Testifying in Court: An Introduction for Mental Health Professionals

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Introduction

Mental health professionals with limited forensic and legal education and training are sometimes asked or subpoenaed to testify in court for a variety of reasons. If requested to testify, determining one’s role in this capacity is crucial not only to understanding the expectations and objectives for the requested testimony, but also to maintain the appropriate legal and ethical boundaries (Moore & Simpson, 2012). In cases where a defendant is the mental health professional’s client, the professional may be asked to discuss the client’s diagnoses and progress in treatment or offer an opinion as to the client’s mental status. Alternatively, mental health professionals are frequently retained as experts in a clinical area of specialization and knowledge. Being able to offer impartial observations and opinions in a manner that is easily understood by legal professionals and jurors who are participating in the proceedings is critical. Unfortunately, there is a lack of educational and training programs for non-forensic master’s degree level professionals (e.g., LMFT’s, LPCC’s, LICSW’s) thereby, inadequately preparing mental health professionals to serve in these daunting situations.
and intense roles within the legal system. When called upon to testify, mental health professionals are often pressed to seek out colleagues and mentors who may also not have the nuanced understanding of what is required of the mental health professional who testifies in court.

To this end, this article discusses basic reminders and tips for mental health professionals who are asked or required via a subpoena to provide testimony, offering important considerations for effectiveness in the legal process. This article is intended for non-forensically trained mental health professionals who are being called into court as a fact or the limited-expert witness who has little to no education and training in the area of forensics and the law.

Preparation is Key

Preparing to testify in court involves a number of steps. As noted above, understanding one's role is key to identifying the boundaries of what can and cannot be said during testimony. In addition, the mental health professional should always request some sense of the direction the attorney plans to take during court proceedings so that he or she feels sufficiently prepared to answer questions on direct examination. It can also be helpful to think through with counsel some of the potential questions the opposing attorney is likely to ask during the cross-examination.

Once the mental health professional has a solid understanding of the predominant issues and concerns related to a specific legal case, it is helpful to familiarize themselves with the laws and legal standards pertaining to the particular jurisdiction in which the case is being heard. Preparation for testimony involves a systematic review of any and all documents contained in the client's case file in order to inform a comprehensive understanding of the case. If an error is noticed, absence of making changes, the mental health professional must alert the attorney so that the court becomes aware of the issue.

It is not uncommon for expert witnesses to complete a written report which documents all of the information the mental health professional views as relevant to the case and provides a rationale for his or her opinion (Moore & Simpson, 2012). That report frequently becomes the foundation for direct testimony as well as cross-examination. Therefore, it is critical to be completely conversant about one's report including names, dates and other specific details of the case.

Prior to testifying, mental health professionals should ensure that their curriculum vitae (CV) is both current and accurate. Even minor oversights like a misspelling could be called into question by opposing counsel as a way of attempting to discredit the expert. One's CV should include all academic degrees, specialized training, licenses, work history, publications, and memberships in professional organizations. Professional presentations and any research experience should be listed. In other words, mental health professionals should emphasize information about their expertise that is salient to the case and allow these experiences and their backgrounds to speak for themselves. Attempting to pad or embellish one's CV with items like continuing education courses taken or personal information like hobbies only weakens the authenticity of the document along with the credibility of the expert.
Whenever testifying, it is important to pay attention to ethical considerations including an awareness of HIPAA privacy rule restrictions that might impact portions of one’s testimony. This is particularly true in cases where the mental health professional is serving dual roles as both therapist and witness. In cases where a mental health provider has been subpoenaed to appear in court, it is important to notify the client as soon as possible. When applicable, the mental health professional should go through the informed consent process with their client and ensure the client comprehends the advantages and disadvantages of their mental health information being disclosed in a courtroom setting. At the very least, the mental health professional should include a discussion of any potential testimony allowing adequate time for the client to ask any questions and for the provider to make any appropriate recommendations (Jones, 2007). Whenever possible, throughout this challenging process, it is often helpful to discuss the appropriate boundaries around privilege and confidentiality from clinical supervisors or consultation with other professionals who have previous experience in the courtroom (Dvoskin & Guy, 2008).

**Providing Testimony**

Mental health professionals should keep several things in mind whenever testifying. Do not feel pressured to respond immediately to a question asked by an attorney on either side. Listen to the complete question and then formulate a response prior to answering the question. If the question is confusing, it is perfectly acceptable to ask that the question is repeated or clarified. When uncertain of an answer, “I do not recall” or “That is outside my scope of practice” is the appropriate response when you don’t know.

Responses should be constructed in a conversational tone paired with eye contact and confidence rather than as a lecture. Testimony that incorporates common language to explain complicated concepts is generally the most compelling. In cases where technical terminology is necessary, essential terms should be immediately followed by a simple definition to explain the term after its first use. Here is an additional opportunity to share one’s expertise and insight.

As much as possible, rely on facts to support the opinion. This is particularly true when mental health professionals are asked about individuals who have not been directly evaluated by the mental health professional (e.g., a client’s parent). These queries may be an attempt to discredit the witness. As such, the mental health professional should limit their responses to questions relevant to the current legal proceeding (Ireland, 2008; Shuman & Greenberg, 2003).

Furthermore, always be clear about the source of any information. For example, if it was reported by the client, then make that clear. Alternatively, if the information was based on the results of an assessment tool, then the mental health professional should identify the tool and briefly describe its use, relevancy, and why it was chosen. Mental health professionals need to have sufficient expertise and training to administer and interpret the tool. They should also be knowledgeable about the tool’s research base.

Be cautious when responding to questions by opposing counsel that are intended to antagonize or offend the expert. For example, the attorney may mispronounce the mental health professional’s name or misquote their
credentials during cross-examination in an effort to get a rise out of them. Rather than taking such slights personally, avoiding displays of frustration or anger is key to maximizing positive impressions on the court and the jurors.

Finally, courtroom etiquette should not be overlooked when preparing to testify in the courtroom. Wear appropriate business-like attire with a minimum of accessories and jewelry. The attire should maintain a balance between a professional appearance and comfort without being distractingly stylish. Communication should be polite, concise, and easily understood by individuals from a range of backgrounds (e.g., education, work, and culture). Expert witnesses are not generally allowed in the courtroom prior to their own testimony, but regardless, avoid speaking with others involved in the case such as jurors, as this can result in a mistrial. Throughout all proceedings, make sure to silence any electronic devices and avoid looking at them. Most important, get a good night's sleep the day before you are called to testify. Eating appropriate food to maintain energy and blood sugar levels are also important prior to testimony, in the event you are on the stand for an unpredicted amount of time.

**Conclusion**

The process of testifying in court cases is complicated. It entails a tremendous amount of work preparing for trial along with the obvious stress of providing testimony in a courtroom setting. Regrettably, most mental health professionals who are not forensically trained do not usually receive education in legal processes or how to prepare for testimony. Consequently, there is a strong need for guidance such as advanced training, education, and consultation in these matters.

**Author Biographies**

Jerrod Brown, Ph.D., is an Assistant Professor and Program Director for the Master of Arts degree in Human Services with an emphasis in Forensic Behavioral Health for Concordia University, St. Paul, Minnesota. Jerrod has also been employed with Pathways Counseling Center in St. Paul, Minnesota for the past fifteen years. Pathways provides programs and services benefiting individuals impacted by mental illness and addictions.

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References


