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## 10 Tips for Navigating Family Law Cases with Substance Misuse

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When allegations of substance misuse are made in family court cases, legal practitioners and the courts are often at a loss as to how to proceed. Common questions that arise include:

- Is the parent using substances and to what extent?
- When did the parent last use the substance?
- Is the parent receiving and engaged in appropriate treatment?
- How does the parent's use impact their ability to care for the child?
- Is the child safe in the parent's care and under what conditions?

This article includes ten tips for approaching cases with substance misuse dynamics.

### 1. Recognize that addiction is a chronic disease

Substance Use Disorder (SUD) is a chronic condition. Recurrences (relapses) are to be expected and like other chronic conditions, including heart disease and asthma, there are often a series of relapses followed by remission. Even with tremendous effort, intervention, and support, it can take many years for an individual to enter into sustained remission. Prior to sustained remission, the severity of the individual's substance use is likely to wax and wane. However, over time, most individuals are able to achieve long-term recovery.

### 2. Approach each case with awareness that every person and family is unique

Every case involving substance misuse is different and there is no one-size-fits-all model for approaching these complicated cases. Some parents have milder substance misuse issues that are unlikely to significantly impact the child (e.g., excessively drinking a few times a year at social functions where the child is not present). Other parents fall into a gray area where concerns exist but it is unclear the extent to which the use impacts the child (e.g., a single-incident DUI without the child in the car). Other cases have a pattern of use that is concerning and clearly impacts caregiving (e.g., heroin dependence and use when the child is in the home). However, even within these categories, there is gradation. For example, using in front of a child is different from not using in front of the child. A heroin-addicted mother may use when the child is with family and an alcohol misusing parent may limit their binge drinking to when the child is not in their care. These nuances matter and are relevant when determining parent-child contact.

3. Clarify the nature of the parent's substance use and the nexus between the parent's use and the impact on the child

A central question to ask when approaching a case with allegations of substance use is how that particular parent's substance misuse impact the child given the child's age, needs, supports, and available buffers. The legal practitioner should clearly identify the nexus between the parent's impairment and caregiving deficits to tailor a reasonable course of action. The child's age is an important consideration. Some parents with milder substance misuse issues may be able to provide sufficient care for older children but not younger children who are home full-time. In cases where monitoring may be necessary due to the dynamics of the case, supervision may be critical for younger children but not for older children who may be more readily able to advocate for themselves and communicate about a parent's impairment.

4. Maintain reasonable expectations

Given the nature of Substance Use Disorders, it is unreasonable to expect that a person with a history of severe addiction will not have a recurrence. It is also unreasonable to expect that a parent with a severe addiction will immediately and permanently stop using a substance because of court-related consequences, treatment, or legal issues. While the parent's decisions and behavior may appear puzzling to an outside observer, due to the neurobiological and behavioral consequences of addiction, the parent with addiction – even when putting forth their best effort – is likely to have challenges maintaining sobriety as well as with planning, following through with commitments, and providing sufficient caregiving. It is important to note that compromised parenting may also occur as a result of other chronic illnesses (e.g., heart conditions, diabetes) but stigma and misperceptions can cause stakeholders to view SUD differently.

5. Encourage open communication

Fostering an environment of open communication is imperative. Parents should not be subjected to unnecessary shame and embarrassment in the event of a recurrence. Rather, parents should be praised for disclosing a relapse and offered additional support. Step-ups in monitoring and intervention should be viewed through the lens of problem-solving, the paradigm of recovery, and as a way to help the individual to get their needs met so that they can effectively parent their children.

6. Develop a relapse plan

When a recurrence of SUD occurs, there is often considerable confusion and chaos. This dynamic is harmful to children. It is imperative that a relapse plan be developed prior to a recurrence so that everyone is on the same page with next steps. This plan should include who the parent should disclose the recurrence to, the timeframe for the disclosure, who will make the determination as to whether a step-up in treatment is necessary, a list of potential treatment providers or facilities in each category of treatment (e.g., inpatient treatment, structured outpatient addiction program, etc.), and plans for communicating the relapse to the children.

7. Recognize that there is no one path to recovery

There is not one path to achieving sustained remission from a Substance Use Disorder. Many people require several iterations of treatment to reach sustained remission. Some individuals benefit from Alcoholics Anonymous or Narcotics Anonymous while others do not and are better served by SMART Recovery, mindfulness-based recovery, faith-based recovery, or other peer-

support groups. Addicted individuals also generally require mental health treatment with a provider with expertise in addiction, including group therapy and/or one-on-one counseling. Most individuals will try several different methods to manage their addiction with multiple recurrences before they identify the structure of supports and intervention that best meets their needs. This pathway is likely to evolve and change over time as the individual progresses in their recovery.

#### 8. Acknowledge small wins

Many parents become discouraged over time in the face of repeated “failure.” While abstinence from a substance is often ideal, it is helpful for the court to recognize progress in smaller forms, including decrease in the frequency of use, the amount used, the potency of the drug used, safe use, open communication and acknowledgement of use, and taking responsibility for one’s actions. Parents with addiction are often trying exceptionally hard to function and to get better and acknowledging effort and incremental progress can be helpful for discouraged parents.

#### 9. Look for ways for children to maintain a connection to the addicted parent

Most children can continue to have a relationship and in-person parenting time with a parent with a SUD. If it is deemed definitively unsafe for the parent to have unsupervised contact with the child, some form of supervised visitation or avenue for continued connection should be immediately implemented. If in-person visitation is not feasible due to, for example, the parent frequently no-showing visits or repeatedly arriving to the visit under the influence, intermediate measures should be considered, such as writing letters, sending videos that are taken when a parent is not visibly under the influence, phone calls, videoconferencing, FaceTime, and so forth. It is important to note that younger children often struggle with phone and videoconferencing and that expected behaviors may include inattention, resistance, and distress. This is generally best navigated by the custodial caregiver actively facilitating the interaction with planning, preparation, and encouragement. Notably, due to the nature of progress and setbacks often inherent when Substance Use Disorder is present, supervision and parenting time should be revisited and reassessed every 30 days so as 1) not to prolong unnecessary supervision and decreases in parenting time and 2) to maintain safety as consistent with the best interest of the children. Regular drug testing is often useful to promote accountability and reassure stakeholders that the addicted parent can safely care for the child. However, a positive drug screen, in isolation, should not be used as grounds to sever contact between the child and parent.

#### 10. Have compassion

Substance Use Disorders are exceptionally difficult and often come with considerable pain for individuals and their families. The larger culture holds many stigmatizing thoughts and beliefs about SUD and these oftentimes erroneous preconceptions have significant effects on parents in recovery. While the addicted parent may appear as if they are not trying, they are often experiencing crippling shame, embarrassment, a lack of control, and fear. These individuals should be treated with empathy, respect, and care as they work toward recovery.

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