

Testifying in Court

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... Therapists and counselors are sometimes exposed to the rigors of testifying in court or at a deposition. Perhaps they will be called to testify as a witness in a marital and custody/visitation proceeding, or in a civil lawsuit where the patient is suing for emotional and mental harm caused by the negligence of another, or in a criminal case or a dependency court proceeding. There are five general principles (there may be more), which may seem obvious to some, that are important to keep in mind. I have consulted with many practitioners who have for one reason or another run afoul of one or more of these principles – only to find themselves in a difficult situation.

... The first principle is to **tell the truth**. While this may seem obvious and unnecessary to mention, it is important to emphasize. Sometimes an attorney or a patient will try to get the therapist or counselor to testify a certain way in order to help the patient make his or her case. The attorney for the patient is an advocate. The patient is of course self-interested in his or her case and will be hoping that their therapist's testimony is helpful to the case. In some cases, for example, the more "injured" (mentally or physically) the patient is, the more valuable the case. The practitioner who is called to testify must nevertheless testify to the truth as he or she sees it, and hopefully, as supported in the treatment records. It sometimes takes great strength of character to make this clear to the patient and to the attorney for the patient.

... The second principle is **don't guess**. Witnesses are to testify to the facts, to what they remember, perhaps to their opinions, but are not expected to guess at answers. It is okay to say "I don't know," or "I don't remember." It is also permissible to answer a question by indicating that if you are able to review your records or a report, your recollection may be refreshed. Guessing can get you and the patient in trouble. Stick to the facts and to what you know and remember.

... The third principle is to **be prepared**. There are a few basic things that can be done to prepare for testifying as a witness. It is of course important to review the patient's records prior to appearing in court or at a deposition. In some cases, the patient's attorney will assist in preparing you for testimony at a deposition or at a court hearing or trial. The attorney may tell you what to expect on cross-examination or how the opposing attorney may try to attack your credibility. It is also important to be familiar with the scope of your license and continuing education requirements. Questions are often asked about licensing qualifications and requirements, continuing education requirements and compliance, and the differences between your license and perhaps the psychology license.

... The fourth principle is **don't duel with the adversary**. Many witnesses make a mistake by dueling with the attorney who is representing the party adverse to the patient's interests. This typically leads to the witness being distracted and to testimony that may not be accurate. Additionally, once the witness begins to argue or advocate for the patient, he/she takes on a

partisan appearance and the testimony may lose its full effect. Witnesses should try to remain calm, concentrate on the question being asked, and should not worry that the opposing attorney is scoring points or gaining concessions. The patient's attorney will have the opportunity to "rehabilitate" you or your testimony, should that become necessary.

... The fifth principle is to **answer the specific question and don't volunteer**. A common instruction given to witnesses is to listen carefully to the question, and then answer it without volunteering additional information. If the question calls for a "yes or no answer," then say "yes" or "no." If it is necessary to explain your answer, this can usually be done at a later time with the help of the attorney representing your patient. Volunteering information not sought often gets the witness in trouble. If you don't understand the question, indicate that fact to the questioner and ask that the question be repeated or rephrased. Words like "always," "never," "possible," "probable," "often" will be used by an attorney and may affect your answer. Pay close attention!

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