

All about the role of a mental health expert in legal cases

Outline for Presentation:

- I.) Introduction of presenters
- II.) Who are the mental health expert witnesses – differences between psychiatrists, psychologists, Licensed Clinical Social Workers and other types of mental health practitioners
- III.) Factors to consider in hiring a mental health expert witness
 - a.) Expert witness should have experience both as a clinician and expert witness
 - b.) Ask to see a resume, get recommendations from other attorneys, how many reports have they done, how many times they have testified in court/if they have testified in front of a specific judge; ask to see sample reports, their 'success' rate, ask to see samples of their work
- IV.) Conflict between roles of a psychotherapist and mental health expert witness – why one person can't do both/a treater can't be an evaluator/different skill sets
- V.) Reimbursement issues – expert witness function is not psychotherapy, so is not covered by insurance. Most expert witnesses charge a flat fee or hourly rate, depending on what you want them to do (write a report, testify in court, analyze records, consult with attorney)
- VI.) A word of caution – an expert witness is not an attorney or a therapist/setting boundaries with the client
- VII.) Areas in which mental health expert witnesses work:

- a.) Criminal case/sentence mitigation – helps to humanize defendant, may shorten jail time
- b.) Family law – 604 B and 604 -5 child custody evaluations, substance abuse evaluations which address allegations of substance abuse in a child custody case
- c.) Immigration cases – proving hardship to the U.S. citizen relative of someone in removal proceedings (other types of immigration cases are asylum cases; VAWA; u visa; waivers for illegal entry or stay; criminal waivers; substantiation of good faith marriage cases; Adam Walsh cases).
- d.) Personal injury cases – providing evidence of Post-traumatic Stress Disorder, or PTSD
- e.) Professional liability cases – concerns cases in which a therapist or agency has been accused of malpractice. Expert witness may be hired to work on the plaintiff's or defendant's side of the case. Mental health expert witness determines if the standard of care has been violated, usually by analyzing records.
- f.) Death penalty mitigation
- g.) Jury selection

VIII: How a mental health expert witness can help the attorney

- a.) Uncovering important facts about the case that the attorney was unaware of and which will help the attorney refine his or her theory of the case
- b.) Mental health expert witnesses are specially trained in interviewing techniques designed to uncover sensitive information. Examples about how to get the client to reveal information such as a history of sexual abuse, domestic violence, alcoholism, and other sensitive topics.

- c.) The mental health witness can save the attorney time to focus on the legal issues/they have more time to devote to finding out the client's entire life story.
- d.) Mental health expert witnesses should be knowledgeable about cultural issues. Fluency in a foreign language is a plus. Clients from different cultures (including Polish!) are often 'stoic' and reluctant to provide personal information.

IX: How a mental health expert witness gathers information:

Information should be from multiple sources including:

- a.) Clinical interviews
- b.) Talking to 'collaterals' (i.e, friends and family of the client) to get information
- c.) Administering and interpreting psychological tests
- d.) DSM-IV-TR diagnosis should be given
- e.) Obtaining and reviewing records (educational, psychiatric, medical, legal, etc.) about the case
- f.) Incorporating professional literature into the report/testimony

X.) Case Presentation (two cases will be presented if time permits)

XI.) Time for questions