

The Ethical Confrontation of the Unethical Forensic Colleague

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In the course of clinical and forensic work, psychologists sometimes discover serious weaknesses in knowledge, performance, or ethics in other psychologists' work. The ethical code of the American Psychological Association mandates confronting such a psychologist prior to making a professional complaint. This mandatory confrontation typically is omitted because of a sense of awkwardness or a fear of insulting the other psychologist. Education and training in psychology does not cover this sensitive and important area. In this article, sample templates of letters are provided to meet that ethical requirement and to begin to resolve problem behaviors by colleagues.

As clinical psychology matured as a profession, it became more accepted in a variety of applied fields. For courtroom and forensic settings, a body of literature developed on how to be an expert witness (e.g., Blau, 1984, 1985, 1999; Brodsky, 1995, 1999; Brodsky & Anderer, 2000; Brodsky & Robey, 1972; Faust, 1985) and how to review another psychologist's work when practicing in an adversarial context (e.g., Faust, 1991; Faust, Ziskin, & Hiers, 1991; Ziskin, 1995). As a result, independent psychologists, usually strangers to each other, are often asked to critique each other's work deliberately and carefully to look for weaknesses and areas of disagreement.

The review is sometimes one-sided, with one psychologist finding great fault with the other, yielding some subsequent impact on the litigation (e.g., *Chapple v. Ganger*, 1994). Sometimes one psychologist suspects the other of being inexcusably lazy, ignorant, or unethical.

When psychologists' disagreements make their way into the scientific literature, a series of articles is printed so that the debate can be followed. The language may get pointed and contentious (e.g., Lees-Haley & Courtney, 2000). If two psychologists working together in a clinic or university faculty disagree, they can meet together to clarify the disagreement.

But what to do when a clinical or forensic colleague seems to need correction? Consider this real example: After reviewing another's work, a psychologist discovered that the other psychologist was apparently falsely claiming a modestly important credential. When the issue was raised with colleagues, a debate followed about the proper action to take. Notifying the appropriate licensing board seemed draconian. Filing an ethical complaint was dis-

missed as excessive given that other credentials related to the work were in order. Besides, the ethical code (American Psychological Association, 1992) mandates that the apparently offending psychologist be personally confronted first. The manner such a confrontation could take was also debated, but no method met with wide approval.

Similar examples are easily found. Some psychologists fail to administer, score, or interpret tests as directed in the literature or manual. In one published case, a psychologist failed to properly use age norms (McKinzey & Ziegler, 1999) as indicated in the manual. In one death penalty case, the appellate argument was based on a psychologist's failure to use any sensitive neuropsychological screening test (*Harris v. Vasquez*, 1990). In another death penalty case (McKinzey & Campagna, 2001), an appellate argument was rebutted when it was pointed out that a psychologist retained by defense counsel used the Rorschach Comprehensive System without taking into account its 81% false-positive rate (Mittman, 1983), discredited norms (Wood, Nezworski, Garb, & Lilienfeld, 2001), and questionable scoring system (Guarnaccia, Dill, Sabatino, & Southwick, 2001; Wood, Nezworski, & Stejskal, 1996). Other examples are psychologists who engage in rhetorical excess, adversarial zeal, scholarly myopia, or show lack of proper professional and knowledgeable preparation for the tasks they are undertaking.

What should one do when a clinical or forensic colleague needs correction? Appendix A offers a letter one can send to such an offending forensic colleague. Note that it takes the form of polite language, followed by specifics, and concluding with polite language. Note also that such letters do not necessarily assume that the other psychologist necessarily knew of your awareness of her or his actions or your involvement in the litigation until the letter was received.

The first step in this discussion has been the confrontation by letter or e-mail. A related ethical issue is, in turn, what the recipient should do. Furthermore, what should one do when an overzealous, overly critical colleague sends the letter in Appendix A? The *culpa* option is perfectly appropriate if the letter has accurately identified a professional problem, procedural omission, or scholarly lapse. A straightforward acceptance of the complaint as constructive may sometimes be the most reasonable reply, especially

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with an indication of a plan for remedying the problem. Perhaps, however, the complaining colleague has overlooked the contradicting relevant literature or is unaware of mitigating circumstances. In that case, we offer the reply letter in Appendix B, which also takes the form of “polite language, followed by specifics, and concluding with polite language.”

Of course, some infractions are sufficiently egregious that a more proactive level of intervention is in order. Consider a custody case: The two experts called by the mother and stepfather testified that the young children would thrive better in the custody of the mother. Information came to light that both experts were currently clients being seen in psychotherapy by the stepfather. In this instance, waiting to have the hearing completed would have enabled biased experts to promote an inappropriate court action. The attorneys representing the biological father were notified, and they, in turn, followed the suggestion of notifying the judge. The judge personally recalled and challenged the experts, who acknowledged their role as clients with the stepfather.

Naturally, the judge disregarded their testimony (which had been the only testimony in favor of custody being reassigned to the mother) and severely chastised the experts. An existing mechanism is in place in courts for inquiring into potentially unethical acts. No such clear and immediate arbiter exists for ruling in ethical infractions in clinical practice.

What to do when the fact of the infraction is unclear? Remember, most information that comes to us is not definitive. Indeed, even after a long criminal or civil trial within the structure and protections of the justice systems, the resultant information is not necessarily unequivocal. An exchange of letters might allow a clarification of uncertain or ambiguous information and can assist in planning further action, if any. Appendix C offers such a letter of clarification, and Appendix D offers a reply; again, both use the “polite language, specifics, polite language” formula. However, sometimes the legal process of discovery is more appropriate: For example, suppose the dual roles of the two custody experts were merely rumored. Until the judge asked the two client-experts and they admitted their dual roles, it was not clear whether they simply had consulted with the stepfather, had been clients many years before, or perhaps had stated to a third party that they might like to be clients at some future time.

Sometimes a decision of how to confront the allegedly offending colleague must be preempted by the obligation to notify law-enforcement authorities or by imminent harm judgments. In those cases, the confrontation will be left to the appropriate societal agents.

These sample letters of exchange by no means resolve the variety and problems of unethical clinical practices and uninformed or problematic forensic testimony. However, they add structure for the use of an important option in addressing such problems. These templates for corresponding with colleagues do not apply only to clinical and forensic psychology. The same issues apply to counseling, consulting, and organizational psychology when one psychologist becomes aware of another’s questionable practices. It is worth noting that complaints to state and provincial licensing boards are, at best, only arguably effective and are a source of recurring complaints (O’Connor, 2001; Peterson, 2001; Williams, 2001). By accepting an educative and constructive posture with apparently erring colleagues, a greater opportunity arises for improving the quality of practice and of the profession.

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Appendix A

A Polite Letter to a Forensic, Adversarial Colleague

Dear [Colleague]:

We have recently been involved on opposite sides in the now-resolved case of [FILL IN]. During this case, I had the occasion to review your work. I sometimes do such review work, as it enables me to remain aware of the practices of my colleagues, which sometimes differ from my own.

However, one of your actions in this case caused me concern. [I was specifically concerned about your statement that the empirical research literature supported the use of the Szondi Test as a preferred method of psychological assessment. My reading of the empirical literature is that the Szondi Test has been abandoned in the profession, for good reason, some years ago. Please consider the attached list of references which address the issue]. [OR FILL IN THE SPECIFICS OF THE CONCERN AT HAND]

I want to emphasize that this is not a complaint to any licensing or ethics body. Rather, consider this letter my effort to be a responsible colleague. Please let me know what you think.

Appendix B

A Polite Reply Letter to a Complaining Colleague

Dear [Dr. Concerned]:

I cannot say your letter was exactly welcome; negative feedback rarely is welcome. At the same time I appreciate your willingness to take the time to write to me and to share your thoughts. I want you to know that I take such comments seriously. I am revisiting the testimony I gave and rethinking what I said.

[I will get back to you after I have taken another look at the empirical research literature on the Szondi Test.]

My objective is always to be careful in my testimony to stay precisely within the limits of accurate statements and credentials. [In this case, I'd like to respond to your kind advance of a reference list by reassuring you that I will look at it with care.]

Thank you for your interest and for taking the time to write to me.

Appendix C

A Polite Letter Asking for Clarification

Dear [Colleague]:

In the course of my practice, I have heard, third-hand, something about your practice that, if true, raises some concerns.

Specifically, [I was told by an attorney with whom I work that you do one hour child custody evaluations, offering a fee schedule per job below other psychologists. If this is accurate, I would like to call to your attention that all of the custody evaluators I know allocate between ten and thirty hours for a minimally adequate assessment. I checked with some of those colleagues and they expressed distress that someone would be doing one hour assessments].

I write to you in the hope of clarifying inaccurate information and/or providing some feedback about a practice that may be problematic. I want to emphasize that this is not a complaint to any licensing or ethics body. Rather, consider this letter my effort to be a responsible colleague. Please let me know what you think.

Appendix D

A Polite Reply Letter to a Request for Clarification

Dear [Dr. Concerned]:

Thank you for your letter asking for clarification. I am pleased that such concern for our profession is a part of our common practices. I am happy to provide an answer to your request.

Specifically, [you asked about the time I spend on custody evaluations. You are correct that I spend, and charge, one hour for each evaluation. You are also correct that other evaluators commonly charge ten times that amount. The difference can be attributed to my new structured interview and testing procedures that I have only recently perfected. Sadly, other psychologists do not yet know of these methods, as the publication times for our professional journals is now quite lengthy. I have appended a list of my in-press publications for your review. I will also send you a schedule of my upcoming workshops when it is ready].

Thank you for your interest and for taking the time to write to me.

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