

Family Law Education Reform Project

THE ROLE OF EMOTION IN FAMILY LAW PRACTICE

OVERVIEW

This is part of a series of teaching materials prepared by the American Academy of Matrimonial Lawyers Best Practices Committee.

EXPLANATION AND COMMENTS

This unit focuses on the role of emotion in family law practice. It is authored by Mike Albano, a past president of the AAML and Santo Albano, a noted psychologist. It includes an outline of the material as well as information on the initial client conference. It is accompanied by a video which demonstrates an initial client conference with commentary by a psychologist highlighting the emotional content of the interview.

ABOUT THE AUTHOR

American Academy of Matrimonial Lawyers Best Practices Committee

Professor Mary Kay Kisthardt, Reporter

UMKC School of Law

The material was authored by Santo Albano, Ph.D. and Michael Albano a past president of the American Academy of Matrimonial Lawyers. Biographical information is available at www.aaml.org.

The **American Academy of Matrimonial Lawyers**, founded in 1962, is an association of 1600 highly regarded domestic relations attorneys hailing from all 50 states, dedicated "to providing leadership that promotes the highest degree of professionalism and excellence in the practice of family law." The on-line materials were developed by the Academy's Best Practices Committee comprised of 5 senior Academy members from geographically diverse parts of the United States.

Emotions in Family Law Practice

Lesson Guide

Santo J. Albano, Ph.D

Michael Albano, JD

Objectives

At the end of this training module, the family practitioners are able to:

- Identify core client feelings
- Build and utilize a feeling vocabulary
- Respond to client feelings
- Differentiate between responding to content and responding to feelings.
- Verify accuracy of feeling comments.

Assessment

The trainer assesses participants' attitudes toward feelings in family practice through the use of a pre and post-feeling attitude scale.

Through role-playing and the observation of an initial interview with a client, participants are given an opportunity to express and to discuss their opinions, and to demonstrate their learning of the material.

The trainer will utilize a short follow-up questionnaire to determine the impact of the training one-month following the module.

Materials

Handouts of relevant material.

Role Playing Situations between participants and clients.

Videotaped initial client interview with commentary by a psychologist

Methods

- Viewing of Initial Session with a client, discussion, role playing (1 1/2 Hour)
- Questions and Answers (10-15 minutes)
- Summary/Wrap (5-10 minutes)

Constructing an Adequate Skill Base in Responding to Feelings in Family Law Practice

By

Santo J. Albano, PhD*

Introduction

In this chapter I begin the process of constructing an adequate skill base for practitioners to respond to feelings in family law practice. I introduce self-learning techniques for describing feelings, for responding to feelings, for differentiating content from feelings and for managing the feelings of two well-known difficult clients affecting the emotions of family law practitioners - the Dictator client and the Amorous Client.

Fines and Madsen (2006) recommend that the family law practitioner develop an adequate skill base for responding to the emotional needs clients. The authors indicate realistically, however, that the family law practitioner need not train to become a mental health practitioner. The family law practitioner possesses some knowledge of, and skill in, addressing human feelings by the mere fact that the practitioner is successful in managing a practice. The practitioner routinely reacts to client feelings and his own feelings, during the family law process, but does not typically refine that knowledge over time, and does not systematically study or acquire available new related skills thereby leaving room for unwanted pitfalls.

Other authors, like Murray and Royer (2006), have addressed the emotional impact of family law practice on the family law practitioner. They have written about how excessive empathy on the part of the family law practitioner can lead to “vicarious trauma”.

These authors (and others) have provided the rationale for the following remarks. In the office of the family law practitioner resides case law, knowledge of the legal process, logical thinking, and the feelings of all present. The management of feelings is part of family law practice.

*New York State Licensed Psychologist. He is currently practicing as a Geriatric psychologist and legal consultant on psychological documents.

Psychologists learn from clinical experience that patients often forget the content of clinical interventions. Patients do remember fairly consistently, however, how the clinician made them feel. This psychological truism also pertains to the family law practitioner because the emotional salience of the issues addressed in family law practice (divorce, custody, abuse, etc.) is comparable.

Also similar to the psychotherapeutic relationship, the family law relationship pulls toward intimacy and vulnerability. Each relationship requires an optimum closeness/distance- neither too intimate nor too distant. This beneficial space for relating and accomplishing the goals of the relationship is shaped through the management of feelings. The experience of too much intimacy between practitioner and client can traumatize both members of the relationship and can cause the relationship to veer from its stated goals. The experience of too much distance can color the relationship with indifference and disinterest and also derail the relationship from its stated goals. With this understanding in mind the family law practitioner becomes interested in advancing his/her knowledge and skill related to human feelings.

Labeling and Responding to Feelings

Clinicians typically find the idea of introductory skill building related to communicating about feelings to be common sense or simplistic until the practice phase begins. When clinicians begin the practice, they discover their weaknesses and they are surprised to find often that what appears to be the smallest of changes can lead to the largest positive outcomes. Family law practitioners who apply themselves will find the same to be true for them.

Introductory Skill I. Building a large feeling vocabulary

Research psychologists who investigate human emotions identify six basic feeling expressions (Ekman 2007).

1. Happiness
2. Sadness
3. Fear
4. Anger
5. Surprise
6. Disgust

Feelings vary in intensity from mild to severe. The first step in acquiring an adequate feeling skill base is to label the feeling accurately and to identify the intensity level of the feeling. To be able to perform this skill, the family law practitioner must first build a large serviceable feeling vocabulary. A feeling vocabulary increases the likelihood that the word chosen typically resonates with the client, and promotes client comfort and acceptance as the client experiences the practitioner as an effective and sensitive listener. A large feeling vocabulary also builds recognition of important nuances in the life experience of both the client and the family law practitioner.

A particularly effective way of building a large feeling vocabulary is to take advantage of the books published for this purpose-the dictionary and the thesaurus. For those comfortable with the Internet, these books are on line and at your fingertips, for example, **Synonyms.Com** and **Dictionary.Com**.

Introductory Technique I is to identify six synonyms that represent intensity levels from mild, moderate to severe for the six basic feeling expressions. For example, if the feeling chosen first is sadness, the practitioner might come up with the following synonyms in severity level:

Severe Intensity: 1. Depressed
 2. Discouraged

Moderate Intensity: 1. Apathetic
 2. Sulky

Mild Intensity: 1. Low
 2. Down

Regional dialects most likely will shape the exact feeling words chosen. The important thing is that the practitioner starts the process. The refinement and usefulness of a particular word will be determined by how successful the word is in connecting and communicating with a particular client. The practitioner can practice the use of new feeling words with colleagues and family members (off-Broadway) before he tries them with clients (on Broadway). Friends, family and clients will let you know what is working by their reaction to your usage. Ultimately, a large feeling vocabulary results in more nuances in the way the practitioner perceives interpersonal relationships, which is a beneficial development in the personality and skill base of the practitioner. Also since thoughts and the words that are used to express them affect how people feel and behave, the practitioner will be able to influence his own feelings and behavior and the feelings and behavior of his client as he subtly helps his client to ratchet down the intensity of their response by getting them to use less provocative statements such as being “irritated” or “annoyed” by the spouse rather than “hating” the spouse.

Introductory Skill II. Differentiating Content from Feeling

Differentiating the content of a statement from the feeling propping it up also can seem simplistic and obvious. In practice it is a communicative art form that is not necessarily perform usefully with great finesse and skill.

- A. Responding to Content: A good response to content paraphrases what was said as concisely as possible and without parroting all the details (Carkhuff, 2000). Responses to content are specific not vague. Vague responses do not facilitate further expression. Specific responses help clarify the client's experience. A practitioner in this case can make a list of twenty different remarks made by twenty different clients and then write for himself twenty content responses to the remarks and then evaluate after a day or two whether or not his response was vague or specific and why he rated the response the way he did. He can have a partner or colleague do the same remarks and then discuss each other's responses to facilitate learning. For example:

“I just don't get what he was thinking? He thought he could actually have sex with his daughter's best friend in our bedroom and there would be no repercussions at all?”

Family Practitioner Response _____

Is the response to content accurate? Yes ___ or No ___

Is the response to content Vague ___ or Specific ___?

Reason for rating giving _____

B. Responding to Feeling The practitioners uses the same list but now gives a feeling response to each remark. For example:

“My husband is driving me crazy. We were divorced six years ago and now suddenly he wants to fight me for custody of the kids. I know he doesn’t have a case, but he’s harassing me just to fight with me!”

Family Practitioner’s Response _____

Is the response to feeling Right___ Wrong_____

Reason for categorization_____

The practitioner can find a variety of feeling skill exercises in Robert Carkhuff’s book entitled *The Art of Helping and The Art of Helping Workbook* (2006)

Introductory Skill III. Managing Difficult Clients

The family law practitioner can focus so much on legal matters that he/she succumbs to avoidable pitfalls. The following two potential clients can threaten the practice, the marriage and the personal well being of the practitioner.

A. The Amorous Client: Philosophers advise that familiarity can breed contempt. The family law practitioner is well aware of this fact. The practitioner doesn’t always expect that it will happen in his/her marriage. When it does, and the practitioner is disillusioned by his marital relationship, the practitioner can be primed to submit to the lore of the “perfect stranger”. The other person becomes less a real person but more a symbol of what is emotionally needed. Of course a client can succumb to the same personal mythology and view the family law practitioner in the same light. When this situation occurs, a serious conflict of interest and ethical violation

becomes almost inevitable unless the family law practitioner defuses the troubled “atmospherics”.

With this amorous client a number of prudent avoidant strategies are called for.

In relation to the client:

1. Do not meet with the amorous client outside the framework of the legal relationship. In effect do not meet with the client outside the office or the court. No meetings at home, in restaurants, on private email addresses, etc.
2. Do not do personal errands for the client.
3. Do not let yourself become the knight in shining armor that rescues the damsel in distress. Yes, there is a rescuing element in family law practice. You may be righting a wrong but you are not the love object.

In relation to yourself:

1. Be forewarned if you find yourself indirectly giving the amorous client money by reducing your fee or other standard costs.
2. Don't buy the amorous client personal gifts.
3. Undercut fantasizing about riding off into the sunset living happily ever after. Consider marriage counseling.

B. The Dictator Client: The dictator client is basically an insecure bully who sees the world as black and white. There are no gradations. Angels, who agree with him and devils that do not agree with him people the world. The devils should be punished.

At first the Dictator sees the practitioner as an extension of him/her self. The practitioner is an angel too. Inexorably the practitioner is seen as a devil because the practitioner is a flawed human being and not a perfect angel. When this transformation occurs in the eyes of the Dictator, the life and the practice of the practitioner will take on an atmosphere of threat and therefore of worry and anxiety.

To avoid and/or possibly reduce the likelihood of being cast as the enemy, the practitioner can take the following steps:

In relation to the Dictator Client

1. Gently do not accept the idealization. Present yourself as confident in your ability but always communicate that usually the family law process is one of constructive/reasonable compromise among all parties.
2. Put all personal family pictures away once you sense hostility. The Dictator can want to control/punish you but also members of your family.
3. Do not meet alone with the Dictator outside the legal framework, your office, etc.
4. Meet with your client, when possible, with another colleague or security representative but never criticize the Dictator client in front of other people. The Dictator client can usually be prone to shame and rage reactions if they feel diminished in another person's eyes.
5. Gently resist the Dictator client's tendency to see things in an all or none manner. A useful type phrase is something like the following: *It may be a little more complex than that. Let's take another or closer look at it.*

In relation to yourself:

1. Be forewarned if the client comes to you with a string of fired lawyers.

2. Resist your own inclination to view yourself as the best. Believe it or not viewing yourself as one of the best is a subtle but important difference. The best pulls toward grandiosity while one of the best reserves a modicum of humility, which, from a personality trait standpoint, is healthier!
3. Free yourself from the belief that you have to be able to help every potential client that consults you.
4. When choosing an office or an office arrangement take security into account as well as privacy and advertising your services.
5. Do not take calls from family when in the presence of the Dictator client. The Dictator client searches for your personal vulnerabilities.

Conclusion

Acquiring useful psychological knowledge and skills about feelings in family law practice is as simple as expending the time the practitioner takes in attending periodic professional legal seminars and/or pursuing continuing education credits. It is also as equally useful. It is a skill base that is beneficial in practice and in personal life.

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**Emotions in Family Law Practice: A Preliminary Practice
Session**

Michael J Albano, JD and Santo J. Albano, PhD

I. Introduction

- A. The non-legal needs of clients require that the family law practitioner develop an adequate skill base in responding to the emotional needs of their clients as those needs impact the legal process (Fines and Madsen, 2006).**
- B. In-between the unfortunate extremes of attorney neglect of client feelings and excessive empathy (which could lead to vicarious trauma (Murray and Royer, 2006) are an array of effective responses to feelings. Family law practitioners are capable of learning these responses. They need not become psychologists to do so.**
- C. The family law practitioner, who responds effectively to the emotions of clients, is more likely to foster a favorable legal experience for clients.**

II. Feelings

To start with, family law practitioners begin by establishing a secure foundation of recognizing, naming and expressing the feelings that they observe. To that effect the family law practitioner acquires the following knowledge and skills:

- A. A knowledge of the six basic human expressions and their derivatives (Discover Magazine, Jan. 2009)**
 - 1. Happiness,**
 - 2. Sadness**
 - 3. Fear**
 - 4. Anger**
 - 5. Surprise**
 - 6. Disgust**

B. Responding to Feeling: When formulating a verbal response to the feelings of another person, it is useful to have a large vocabulary of feeling words available to you. From this feeling word vocabulary you can select feeling words that are accurate in feeling category and accurate in intensity.

Example

2. Ex-wife: “My ex-husband is driving me crazy. We got a divorce six years ago and now suddenly he wants to fight me for custody of the kids. I know he doesn’t have a case, but he’s harassing me just to get me mad.”

Attorney feeling response:

- a. you feel _____
- b. you feel _____

Categorize the response wrong right.

Is Categorize the intensity wrong right.

Reason for your categorization _____

Also you will also find that several feeling words accurately capture the client's experience. You will be more likely to identify the most accurate feeling if you first explore their many possible feelings when reflecting on typical family law practitioner/client interchanges.

Example

“I wish I knew what I could do. My one teenager wants to live with her father and the other wants to live with me. The two girls fight all the time on every issue. They beat different drums. Becky wants to live with her father because she's sports crazy like he is. He coaches the boy's basketball team at the high school and she's a star on the girl's team. She's got a point. I don't talk sports at all. Her sister and I talk knitting and the latest Hollywood gossip.”

Circle the feelings that are being expressed.

- | | | |
|--------------------|----------------------|------------------------|
| a. upset | d. frustrated | g. uncertainty |
| b. troubled | e. sad | h. torn |
| c. excited | f. tired | i. helplessness |

3. In the following response, identify two feelings present and then develop a response that accurately captures the whole feeling.

“I don’t want to fight with my wife all the time. I know I have to protect the kids from her drug use but at times I feel like just throwing in the towel”.

Two feelings: responsibility and being fed-up.

Response: You feel discouraged.

(Outline)
The Initial Conference and the Role of Feelings in Family Law
By
Michael Albano, JD and Santo J. Albano, PhD

I. Initial Conference

- A. Time Allocation: Allow (2) hours with the first hour geared to listening carefully to what led your client to consult you. Listen, Listen, Listen!
- B. Materials: Give materials regarding office procedures, local rules of jurisdiction and statutory laws of the particular state where practice is held. Give materials to client even before decision to hire is made. In many cases, the client is undecided about filing and uncertain about who will be chosen for representation. The materials should include:
 - 1. An initial letter explaining office procedures.
 - 2. A domestic relations employment contract.
 - 3. A letter concerning photographs of house and personal property.
 - 4. A letter concerning marital history.
 - 5. A copy of “Legal Tips from A to Z for the Newly Divorced”.
 - 6. A listing of Recommended Family Psychologists and Psychiatrists.
 - 7. Forms related to Assets, Debt, Income and Expenses.
 - 8. A copy of “Shattering Some Expensive Myths About Divorce”.
 - 9. A copy of “A Model Parenting Plan”.
 - 10. A copy of the tenets of Professional Courtesy drafted by the appropriate state.
 - 11. A copy of all statutes that require client compliance.
 - 12. Other appropriate documents, i.e. the Divorce Manual; A Client Handbook of the Academy of Matrimonial Lawyers, the appropriate handouts from the state bar.
- C. Assurances: that the case will be handle with diligence and promptness. Do not guarantee the quickness of judicial hearing.
- D. Explanations: outline the general docketing system (appropriate for the jurisdiction). Indicate if another attorney will do preliminary work on the case. Make plain the importance of client participation and cooperation in case. Emphasize the need for candid expression of all possible relevant personal information.
- E. Provision of:
 - 1. Normal business hours of office.
 - 2. The role of office staff in maintaining flow of communication between Lawyer and client when lawyer is in court.
 - 3. Advanced notice of long separations from office. Clients do not like to be surprised by long absences.

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4. Copies of everything that goes in and out of the files, including pleadings and correspondence. This practice keeps client informed, updated, and less anxious.
- F. Instructions: on the importance of reading all materials and establishing the habit of putting all questions in writing so that the client and lawyer are reminded of what in addition needs to be responded to.
- G. Be positive about the possible reconciliation of the client's marriage where reasonable. Indicate that experts in marital discord, listed on the counseling handout, can be helpful in sorting out difficult marital stresses.

II. Feelings

- A. Rationale for the importance of feelings:
 1. Intense emotions interfere with a client's ability to appreciate the attorney's legal proficiency in handling the client's problems.
 2. Intense emotions interfere with the lawyer's ability to focus on the legal needs of the client.
 3. Intense emotions can lead to "vicarious trauma"(Fines and Madsen, 2006)
 4. Skills for the appropriate management of feelings in Family Law are available. Family law practitioners are capable of learning these skills. They need not become psychologists to do so.
- B. Skill Sets for Responding to Client Feelings (Robert Carkhuff, 2000)
 1. Building a large feeling vocabulary.
 2. Recognizing intensity levels.
 3. Responding to Content
 4. Responding to Feelings
 5. Understanding the six basic human expression of feelings and there variations: happiness, sadness, fear, anger, surprise, and disgust.
 6. Practicing exemplary responding-to-feelings exercises.

III. Fees

- A. Never a charge a contingent fee unless you have confirmed with the State's Advisory Committee (State Bar) that the practice is within ethical bounds.
- B. Carefully explain the fee. Do not give ballpark figure!
- C. Receive a retainer in advance.
- D. Avoid a fee dispute by giving a clear explanation of the fee arrangement and giving a written contract at the outset.
- E. Remember that a contract made after the relationship has been established is generally construed most strongly against the lawyer.
- F. Have client read contract in your presence and field questions to clarify the contract.

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- G. Direct the client to the portion of the contract that stipulates that a minimum fee will be charged for the legal services.
- H. Make certain client understands that a minimum fee will be charged if the action is dismissed, or even if the lawyer is discharged.
- I. Keep accurate time records to substantiate all charges.
 - 1. Note the charge for phone calls.
 - 2. And for reading and responding to emails.
- J. Make it very clear at the outset that the client is responsible for the fee.
- K. Explain that court costs, expert fees, deposition expenses, and other possible non-hourly expenses are additional costs that the client is responsible for.
- L. Do not raise your hourly rate after the contract is signed.
- M. Insist on receiving the retainer in advance. (Place retainer fund into an IOLTA account).
- N. Establish a billing system in your office that sends out monthly statements by the 26th of each month. This practice lets the client know where they stand financially and what was done in his/her behalf. Give the specifics.
- O. Explain that post-trial telephone calls, pleadings and ancillary documents (deeds, qualified domestic relations orders, vehicle transfer documents, etc.) may be necessary and that they will be charged for the services.
- P. Explain that fees may go up in the future should they need additional representation after the initial case is completed.

V. Custody

- A. Complicated ethical problems arise as a result of an attorney's representation of one party in a child custody matter. A lawyer's participation in child custody litigation presents issues, which are fraught with dangers for the attorney and the respective law firm. Unfortunately, the answers to the ethical questions raised are usually unavailable until after the attorney has already incurred the consequences of a judgment error. As a result, most attorneys are flying blindly in an area that has significant impact on their client's lives and their practice.
- B. Do not represent the client's children in the custody matter.
- C. The problem of proof in a custody case is a significant one.
- D. Some ethical and/or malpractice considerations

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1. Do you allow a parent to bring the child into the office?
2. Do you speak with the child?
3. If you intend to speak with the child as a fact witness, do you notify the other attorney, guardian ad litem or the other parent if unrepresented?
4. Do you send your client and the child to see a psychiatrist before or during the suit? If you do, are you under an obligation to inform the other attorney, the other parent if unrepresented or the guardian ad litem?
5. Do you disclose to your adversary and/or to the court the existence of any reports involving the child that are adverse to your client?
6. To what extent do you communicate with your privately retained expert?
7. What do you do if one of your client's fact witnesses makes a disclosure to you that adversely affect your client's position (such as a suicide attempt by your client)?

VI. Conduct of Parties

- A. Many clients focus on one aspect of misconduct and believe that the wrong done to them justifies their own misconduct.
- B. Clients under emotional distress may behave bizarrely.
- C. Clients may use the legal process for revenge.
- D. Have your clients read local bar association documents relevant to the misrepresentation of a client.
- E. Educate client about the restraints of the divorce process.
 1. No wire-tapping
 2. No harassment of spouse or paramour.
 3. No libel/slandering of spouse to family/friends.
 4. No interception of spouse's mail.
 5. No parental alienation of children.

VII. Attorney-Client Relationship

- A. Don't exaggerate potential accomplishments.
- B. Indicate that you will make final decisions concerning how the case should be tried, but that you want to be clear on what they hope to achieve.
- C. Avoid conflicts of interests.

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- D. Avoid at all costs dual representation! Do not file joint petitions, since it is impossible to represent both sides of marriage dissolution.
- E. Do not discuss anything with the other spouse unless your client is a party to the conversation.
- F. Make every effort to fully complete your representation of the client.

VIII. Case Conclusion

- A. Send a “checklist” letter to your client reminding him/her of the post-dissolution items that need to be completed. Such as:
 - 1. Retitling of motor vehicles.
 - 2. Transferring of financial accounts.
 - 3. Checking of beneficiaries on life insurance policies and financial accounts.
 - 4. Doing personal estate planning for protection.
 - 5. Retitling of real estate.
 - 6. Transferring of utility deposits.
 - 7. Setting up a record’s system to track financial payments made to and/or received from the former spouse.
 - 8. Setting up a record’s system to track custody/parenting time schedules and problems related thereto.
 - 9. Tax filing issues.
 - 10. Division of retirement accounts (qdros, etc.)