIT's knowledge and expertise, and initiate consultation and/or referral, when appropriate.
- (b) The CIT should understand the limits of scientific knowledge and use caution to avoid overstating the certainty or parameters of professional opinions. (See Guideline 10.)

**3.6 Consideration of impact of personal beliefs and experiences**

- (a) The CIT should remain familiar with current research on the impact of personal bias, personal beliefs and cultural and value differences, factors that may contribute to bias, and efforts that may be undertaken to contain or manage potentially biasing conditions in the CIT's work.
- (b) The CIT should recognize and acknowledge that powerful issues may arise in court-related cases that generate personal reactions in the therapist or others, and take steps to counterbalance exposure to information or otherwise manage these issues.
- (c) The CIT should obtain appropriate consultation to assist in maintaining professional objectivity.

**GUIDELINE 4: MULTIPLE RELATIONSHIPS**

**4.1 The CIT should avoid serving simultaneously in multiple roles, particularly if these create a conflict of interest. For example, the CIT should not serve simultaneously as therapist and evaluator or as therapist and friend.** Similarly, the CIT is strongly discouraged from performing different roles sequentially, as, for example, a therapist who becomes an evaluator or a therapist who becomes a parenting coordinator.

**4.2 The CIT should disclose to all relevant parties any multiple relationships that cannot be avoided and the potential negative impact of such multiple roles**

- (a) The CIT who discovers that he/she is performing multiple roles in a case should promptly seek to resolve any conflicts in a manner that is least harmful to the client and family. The CIT should clarify the expectations of each role and seek to avoid or minimize the negative impact of assuming multiple roles.
- (b) The CIT should recognize that relationships with clients are not time limited and that prior relationships, or the anticipation of future relationships, may have an adverse effect on the CIT's ability to be objective.
- (c) The CIT should attempt to avoid conflicts of interest and should address them as soon as they arise, or the potential for conflict becomes known, by:
  - (1) Identifying a real or apparent conflict of interest as soon as it becomes known to the CIT
  - (2) Refusing to assume a therapeutic role if personal, professional, legal, financial or other interests or relationships could reasonably be expected to impair objectivity, competence or effectiveness in the provision of services
  - (3) Communicating with the client or potential client or counsel, and, if necessary, with the Court, about the existence of the conflict
  - (4) Recognizing that the appearance of a conflict of interest, as well as an actual conflict of interest, can diminish public trust and confidence both in the therapeutic service and in the Court
  - (5) Differentiating between conflicts that require declining to assume or withdrawing from the therapeutic role, as opposed to multiple or sequential roles that may be undertaken with waivers from the client or parent
  - (6) Recognizing the risks of undertaking conflicting roles, even if the client or parent signs a waiver

- (7) Clearly documenting the disclosure of any waived conflict, the client's ability to understand it, and the client's waiver. The client must receive a clear explanation of the conflict, and it may also be necessary to provide such explanations to other professionals or agencies relying on the therapist's work or information

### **GUIDELINE 5: FEE ARRANGEMENTS**

#### **5.1 The CIT should establish a clear written fee agreement with the responsible parties prior to commencing the treatment relationship.**

- (a) A CIT may send a written fee agreement to the parties and/or client(s) prior to commencing treatment.
- (b) If the case is not court-involved, a CIT may discuss the terms and fee requirements of treatment directly with the parties and/or client. This discussion should be documented in the CIT's record.
- (c) If the case is already court-involved, or likely to be, a CIT may send the fee and consent agreements to counsel.

#### **5.2 The CIT should provide written documentation to each responsible party.**

- (a) Documentation should include a description of the treatment services to be provided, including all of the elements of informed consent described in Guideline 6.
- (b) A CIT should provide a fee agreement that contains, at a minimum:
  - (1) A description of all services and charges
  - (2) Expectations regarding payment, including, if applicable:
    - (i) fees associated with missed or cancelled sessions,
    - (ii) costs/fees generated by one parent,
    - (iii) consequences of non-payment, including its potential impact on continued provision of services,
    - (iv) the use of collection agencies or other legal measures that may be taken to collect the fee (see attached sample agreement)
  - (3) Policies with regard to insurance reimbursement, if any. This should include issues such as identifying the person responsible for submitting the insurance form, payment for covered and non-covered services, responsibility for submitting treatment plans (if required by the insurer) and the consequences of using insurance.
  - (4) Policies regarding advance payments, if any, for treatment services and the use of those payments
  - (5) A procedure for handling of disputes regarding payment
- (c) If the therapy is court-ordered, the CIT should provide to the Court all information required to engage the CIT so that the Court can issue an appropriate and comprehensive order. The written fee agreement may be incorporated into the Court order that initiates the therapy. The therapist should request that the Court specify the party responsible for the payment or the specific apportionment between the parents or parties. In the event that the Court order fails to address the issue of fees adequately, the therapist should take appropriate steps to obtain clarification from the Court before providing services. Arrangements should be sufficiently clear to prevent or resolve most fee-related disputes, and for a future judicial officer or reviewer to be able to resolve any such disputes submitted to the Court.
- (d) If treatment is terminated or suspended due to non-payment, the CIT should conduct the termination or suspension in accordance with the order, fee agreement and ethical principles.
- (e) The CIT should maintain complete and accurate written records of all amounts billed and all amounts paid.

## **GUIDELINE 6: INFORMED CONSENT**

### **6.1 At the outset of therapy, the CIT should provide a thorough informed consent process to adult clients and parents or legal guardians if the therapy involves the child**

- (a) A CIT has a professional obligation to inform the client of the limits of confidentiality and privilege at the outset of the therapeutic relationship, to promote informed decision-making throughout treatment and to document such explanations in the CIT's record. The CIT should clarify that these cautions do not constitute legal advice, and that the CIT will obey the Court's orders regarding treatment information.
- (b) The informed consent should use language that is understandable and includes, at a minimum, information about the nature and anticipated course of the therapy, risks and benefits of the therapy, fees, the potential involvement of other individuals in the therapy, and a discussion of confidentiality.
- (c) The CIT should be aware of state laws that impact confidentiality and access to records and these should be incorporated in the informed consent.
- (d) Clients or their counsel should have an opportunity to ask questions, obtain answers, and discuss their concerns. These discussions should be documented in the CIT's record.

### **6.2 If a child is to be involved in treatment, there are special considerations**

- (a) A CIT should generally avoid accepting a child into treatment without notifying or consulting with both parents.
- (b) A CIT should request copies of Court orders or custody judgments documenting each parent's right/authority to make decisions regarding treatment and delineation of each parent's access to treatment information.
- (c) In rare and urgent cases, such as when there is strong reason to suspect a risk to a child's safety, a CIT may accept a child in treatment at the request of one parent. This should only occur if that parent has clear legal authority to consent and pending efforts to either notify the other parent or obtain permission from the Court; however, the CIT should be aware that such a decision may increase risk to the child, and to the CIT.
- (d) A CIT should explain the nature and purpose of the treatment to a child in age-appropriate language. It may be necessary to revisit these issues as treatment proceeds.
- (e) A CIT should discuss the limits of parental involvement and confidentiality with the parents or guardians of a child or adolescent involved in treatment.

### **6.3 When a CIT becomes involved in treatment at the request of a third party such as the Court, an attorney, or a social service agency, the CIT should be especially attentive to informed consent issues**

- (a) The CIT should identify to the client the name of the person or agency that requested the services and the potential impact this may have on the treatment.
- (b) If an adult client or parent does not sign the informed consent, or otherwise has significant disagreements with the treatment process, the CIT should defer commencement of services and refer the client back to the third party agency or the Court for clarification.
- (c) If the CIT has been appointed by the Court to provide treatment to one or more adults and an adult refuses to sign consent documents, the CIT should defer commencement of services until consent is obtained or the Court takes action to resolve the issue.
- (d) If a CIT is asked by anyone to provide treatment to a child and one parent supports treatment while the other refuses consent, the therapist should refer the parties back to the Court for resolution of the dispute between the parents, and then proceed as the Court directs.
- (e) If the court-ordered treatment is to proceed, it is recommended that the CIT require a treatment order, specifying the nature of the services to be provided and the parameters of treatment, before proceeding with treatment.

- 6.4 When more than one individual participates in the therapy, the CIT should clarify with each person the nature of the relationship between the participants and between each participant and the therapist. The CIT should also clarify his/her roles and responsibilities, the anticipated use of information provided by each person, and the extent and limits of confidentiality and privilege.**
- 6.5 On a case-specific basis, the CIT should explain to the client the manner in which treatment information will be handled. Issues to be clarified may include, but are not limited to:**
- (a) Whether the consent of one or both parents will be required to release information from conjoint, co-parenting or marital therapy
  - (b) Whether information will be released to a custody evaluator, parenting coordinator, the Court, or any other individual, and the extent of the information to be released
  - (c) Whether, and how, the CIT will communicate to the Court in the event that one or both parents do not cooperate with court-ordered treatment
  - (d) What will happen if the CIT is subpoenaed to give testimony in a court-related matter
  - (e) What information can be released to insurance companies, the Court, the other parent, or other entities to enable the CIT to collect his/her fees.
- 6.6 The parent/client should be encouraged to consult with counsel before signing a therapy/informed consent agreement, if the parent or client is represented.**
- 6.7 If the CIT's level of Court involvement changes or requests are made to change the CIT's role, the CIT should inform the client of the risks, benefits and impact of any potential changes in treatment.**
- (a) The CIT should obtain consultation before contemplating a change in his/her role that might create a conflict of interest or alter therapeutic alliances.
  - (b) If the CIT becomes aware of potentially conflicting roles, he/she should take reasonable steps to immediately disclose, clarify and discuss the potential conflicts and any potential adverse impact. The CIT should make best efforts to minimize any negative impact, including withdrawing from the case, if appropriate.
  - (c) If the parties consent to a change in the CIT's role, the CIT should document the revised informed consent process.
- 6.8 The CIT should be sensitive to the possibility of being asked to provide feedback to third parties or to testify as a witness.** The CIT should inform the client of this potential at the beginning of the informed consent process and as necessary thereafter.
- (a) The CIT should take reasonable steps to clarify the limits of the therapeutic role, the potential scope of information to be released, and the potential implications of the release of information or the testimony for the client (see Guideline 7). In no case should the CIT attempt to provide legal advice to the client.

## **GUIDELINE 7: PRIVACY, CONFIDENTIALITY AND PRIVILEGE**

- 7.1 The CIT should understand the principal issues that arise in court-related therapy in regard to client/patient confidentiality and privilege**
- (a) The CIT should be aware that laws and standards vary markedly among jurisdictions, and there may be conflicts in the law within a single jurisdiction. Issues that may vary among (and within) jurisdictions include, but are not limited to:
    - (1) The identified client
    - (2) Assertion and waiver of the client's privilege
    - (3) Under what circumstances the mental health professional can or must disclose confidential information
  - (b) The CIT should be aware that ethical, clinical, and legal issues related to confidentiality/privilege may differ depending on whether a parent, child, couple or family is in treatment.

- (c) The CIT should be aware of clinical issues related to disclosure of confidential information. (See Guideline 8.7.)

#### **7.2 The impact of litigation on decisions regarding use of treatment information.**

- (a) The CIT should also be aware that a client or parent's legal case may be affected by the client's decision to release or decline to release treatment information. The CIT should encourage the client/parent to seek appropriate legal consultation before making this decision.
- (b) The CIT should consider the impact of the Court context on a client's decisions about the use of treatment information and should take precautions accordingly.
- (c) The CIT should consider that situational pressures may affect the client or parent's judgment or authority on the issue of waiving the privilege regarding treatment information. These pressures may include requests from the Court or other professionals with influence on the legal proceedings (e.g., a custody evaluator or parenting coordinator) that the parent waive his/her own, or the child's privilege as to the treatment relationship.
- (d) The CIT should be aware that in some jurisdictions or situations, parents may not hold the right to waive or assert the child's privilege in court-involved treatment or treatment of the child. In some jurisdictions, a CIT has the option or duty to resist disclosure of information, or seek direction from the Court, if the CIT determines that disclosure of the information risks the welfare of the child. The CIT should be familiar with the appropriate procedures for his/her jurisdiction.

#### **7.3 A CIT should recognize the limits of his/her expertise and, when in doubt as to whether information requested about treatment can be released, seek legal advice or request direction from the Court**

##### **7.4 Ongoing obligation to inform clients**

- (a) A CIT should revisit the discussion of confidentiality with the client as circumstances change, or as issues arise in therapy that may result in the disclosure of treatment information.
- (b) If therapy is court-ordered and there is dispute regarding privacy, confidentiality and privilege, the CIT should seek clarification from the Court prior to commencing services. If a dispute arises as to the interpretation of the Court order after services have begun, the CIT should seek direction from the Court before releasing information.

##### **7.5 Special issues in children's treatment**

- (a) A CIT should be familiar with general provisions governing confidentiality of children's treatment information in his/her jurisdiction, including:
  - (1) Who holds the child's privilege and how a child's privilege can be waived or asserted
  - (2) Under what circumstances a child or adolescent may have a role in this decision
  - (3) How the CIT should respond if he/she receives conflicting instructions from the parents
  - (4) How the CIT should respond if he/she believes that disclosure of treatment information poses a substantial risk of harm to the child
- (b) At the outset of a child's treatment, the CIT should clarify the provisions of the order or therapy agreement regarding the child's treatment information. These issues include, but are not limited to:
  - (1) How information about a child's progress will be shared with parents
  - (2) Whether the consent of one or both parents will be required to release information about the child's progress
  - (3) The role that the child's thoughts and feelings will play in determining what information is shared, and how it is shared
  - (4) Circumstances in which the CIT may be required to release information to the parent or other professionals

- (5) Circumstances that might require further discussion, clarification or modification of the order or agreement as the treatment progresses
- (c) A CIT should prepare the child client for the release of treatment information, address the child's feelings about the issue, and assist the child in coping with any stressors that may result.
- (d) The CIT should adapt explanations to the developmental and situational needs of each child.
  - (1) When working with a child client, the CIT should clarify the limits of confidentiality in developmentally appropriate language.
  - (2) A CIT should not make blanket promises to a child that treatment information will be confidential

#### **7.6 Considerations for therapists covered under the Health Insurance Portability and Accountability Act (HIPAA)**

If the CIT is a HIPAA-covered entity, he/she must be aware of his/her obligations under the Act, and the how those obligations may change if the client or family becomes involved with the Court. When requirements under HIPAA appear to be in conflict with other laws or Court orders, the CIT should obtain legal consultation.

#### **7.7 Responding to requests for treatment information from third parties**

- (a) The CIT should request a copy of the release signed by the client, former client, parent, or other authorized person. The CIT should not communicate with a third party without an appropriate release or order of the Court authorizing disclosure.
- (b) Prior to providing client information to a third party, the CIT should attempt to inform the client or former client about the request for release of information.
- (c) The CIT should inform the client or former client of the nature of the information that may be released to a third party if the client waives the privilege. If appropriate, the CIT should also refer the client or former client to his/her attorney to assist the client in making this decision.
- (d) A release does not supersede a Court order; therefore, prior to releasing information to a third party, a CIT should consult any agreement or Court order that governs the treatment.

#### **7.8 Responding to a subpoena**

- (a) A CIT should be aware of differences between subpoenas and Court orders.
- (b) A CIT who has received a subpoena should consider consulting an attorney familiar with both legal issues in the jurisdiction related to mental health law, and the requirements of the Court in which the family is involved. Procedures, requirements, and the CIT's options will vary depending on the jurisdiction, whether the case is being heard in a family Court or juvenile dependency Court, and many other issues.
- (c) A CIT should not automatically respond to a subpoena by disclosing written or oral information.
- (d) A CIT should not ignore a subpoena.
- (e) The CIT may wish to consider the additional guidance provided in Appendix A regarding specific steps that may be helpful in responding to a subpoena.

#### **7.9 Responding to a Court order for release of treatment information**

- (a) If the CIT is ordered by the Court to release information, particularly over the objection of one of the parties, the CIT should request a written order specifying the parameters of information to be released.
- (b) If there are outstanding legal questions regarding what information can be released (such as whether the CIT can release information from other agencies or child protective services), the CIT may wish to obtain the assistance of an attorney who can bring these issues to attention of the Court and obtain clarification or direction.

### 7.10 **Appealing a Court order**

There are some circumstances in which a CIT may believe that disclosing information may violate ethical or professional practice guidelines applicable to mental health practice. In such a case, the CIT may wish to consult an attorney familiar with the laws of mental health privilege/confidentiality in that jurisdiction.

## **GUIDELINE 8: METHODS AND PROCEDURES**

**8.1 The CIT should adhere to the methods and procedures generally accepted in his/her particular discipline.** In addition, the CIT should maintain methods and procedures consistent with being involved in situations, which may include litigation, testimony, and the reporting of various matters to Court, parties, or their attorneys.

### **8.2 Obtaining necessary information if the therapy is court-ordered**

- (a) The CIT should attempt to obtain all information necessary to conduct the court-ordered therapy and should discuss the goals of the court-ordered therapy with the client.
- (b) As appropriate to the specific case, the CIT should request information that may be necessary for effective treatment. This may include permission to speak to a prior therapist or other involved professionals, copies of prior Court orders, therapy records, and reports from child custody evaluators, child protective services, or a guardian *ad litem*.
- (c) The CIT should obtain necessary information, including copies of relevant Court orders, to confirm that his/her role is clearly defined and consistent with the therapeutic role and the CIT's expertise.
- (d) If the CIT is unable to obtain information from the parties or counsel that is necessary to conduct treatment, the CIT may apply to the Court for further direction if the CIT has obtained appropriate releases. Application to the Court should be preceded by proper notice to the parties and counsel.

### **8.3 Therapeutic role and process**

- (a) The CIT has a responsibility to identify both the intended clients and any others intended to be the beneficiaries of the intervention.
- (b) When the intended beneficiary of the intervention is an individual client, the primary focus of the therapist is the client's welfare and treatment is implemented for the benefit of the client. Therapists with different treatment orientations may identify different treatment goals, but all focus on improving client's functioning.
- (c) In other cases, a relationship or family unit may be the identified client or may be the participants in counseling, but the goal may be to reduce conflict or promote behavior change for the benefit of the child (e.g., co-parenting or conjoint/reunification therapy).
- (d) The CIT should clearly identify the goals, procedures and beneficiaries based on any relevant orders and in collaboration with the client(s) and other professionals as appropriate, and should clearly communicate this information to participants in the therapy.

**8.4 The CIT should understand that the information provided by the client during the course of the treatment is based upon the client's experience and perspective, which may sometimes be distorted or lacking balance and comprehensiveness**

- (a) The CIT should strive to maintain professional objectivity, and to remain aware of the impact of the therapeutic alliance on the therapist's information and perspective.
- (b) The CIT should actively consider alternative hypotheses regarding the information (i.e., data) he/she is receiving in the treatment.
- (c) The CIT should strive to be aware of societal and personal biases and continuously monitor his/her actions for evidence of potential bias. Awareness of research and focus on the treatment data inform the CIT and help limit the potential for bias. The CIT

should consider withdrawing from a case when he/she is unable to manage a known bias and/or is unable to maintain objectivity.

- (d) The CIT should be aware that the treatment may be influenced by the client or family's involvement in legal processes, and that the legal process may be influenced by the actions of the therapist.
- (e) The CIT must constantly guard against/protect his or her work from threats to professional objectivity and role boundaries.

### **8.5 Selecting Appropriate Treatment Methods**

- (a) A CIT should not exceed the bounds of his/her professional competence in his/her diagnosis, treatment planning and treatment of clients.
- (b) A CIT should use methods or interventions that are generally accepted within the professional communities and literature, and should apply methods or interventions appropriate to the situations and characteristics of court-involved families.
- (c) A CIT should be able to justify and explain the choice of methods based upon the current state of professional knowledge and research.
- (d) The CIT should select treatment methods or approaches that minimize the potential for biased or inappropriate interpretations of client's statements and behaviors or perceptions of others' behavior. This may include deliberate balance in asking questions, challenging assumptions, and supplementing behavioral observations with other methods of inquiry.
- (e) A CIT should exercise caution in forming opinions or structuring therapy based on limited or one-sided information.
- (f) A CIT should maintain current knowledge about the validity (or lack of validity) of using specific behaviors as a basis for diagnosis or treatment, and should employ treatment methods that allow the therapist to gather information from a variety of methods and observations.

### **8.6 Critical examination of information**

- (a) A CIT should critically examine information received from a client before formulating or offering a clinical opinion. This is especially important in light of the possibility that a therapeutic alliance may produce a bias toward the client.
- (b) A CIT should recognize that loss of therapeutic objectivity may harm a child or family, whether or not the therapist reports or testifies about the therapy. Therapists should avoid inappropriate bias by actively considering, and exploring, rival hypotheses about a client's difficulties.

### **8.7 A CIT should consider the clinical implications of actions taken when the CIT is asked to release treatment information, and should endeavor to minimize risks in these areas**

- (a) The therapist should be aware that an adult client requesting the release of information may not fully attend to, or understand, the risks and benefits of such a decision. This may lead to distress in the client or damage to the therapeutic alliance, if the client is surprised by the therapist's information or opinion.
- (b) The therapist should assist the client in understanding:
  - (1) The risks and benefits of releasing information
  - (2) The nature of the information in the client's records
  - (3) The CIT's obligation to provide complete answers when questioned under oath and to avoid misleading other professionals or the Court
  - (4) Other potential factors that may lead to distress in the client or damage to the therapeutic relationship due to the release of information
- (c) When a child is involved in treatment and the CIT is asked to release treatment information, the CIT should consider and address issues to minimize disruption of treatment and avoid distress in the child. Issues to consider may include:
  - (1) Appreciation of the parent's right to information and any concerns that he or she may have about the child or the therapy

- (2) Protection of the child's treatment progress and privacy
- (3) Potential for disruption of the therapeutic relationship if the parent feels excluded or resorts to litigation in order to obtain information
- (4) Possibilities for negotiating the parent's involvement and managing the sharing of information without violation of the child's privacy, wholesale release of treatment information, or litigation
- (d) The CIT should consider and address the various clinical possibilities in children's expressed preferences about disclosure of information. The CIT should consider the potential implications of whatever action the CIT takes, and should utilize available therapeutic options for dealing with the child's information. Issues to consider and address may include:
  - (1) Treatment goals related to the children's resolving of issues with parents
  - (2) A child's realistic or unrealistic fears about the parent's response to the information
  - (3) The child's own emotional issues or difficulty in expressing feelings directly
  - (4) Whether the child will ultimately be empowered or protected by having the CIT share information on the child's behalf
  - (5) Whether the child needs protective measures to prevent harm resulting from the sharing of therapeutic information
  - (6) Whether information can be disclosed in a therapeutic rather than legal setting
- (e) The CIT should prepare both adult and child clients for the sharing of information and endeavor to anticipate any problems the client may experience as a result.

### **8.8 A CIT should seek appropriate advice**

When in doubt about an appropriate course of action, the CIT should consider seeking legal advice or professional consultation. Such advice may protect both the clients/participants in therapy and the CIT.

## **GUIDELINE 9: DOCUMENTATION**

**9.1 A CIT should create documentation so that the Court can understand the treatment process, progress and financial arrangements.**

**9.2 A CIT should establish and maintain a system of record keeping that is consistent with applicable law, rules, and regulations and that safeguards applicable privacy, confidentiality, and legal privilege.** A CIT should create and maintain records reasonably contemporaneously with the provision of services.

- (a) In deciding what to include in the record, the CIT may determine what is necessary in order to:
  - (1) Provide competent care
  - (2) Assist collaborating professionals in delivery of care
  - (3) Provide documentation required for reimbursement or required administratively under contracts or laws
  - (4) Effectively document any decision making, especially in high-risk situations
  - (5) Allow the CIT to effectively answer a legal or regulatory complaint
- (b) If a client, parent or third party requests limited record keeping as a condition of treatment the CIT should explain that record keeping must meet professional standards.

**9.3 Records should be organized and sufficiently detailed**

A CIT should maintain records that facilitate the provision of future services by the CIT and by other professionals, ensure accuracy of billing and payments, and ensure compliance with ethical requirements and laws. Records should be sufficiently detailed, legible and readily available for reproduction upon receipt of appropriate releases or Court orders.

**9.4 Confidentiality and security of records**

A CIT should make all reasonable efforts to maintain confidentiality in creating, storing, accessing, transferring and disposing of records under his/her control. A CIT should maintain active control of records, provide appropriate training to any support staff, and take reasonable care to prevent the loss or destruction of records.

**9.5 Ethical and statutory requirements**

(a) A CIT should be cognizant of and follow relevant ethical and statutory requirements regarding maintaining records.

**9.6 Communicate and clarify recordkeeping with the client and/or parents**

- (a) When the client is a child, the CIT should request any orders establishing who has the authority to consent to release of records. A minor may have the legal prerogative to consent to treatment, but the parent may nevertheless seek access to the records. A CIT should verify parents' statements of having the sole authority to consent to or block release of records by requesting relevant documents.
- (b) When the CIT has multiple clients, such as when a parent participates in therapy with the child, the CIT should clarify as part of the informed consent procedure how the records are kept and who can authorize their release.
- (c) A CIT should clarify any costs associated with providing copies of records and follow relevant statutes regarding fee arrangements. A CIT should not refuse to release records needed for emergency treatment because a client has not paid for services.
- (d) Even when clients are participating in therapy pursuant to a Court order, the CIT should clarify policies, procedures and fees associated with the release of records and confidentiality.

**GUIDELINE 10: PROFESSIONAL COMMUNICATION**

Communication from a CIT to another therapist, the client, parents, counsel, or the Court carries with it an obligation to ensure that the communication is authorized, clear, and accurate. A CIT should recognize the adversarial nature of the legal system and the potential impact of the therapist's observations and opinions.

**10.1 Authorization to communicate**

A CIT should take reasonable steps to ensure that he/she is authorized to communicate with a third party, as described in Guideline 7.

**10.2 Accuracy in communication**

- (a) In communication with others, a CIT should take reasonable steps to ensure that he/she is accurate in communicating:
- (1) The nature of the service provided
  - (2) His or her opinions on diagnosis, prognosis, and/or progress in treatment
  - (3) His or her opinions on appropriate actions that would support the therapy
  - (4) His or her understanding of the role the therapist has with the family and in the Court process
  - (5) Reports or observations of parents' or children's behavior
- (b) The CIT should make reasonable efforts to ensure that information regarding his or her services, including treatment, reports and testimony is communicated in language that can be understood by consumers and minimizes potential for misuse of the therapist's information.

**10.3 Communicating limits and distinctions**

A CIT should communicate the bases and limitations of observations and opinions.

- (a) In all communications, especially in reports or testimony, the CIT should distinguish between observations, verbatim statements, inferences derived from his or her sources of information and conclusions or assessments reached.

- (b) A CIT should articulate the limits of any communications. A CIT should decline to communicate opinions, recommendations, or information requested:
  - (1) When there is insufficient data on which to form a reliable opinion
  - (2) When there is no authorization to do so
  - (3) When the opinion requested is inconsistent with the role of the CIT
- (c) Where the information available to the CIT might support more than one therapeutic assessment or opinion, the CIT should present and acknowledge the alternate possibilities and any treatment data or research supporting them.
- (d) When necessary and appropriate, a CIT should be prepared to explain the limits of the CIT's role and the reasons it is inappropriate to give testimony or opinions in violation of that role.

#### **10.4 Appropriate parties to include in communication**

A CIT should carefully consider who should be aware of and involved in each professional communication.

- (a) The CIT should consider whether one or both counsel, a guardian *ad litem*, child's counsel, other CITs, or parenting coordinator should be included in the communication.
- (b) The CIT should respond with caution if an adult client's attorney requests a treatment report, particularly if the request comes through the client. The CIT should discuss with the client the potential content and implications of such a report, as discussed in Guidelines 7 and 8. With an appropriate release, the CIT may also wish to consider consulting with the adult client's attorney to ensure that the attorney is aware of the potential content and implications of a report from the therapist.
- (c) The CIT in a neutral role, such as that of child's therapist, co-parenting therapist or conjoint/reunification therapist, should avoid unilateral communication with either parent's attorney in order to avoid appearance of bias and to contain the potential for actual bias.

#### **10.5 Testimony**

- (a) A CIT should recognize the limits of his/her knowledge, and the potential impact that testifying in Court may have on the client, and on treatment. Prior to testifying, a CIT should thoroughly discuss these issues with adult clients, and should engage in age-appropriate preparation of child clients.
- (b) A CIT should comply with any limits on the scope of his/her testimony, which have been specified by a judicial officer in conjunction with any applicable ethical code.
- (c) A CIT should anticipate that clients, attorneys, and the Court may ask the CIT to testify beyond the limits of his or her knowledge and role. The CIT should respectfully decline to provide information or opinions that exceed the treatment role or the CIT's knowledge base.
- (d) A CIT should seek to clarify any conflicts between the testimony requested by the Court or counsel and any limitations imposed by professional ethics codes or licensing regulations.
- (e) When the CIT is designated as an Expert Witness by the Court he or she may offer relevant clinical opinions within the role of the treating expert.
  - (1) The CIT may offer opinions on issues such as diagnosis, changes or behaviors observed in treatment, treatment plan, prognosis, coping and developmental abilities, conditions necessary for effective treatment, etc.
  - (2) The CIT should not render opinions on psycho-legal issues (e.g., parental capacity, child custody, validity of an abuse allegation, joint or sole custody), as these are beyond the scope of the treatment role and properly the province of other professionals and the Court.