



## Use a Stipulation: How to Avoid Being Accused of Involvement in a Multiple Relationship

G. Andrew H. Benjamin, JD, PhD, ABPP and Liang Tien, PsyD

**M**ultiple relationships arise quite frequently for psychologists in the context of custody, employment, and guardianship cases. Whether child psychologists or adult psychologists, when it becomes known that your records and you exist, some lawyer will come a calling.

Ask the question “could lawyers become involved” when taking on a new case of: any adult who is starting a child in treatment or any adult in a relationship with another adult with children; any adult who is having employment difficulties; and any adult representing an adult dependent person or an elder. Becoming involved in such a case remains an active quarter from which ethics complaints are propagated, if a lawyer attempts to shift the treating role you began in as a psychologist to a forensic role.

A multiple relationship is more likely alleged when a psychologist is providing treatment to an adult or a child of such a relationship and then a lawyer requests opinions from the psychologist, as if the psychologist is an expert about all parties involved in the family, the issues before and during employment, or issues before and during the diminution of capacity. Lawyers in such contexts often blur the lines between being a fact witness and expert witness by using the psychologists’ records and from subsequent testimony. The release of the records or your testimony is likely to rupture the therapeutic alliance for at least one of the parties involved in the case.

Though violations of the Code of Conduct regarding multiple relationships (APA Ethical Principles of Psychologists and Code of Conduct, 2002, Standard 3.05) have diminished, some psychologists still struggle with how to protect the confidences of their clients (Fisher, 2008). When unwary treating psychologists mix roles in their cases, the lawyers will spot the multiple relationships and be unforgiving to psychologists. Below are some methods to prevent such a misstep in your practice.

### Practice Tip 1

**Engaging in treatment, then later engaging in any part of a legal proceeding can be construed as multiple relationships.**

Treating psychologists can hold to the role in which they agreed to serve in by clarifying the boundaries of the role from the beginning of the treating relationship. Delineate one role and stay within that role throughout the case whenever lawyers become involved with the person you are treating.

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### Practice Tip 2

**Talk to clients about the strict boundaries that would prevent the release of information before treatment starts as part of consent to treatment.**

Careful, in-depth discussions regarding the need to erect prohibitions against psychologists becoming involved in any court proceeding assures that no client, the domestic partner, the client’s employer, or a family member will attempt to soil the psychotherapeutic alliance. The surest way to remain faithful (APA, 2002, Principle B: Fidelity and Responsibility) to your clients is by upholding their confidentiality (APA, 2002, Standards 4.01: Maintaining Confidentiality) while adhering to the requirements of the law (APA, 2002, Standard 1.02 Conflict between Ethics and Law, Regulations, or other Governing Legal Authority), all the while avoiding harm (APA, 2002, Principle A: Nonmaleficence and Standard 3.04 Avoiding Harm), and remaining true to the principle of beneficence (APA, 2002, Principle A).



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One method to accomplish all of these objectives is through stipulations. For instance, in a possible custody case, psychologists before beginning work on an evaluation or treatment of the child, or adult member of the couple, or the couple that is starting psychotherapy, would identify all persons who could provide informed consent to treatment or could later obtain a court order to obtain records and testimony. Each of these people would stipulate that none of the information disclosed would ever be released to anyone outside of the psychotherapeutic relationship. Record in your notes the releases of information to approach each of these people and their contemporaneous responses during the conversation or e-mail exchange about the stipulation. Follow the conversation with sending them a hardcopy of your practice agreement and the stipulation to review before meeting for the first time, if possible, but certainly no later than after the first hour of client contact. Engage in no further client contact until your role is protected by the stipulation.

### Practice Tip 3

**A written stipulation fully informs your potential client and the other adults about protecting confidential information, and provides each with an opportunity to check with their legal advisors before you begin providing services to your client.**

Do take the opportunity in writing to clarify the importance of protecting confidentiality, the treatment rationale behind the privilege to protect confidential information from the legal process, and the possible harm that might arise from authorization to release confidential information. When your client and the other adults, who might seek your records or your testimony, sign such a written document, you have created a written stipulation. Such a stipulation creates a binding contract that a Judge will likely honor. The stipulation shows that from the onset of the case, you acted in good faith. It serves as an instrument that prohibits your records or your testimony from being used as evidence, and will protect you from an accusation of having engaged in a multiple relationship.

Filing such a stipulation in the State of Washington has protected hundreds of mental health records from being exposed or psychologists from having to testify. Only a few lawyers involved in such cases have pursued court orders to compel disclosure of records or testimony. When they have done so, Judges, have upheld the stipulations as contracts, and not ordered the release of the mental health records or psychologists to testify. Consult with your California lawyers – we believe that you will find that such a process will work as efficaciously in California.

### Practice Tip 4

**Develop your own document that comports with the law of California.**

On the next page is suggested language for a written stipulation that works in Washington. Any mention of a child would be dropped in an employment or guardianship case.

### Practice Tip 5

**Obtain consultation to review the version of the stipulation you want to use before sending it to the clients that approach you. Do not consider any attorney or any psychologist as equally knowledgeable when obtaining consultation.**

Do not seek counsel from just any mental health professional or lawyer. Please call the volunteer specialists who serve you in CPA's Ethics Committees. Also, a JD / PhD trained clinical psychologist in your jurisdiction that knows the nuances about the laws related to psychological practice may provide consultation. Additionally, the two largest malpractice carriers that serve psychologists provide free legal counsel.

### Practice Tip 6

**Send a contemporaneous written communication to the consultant that provided your counsel.**

You should memorialize the consultation by sending a written communication that summarizes the interchange. The consultation shows a transparent decision making process occurred while attempting to meet psychological ethics, and the legal standard of care. Such an action seems to decrease the risk of an ethics complaints or lawsuits. If a complaint is filed or you are sued, such a document can help to bolster your contention that you acted reasonably at the time when the stipulation was written, that it was presented to any of the possible parties that could be involved in litigation, and that you acted upon it as the treating psychologist.

### Practice Tip 7

**If a lawyer attempts to eviscerate the stipulation, fax a copy of it to the clerk or the bailiff of the Judge that is involved with the parties.**

To prevent a Court from ordering the release of the records, or you from having to testify, respond to any request for information as if you have just received a subpoena (See, "*Subpoena: It's just a request for information*" at <http://www.division42.org/MembersArea/IPfiles/Winter08>). Prepare a written response, in the form of a legal declaration. It should discuss the reasons for not releasing the records or providing testimony, and be accompanied by a copy of the signed stipulation of the parties. You also may want to recommend that another psychologist conduct an independent forensic evaluation so that the evidence that the lawyer believes she or he needs may be furnished in a manner that does not create a multiple relationship for you. Do send a copy of this recommendation to all of the lawyers in the case, and the clerk or bailiff of the Judge. The Judge will likely bar any further incursion by the lawyer.

### References

American Psychological Association. (2002). *Ethical principles of psychologists and code of Conduct*. Washington, D.C.: Author.  
Fisher, M.A. (2008). Protecting confidentiality rights. *American Psychologist*, 63, 1-13.

*G. Andrew H. Benjamin, JD, PhD, ABPP, is a Clinical Professor of Psychology, Affiliate Professor of Law, and Director, University of Washington Parenting Evaluation/Training Program (PETP).*

*Liang Tien, PsyD, is a Professor with Antioch University Seattle teaching in the Psy.D. Program and practices in Issaquah, Washington. She has served and chaired the Washington State Ethics Committee and was past co-Chair of Washington State Board of Psychology.*



## Practice Tip 4 (sample)

### STIPULATION OF (Names of the couple)

THIS STIPULATION is entered into between (Names of any adults who may likely seek your testimony or your records), and they declare and agree to the following:

- 1) All communications among the parties, their child, and the Psychologist (insert your name here) will be confidential and privileged from disclosure;
- 2) Both parties stipulate that (insert your name here) will not be required to testify at or to produce for any proceeding or in any court, opinions, records, documents, or recordings formed or created as part of the psychotherapy process;
- 3) It is in the best interests of the child and the parties that no one feels influenced by any impending legal action when involved in psychotherapy;
- 4) Without the parties entering into this type of stipulation, it is quite likely that the therapeutic alliance would be affected detrimentally;
- 5) Empirical research has demonstrated that if clients of mental health services are assured of confidentiality, they are more willing to respond to personal inquires and are more honest in their responses during psychotherapeutic evaluation and treatment;
- 6) As a society we want our mental health professionals to protect the confidences of our clients unless a few very specific limitations should arise. Destroying the privileged communication protection for psychologist and client communications would prevent effective therapeutic interventions from occurring;
- 7) This stipulation does not preclude obeying the statutory requirements to report information about: child, adult dependent person or elder abuse, neglect or exploitation; an actual threat of violence against a reasonably identifiable victim(s); or mental illness that requires involuntary commitment because of danger to self or others or grave disability;
- 8) These stipulations have been explained to us and we agree to abide by them. We have been provided ample opportunity to inquire into the experience and credentials of the Psychologist and have consulted with our attorneys or other Psychotherapists about these stipulations. We are fully satisfied with the proposed approach to protecting our confidences from disclosure for the purposes of any legal process.

We certify under penalty of perjury under the laws of Washington that the foregoing is true and correct, and mutually agreed upon.

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Any adult who could obtain a court order to obtain release of your records or your testimony

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Any adult who could obtain a court order to obtain release of your records or your testimony

Date\_\_\_\_\_

Date\_\_\_\_\_