

Take New Clients With a Psychological Grain of Salt

Attorneys must be zealous advocates, but that does not mean accepting every word our clients say. Keep that psychological grain of salt handy – and warn clients that they may sometimes be affronted by our questions and skepticism.

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January 21, 2022



The phone rings. It's a potential new client asking that you come on board as their fourth attorney. Your warning sensors flash. Immediately, the potential client advises that their spouse is a narcissist, and in the same breath, notes that their previous attorneys have been "condescending." You inquire if the spouse has ever been

diagnosed by a mental health professional as narcissistic, only to be told “no, but they sure have every trait of a narcissist.” You ask why the potential client views their prior attorneys as condescending. The response: “They were just never willing to see things my way.” What’s going on?

Attorneys have to be zealous advocates, but part of that zealotry is to periodically and appropriately question the client, not to simply endorse everything the client says. What are our biases, and how do we shield ourselves and our clients from the impact of those biases? Moreover, how can we respect the process while preserving the best interests of the children who are caught up in their parents’ battle?

Consider the following, from the AAML Bounds of Advocacy:

6.1 An attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, minor children.

6.2 An attorney should not permit a client to contest child custody, contact, or access for either financial leverage or vindictiveness.

The family lawyer’s approach is crucial to the future interaction of the family, a matter we sometimes forget. Custody cases are the kinds of cases that provoke ulcers – not just in the litigants – but in their attorneys as well. Mental health professionals, whether they are treating one or both of the parties, or are court-appointed to do child custody evaluations or reunification therapy, are often overworked and burned out. The concept of self-care becomes aspirational. How can you stay chipper and view the big picture?

A Psychological Grain of Salt: Handling Clients with Personality Disorders

Bill Eddy (LCSW, JD), Co-Founder and Chief Innovation Officer of the High Conflict Institute in San Diego, California, focuses on the impact of the mental health disorders and personality disorders regarding those cases that actually proceed to trial. Why should an attorney use caution when a potential client characterizes a spouse as “narcissistic” absent formal diagnosis? A certain percentage of the demographic described by Eddy in *Splitting: Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder* (New Harbinger Publications; 2d ed., 2021) is comprised of litigants and attorneys locked in battle in custody suits. Eddy contends that there is a hidden problem lurking in divorce high conflict cases – that

many such cases involve litigants and/or attorneys who suffer from personality disorders. For example, in *Splitting* (at 22), Eddy notes that those with borderline personality are prone to “some or all of these characteristics”, including:

- Sudden and intense anger
- Wide, rapid mood swings
- Impulsive behavior, often regretted but sometimes defended as justified
- Substance abuse, eating disorders, or potentially self-harming behavior
- Impaired, black-and-white thinking, called “Splitting”.

Eddy characterizes those with Personality Disorder as often exhibiting the following traits (*Splitting*, at 23):

- Self-absorbed and indifferent to the needs of others
- A belief that they are superior to others
- A lack of empathy for others
- Highly sensitive to criticism of perceived insults
- Demeaning and insulting to the people closest to them, sometimes in public (and often inspire anger in the people around them).

Eddy adds that while there are many similar personality traits between those who are narcissists and those who are anti-social, narcissists lack “the qualities of deception, aggression, and impulsivity that anti-social(s) have.”

Can we refrain from allowing our own biases from influencing our representation of people who might present with a personality disorder or some other mental health issue? In terms of biases, we must also be mindful of the stereotypes that flow from certain diagnoses. Focus on such stereotypes potentially closes off the mind to other possibilities that may be present in a given case. We need to focus on facts and observable behaviors, not speculation and the labels tendered by our client who may simply be playing armchair psychologist.

The Client’s Story: Speculation or Fact?

Attorneys and mental health professionals need to have open minds and a healthy respect for digging deeper. Because of that, we need to warn our clients that they may sometimes be affronted by our questions and our predilection for skepticism. Isn’t it

better to flesh out the case in the comfort of the lawyer's office rather than to be throttled on the very same point on cross-examination in the courtroom?

Clients must have reasonable expectations from the time they first contact their attorneys. They must appreciate the fact that their lawyers will insist on verifiable data, not speculation. This may involve molding the client's expectations, and seeking changes in their behavior, from haphazard allegations to insisting on documentation that can substantiate claims. We also need to remind ourselves that family lawyers are not lone riders. We are part of a team, and the client must also try to adjust to working with the attorney and the support staff in preparing pleadings and affidavits, and in gathering documentation. It is simply imprudent to adopt a client's story without inquiring further. Yes, let's give the client the benefit of the doubt as having good intentions, but we still have a duty to ferret out additional details. There is a qualitative and quantitative difference between speculation and fact.

Attorneys also need to have a healthy respect for the point of diminishing return. What is the budget in a given case? Not every lead can be pursued in every case. What information is crucial? What information might be helpful, but might delay the case? More and more, judges are placing time limits on hearings and trials. The client needs to understand that one year's worth of text messages cannot be read into the record in a thirty-minute temporary hearing. Big picture versus minutiae – a constant refocusing is mandatory for the best representation.

Balancing Zealous Advocacy Against Healthy Skepticism

Custody cases are stressful. Is there a need to schedule monthly or weekly meetings with the client to assess progress and to schedule additional work to be done? How does the stress of the case, caring for the children, and work balance out for each client? People have different bandwidths. Some clients juggle the extra demands of litigation more easily than others. How can we help the client understand not only their case (fact specifics and the impact of applicable law) but also the impact of the personalities of the opposing party and opposing counsel as well as the temperament of the judge hearing the case? Some attorneys resist any attempt to work things through settlement. They are indifferent to shielding the children made the subject of the case. They simply thrive on ramping the case up. Do the facts really merit taking a sledgehammer to an ant?

Children's needs may differ from a client's expectations. How can attorneys and mental health professionals help each party focus on strengths and the best interests of the child?

A concern in every case is overidentifying with the client. We owe our clients zealous advocacy, balanced against healthy skepticism. Our duty, at all times, is to do constant reality checks, to be cognizant of whether one or both of the parties has a personality disorder. Are they persuasive blamers? There may be no need to prove a diagnosis in a given case. Instead, we should be mindful of personality patterns, and how to best manage potentially [high conflict personalities](#) in the context of litigation, to preserve and protect the best interest of children.

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