



**MORE**

for Moms & Dads .....

# Mental Health Confidentiality During Separation and Divorce



By Lindsay Parvis

**W**hen parents break up, a family is faced with major life changes, and individual family members and even entire families may begin to receive services from one or more mental health providers. A significant part of a healthy and beneficial client-therapist relationship is the safe place created where the client may share their innermost thoughts, feelings and challenges. Privacy is key to that safety, and this must be considered when preparing for the legal side of separation. This article will explore common mental health provider services utilized during separation, the legal aspects of a family breakup and an introduction to mental health privilege.

## Common Services

Mental health professionals provide a variety of services for families experiencing a breakup. Perhaps the most obvious is therapy, which can be for a parent, a child, the couple or the entire family – including sessions for both individuals and the family unit as a whole. Another option is group therapy, which includes people who are unrelated but are focused on a common issue, and/or reunification therapy to establish or repair a parent-child relationship.

Family members going through separations may also undergo psychological evaluations attorneys and judges use to assess parenting abilities and a child's needs. These evaluations help determine parenting time schedules and legal decision-making that fit a child's best interests.

## Legal Aspects of a Family Breakup

When a family separates or a separated family experiences a big change, the legal side focuses primarily on legal custody – legal decision-making about important issues like health, education and religious upbringing – and physical custody, i.e., with which parent a child lives and the schedule for time with each parent. Both are guided by a child's best interests.

Parents who agree about best interests, decision-making and parenting time usually don't contest custody before a judge. As a result, they are most likely to participate in individual, couples and family therapy. Parents who cannot reach common ground more often need evaluations to navigate contested custody litigation. Ultimately, a trial is held, and a judge or magistrate will decide what custody and time arrangements are in the child's best interests.

## Mental Health Privilege

"Privilege" is the right to decide to keep certain information confidential, "off limits" and out of court in contested litigation.

Not all of the common services listed above are privileged. For example, psychological and custody evaluations are intended to educate the parents and the judge. However, there still may be rules limiting the sharing of reports and testing data, which help protect privacy.

Privilege can also be waived, allowing disclosure of the privileged information to the other parent (and their attorney, if they have one) and used as evidence at trial.

To paint a picture, privilege is like a gate: Privileged information is protected behind the gate. If waived, the gate opens and out goes the privileged information.

A separating couple should be aware of these factors related to privilege.

**Geography matters.** Each jurisdiction in the Maryland-D.C.-Virginia area has different laws about privilege, which may depend on where parents live, work and use mental health services. It's important to meet with a lawyer who understands each jurisdiction's privilege and related rules to know what mental health information is protected – and what is not – and your options for where to file in court.

**It's a balancing act.** When mental health services are not privileged, parents must balance the benefits of accessing mental health services for themselves or their children against the risks that information from those services could be used by the other parent to be granted custody. With guidance from a lawyer, the parent should explore the importance of meeting their children's needs – or their own needs, so they can be the best parents possible – against the potential exposure of sensitive information.

**Protect privilege.** When mental health services are privileged, be intentional about protecting that privilege. If waiving privilege, do so intentionally after weighing the pros and cons. If you have a lawyer, make sure you are clear on what your legal rights and options are when asked to reveal privileged information. Also, be careful about signing authorizations allowing your therapist to speak to others – especially your ex – and refrain from sharing privileged information with your ex and others. And certainly keep this information off of social media.

### Understand boundaries when your child has a privilege.

When your child's mental health services are privileged, it is important to understand the boundaries their therapist may establish about what they will share with you. Whether and how your child's privilege can be waived may involve the court appointing an attorney for your child to represent their best interests regarding the privilege. Parents need to cooperate with their child's attorney in those situations. Also, keep in mind that a child's therapist may share information with a parent that may be "off-limits" in court.

Parents who are separating must consider what's in the best interests of their children from both the legal and the mental health perspectives when they're going through life changes. However, they also must understand how the two intersect, particularly when mental health information is not privileged. Weighing the potential issues when privilege does not exist will help parents truly make the best decisions for their children.

Lindsay Parvis, a principal in Joseph Greenwald & Laake's Rockville, Maryland, office, helps her clients navigate some of life's biggest challenges: divorce, custody, domestic violence and the financial matters that accompany divorce. She may be reached at [lparvis@jglaw.com](mailto:lparvis@jglaw.com).

## 4-week Online Classes for Parents & Caregivers

Tools to build a cooperative, calm, and connected family.

**PEP's award-winning Master Classes are offered monthly**

- Encouragement
- Redefining Discipline
- What Your Child's Behavior Means



**Bring out the best in your children and in yourself.**

[www.PEPparent.org](http://www.PEPparent.org)

**pep**  
Educating parents.  
Enriching families.