



Representation of Parents with Mental Illness:

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Working with the Client

➤ Diagnosis and Medications

- DSM-IV-TR to learn about diagnosis
- Judge's Guide to Mental Health Jargon:
www.gainscenter.samhsa.org, 866-518-TAPA
- Web MD for brief symptom or med information
- Informs you about treatment options; some insight into symptoms; know med side effects

➤ Symptoms and Functioning

- Analysis: actual functioning and abilities as a parent
- Knowing individual symptoms can give insight in managing professional relationship and advocacy
- How do their symptoms/level of functioning affect their interaction with you as their attorney? With others?



Working with the Client

➤ Setting Clear Boundaries

- Clients should understand your role as a *legal advocate*
- Client work with their providers on mental health needs
- May be limits on telephone calls, write letters about inappropriate behavior, craft rule-based retainer
- May require limiting scope of representation

➤ Client Providers and Supports

- Releases for all providers (HIPAA and non-HIPAA)
- Think critically about your client's needs in terms of supports for functioning and parenting

➤ Denial of a Mental Illness

- Work to build an alliance – encourage treatment
- Recognize when you have done all you can



Working with Providers

- **Regularly Communicate with Providers**
 - They should contact you with questions/concerns
 - They should call you asap if client is hospitalized
 - Clinicians can referral to beneficial treatment/resources
- **Inform Providers**
 - Make sure providers understand what your role entails
 - Ensure providers are clear on what happened in court
 - Prepare providers for GAL investigations
- **Managing the Attorney-Client Relationship**
 - Clinicians can assist with managing the client relationship, understanding illness and/or symptoms
 - Identify day-to-day “case managers” for client



Working with Providers

- **Help with Specific Parenting Skills**
 - Can refer client to skill-building services/classes
 - Provider can support parent with these other services
- **Reinforcing your Legal Advice**
 - Providers can give a clinical perspective to the advice you are already giving your client
 - Clinicians can reinforce for the client their responsibilities
- **Encourage Providers to be Advocates**
 - Clinicians can draft letters for the Court: functioning, observation of parenting skills, etc.
 - In investigations their input can be invaluable in terms of comments on client functioning



Advocating for Your Client

- **Know Your Client's Illness and their Providers/Supports**
 - Treatment and/or medication compliant
 - Services being accessed and supports in place
 - Opportunity to educate GAL, probation officer, Judge
- **Be Forthright Regarding their Illness and Hospitalizations**
 - Acknowledge the setbacks and credit the efforts
 - Trajectory of mental illness: recovery includes relapses
- **Focus on Functioning and Parenting Skills**
 - Re-focus conversation away from client's diagnosis only
 - More opportunities to educate – talk specifics regarding individual client and individual children



Advocating for Your Client

➤ Your Client's Position

- Confront your own bias and be a zealous advocate
- Advise client as to what you can reasonably achieve, but the client can make “adequately considered” bad decisions (RPC 1.14)

➤ Practical Solutions for the Client

- Assist the parent to be the best parent they can be
- Be creative when crafting pleadings and agreements
- Redefining “success” for the client with realistic solutions

➤ Evidentiary and Legal Standards

- *In camera* review of hospital/psychiatric records
- Limited releases for clinicians to talk to investigators
- Challenge non-clinician GAL/investigator on mental health or parenting evaluation/assessment

Issues of Confidentiality and Privilege

- Clinician-patient Privilege Statutes
 - G.L. c. 233 § 20B (psychotherapist-patient), G.L. c. 112 § 129A (psychologist-patient), and/or G.L. c. 112 §§ 135A and 135B (social worker-client)
- Privileged Psychiatric or Hospital Records
 - Court must hold a hearing in chambers, reviewing these records *in camera*, in order to determine “that the psychotherapist has evidence bearing significantly on the patient’s ability to provide suitable care or custody, and that *it is more important to the welfare of the child that the communication be disclosed than that the relationship between patient and psychotherapist be protected.*” (emphasis added) G.L. c. 233 § 20B(e).
- Waiving Child’s Therapist Privilege
 - Limited Purpose GAL to Waive or Assert Privilege

Guardian *ad Litem*/Next Friend appointments and Ethical Rule

- c. 208 § 15
 - Court may appoint a “Guardian” for a divorce defendant incapacitated by mental illness
 - Court often does so *without any medical evidence*
 - c. 201 § 34 allows appointment of GAL/Next Friend
 - Infringement on client’s autonomy; appt of *last resort*
- BBO SJC Rule 1.14
 - Attorney of client with disability must maintain normal lawyer-client relationship as far as reasonably possible
 - Exception: client becomes incompetent, client lacks sufficient capacity to make adequately considered decisions, client is at risk of substantial harm, physical, mental, financial, or otherwise
 - Maintain confidentiality as much as possible even with other interventions

Supports for Parents

- **Mental Health Legal Advisors Committee**
 - Intake Days: Mon, Wed, Fri : 8:30am – 1pm
 - Custody/visitation issues are prioritized for family cases
 - Representation and advice to clients
 - Technical assistance to attorneys
 - www.mass.gov/mhlac/index.html

- **Clubhouse Family Legal Support Project**
 - Grant Funded Project: MBF and DMH
 - Agency collaboration: MHLAC and Employment Options, Inc. (clubhouse in Marlborough)
 - Custody/visitation issues are prioritized
 - Model of integration of clubhouse supports and legal assistance → team/holistic approach to representation
 - www.employmentoptions.org/family_legal.htm

Supports for Parents

➤ Clubhouses

- Massachusetts Clubhouse Coalition:
www.maclubs.org/MAclubhouses.php
- Traditional areas of support: housing and employment
- Connection to other providers: DMH, local agencies
- Employment Options, Inc., Family Initiatives:
www.employmentoptions.org/family_initiatives.htm
 - ✓ Family Project: parent supports for DMH consumers
 - ✓ Family Options: family coaching, peer support, wrap-around services for family

➤ Treatment Options

- Partial hospitalization, day treatment, DBT, CBT, DRA, AA/NA
- Parenting class, parent support groups
- Coordinated team approach to treatment yields successful results for individuals with mental illness