

Is it kosher for a psychotherapist to serve as an expert witness?

By Ofer Zur, Ph.D.

Psychotherapists may volunteer or be subpoenaed to testify in court as expert witnesses regarding clients. This generally occurs in cases involving personal injury or medical malpractice.

Many therapists do not know the difference between a "fact or percipient witness" and an "expert witness." In the desire to help the client, they may hurt the client's case and put themselves in harm's way.

Acting as therapist and expert witness may constitute an ethical violation, due to the therapist acting outside his/her scope of practice, encountering an unavoidable conflict of interest or an unethical multiple relationship.

Pitfalls include:

* The psychotherapist's role is that of a patient advocate, which often presents irreconcilable conflict with the more objective-evaluative role of a forensic expert.

* Serving as both a treating therapist and an expert witness may be an improper dual relationship. Forensic and therapeutic roles are generally considered incompatible.

* Psychotherapists are generally biased in favor of their clients, while forensic experts are committed to a truthful, objective and unbiased reporting to the court.

* The forensic-therapist dual relationship often presents a conflict of interest and, as a result, is often unethical and should be avoided under most circumstances.

* As with all multiple relationships, the context of therapy ultimately determines the appropriateness of dual or multiple roles. In certain correctional and forensic settings, treating psychologists are often expected or mandated to serve as court-appointed evaluators and testify in court as experts. Multiple relationships are also mandated in the military. In many rural or small communities dual relationships are unavoidable.

* Another potential unethical area of conduct is when therapists testify as expert witnesses regarding harm when they neither conducted a thorough investigation regarding harm (which may include review of past medical, vocational, educational and other records) nor are experts in the methodologies of harm assessment.

* Therapists may act unethically if they provide an expert opinion regarding a former therapist's (supposedly) unethical conduct solely based on the client's self-report without reviewing psychotherapy records and collateral information or interviewing the therapist.

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* Terminating therapy to assume an expert role does not solve the problem. The therapist is still biased and may still engage in unethical sequential dual relationships.

In summary

* Learn the difference between a "fact or percipient witness" and an "expert witness."

* Realize what questions you should not answer as a "fact witness."

* If subpoenaed to testify as an expert in a case involving a current or former client, consider serving only as a "fact witness." Seek consult before accepting expert status.

* Do not render expert opinion regarding harm, unless you conducted an independent objective evaluation and harm assessment

clearly falls within your scope of practice.

* Avoid giving an expert opinion regarding a former therapist based solely on your client's self-report without any collaboration, review of records or interview with the former therapist.

* Realize that the forensic arena is very different than the clinical one and different rules apply.

* Unless you are a forensic expert, consult before you respond to a subpoena. CE

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Reference:

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