

Child Privilege Attorney in Divorce: Protecting Confidentiality and Best Interests

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A Child Privilege Attorney (CPA) is a legal professional appointed to protect a child's privilege, or right to confidentiality, concerning therapeutic and counseling communications. This role is vital in divorce cases where parents may seek access to the child's therapy records to support their custody claims or other aspects of the divorce.

The Role and Responsibilities of a Child Privilege Attorney

1. **Confidentiality Advocacy:** A CPA's primary responsibility is to determine whether a child's confidential communications with their therapist or counselor should be disclosed in a court proceeding. A goal of the CPA is to preserve the child's ability to speak openly without fear that their disclosures will be used against them or their parents in court.
2. **Legal Representation:** CPAs represent the child in legal proceedings, arguing the issue of privileged information. They may file motions to quash subpoenas or resist the disclosure of therapy records.
3. **Balancing Interests:** While prioritizing the child's confidentiality, CPAs also consider the child's overall best interests. This might involve selectively disclosing certain information if it is deemed crucial for the child's welfare and with appropriate safeguards.
4. **Collaborating with Therapists:** CPAs work closely with the child's therapist to understand the nature of the communications and determine which parts should remain confidential.

Factors in determining whether or not to waive a Child's Privilege in Divorce

1. **Encouraging Open Communication:** Children are likelier to engage honestly in therapy if they know their disclosures are private. This openness is crucial for effective mental health treatment.
2. **Protecting Mental Health:** Exposure of therapy records can retraumatize children, damaging their mental health and trust in the therapeutic process.
3. **Preventing Manipulation:** In contentious divorces, parents might attempt to use therapy records to manipulate custody outcomes. CPAs help prevent such misuse by safeguarding privileged information.
4. **History of Abuse or Neglect:** In cases involving abuse or neglect, maintaining the child's confidentiality can be crucial for their safety and emotional well-being. However, it may be necessary to waive to inform the court of allegations made by a child in therapy.

Challenges Faced by Child Privilege Attorneys

1. **Complex Legal Landscape:** Navigating the legal complexities surrounding privilege and confidentiality in family law requires a deep understanding of mental health and legal principles.

2. **Parental Opposition:** CPAs often face resistance from parents who believe that accessing therapy records is, or is not, in their child's best interests.
3. **Judicial Discretion:** Judges have considerable discretion in determining whether to uphold or override privilege, making the CPA's advocacy crucial but not always determinative.
4. **Balancing Transparency and Confidentiality:** Striking the right balance between necessary disclosures and maintaining confidentiality can be challenging, especially in high-stakes custody battles.

An experienced Child Privilege Attorney may be appropriate in divorce proceedings, ensuring their right to confidential therapeutic communications is protected. By safeguarding this privilege, CPAs play a critical role in promoting the child's mental health, preventing the misuse of sensitive information, and ultimately ensuring that the child's best interests remain the central focus of divorce proceedings. As awareness of this role grows, CPAs are likely to become an increasingly integral part of family law, offering children the protection and advocacy they deserve during one of life's most challenging times.