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Forensic Psychology Dual Relationships

Is it Kosher for a Psychotherapist to Serve as an Expert Witness?

Clinical Update August 2010

By Zur Institute

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Treating psychotherapists may volunteer or be subpoenaed to appear in court and testify as **expert witness** regarding their clients. This generally occurs in cases involving personal injury or medical malpractice, and it is quite common for attorneys to contact the treating therapist.

Many therapists do not know the difference between a "**fact or percipient witness**" and "**expert witness**." In their desire to help their client, they may end up hurting their client's case *and* putting themselves in harm's way.

Psychologist and attorney Donald Eisner, J.D., Ph.D. addresses this and other questions regarding psychotherapists and counselors serving as forensic experts in our new online course for 1 CE:

Forensic Dual Relationships: Treating Psychotherapists as Expert Witnesses

A dual role of therapist and expert witness may constitute an ethical violation, due to the therapist acting outside his/her scope of practice, unavoidable conflict of interest, or due to engaging in unethical multiple relationships.

Psychologists, MFTs, social workers, counselors or psychiatrists who take the stand as an expert witness in cases involving a current or former client are likely to face many **traps and pitfalls**:

- The psychotherapist's or counselor'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 by several professional organizations' codes of ethics.
- 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 the dual or multiple role. In certain correctional and forensic settings, treating psychologists are expected and/or mandated to also serve as court-appointed evaluators and testify in court as experts. Then 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, nor are experts in harm assessment.
- Therapists may act unethically if they provide an expert opinion regarding a **former therapist's** (supposedly) unethical conduct, which is solely based on the their client's self-report and without reviewing the psychotherapy records, interviewing the former therapist, or reviewing other collateral relevant evidence.
- **Terminating** therapy in order to assume an expert role does not solve the problem, as 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" before you take the stand.
- If you are **subpoenaed** to testify as an expert in a case involving a current or former client, consider serving only as "fact witness" and **seek consult** before accepting the expert role.
- Do not render expert opinion regarding **harm**, unless you conducted an independent and objective evaluation and harm assessment falls within your scope of practice.
- Avoid giving an expert opinion regarding a **former therapist**, which is based solely on your client's self-report.
- **Most importantly**, realize that the forensic arena is very different than clinical one and different rules apply. Without proper preparation and knowledge your good intentions may result in harm to your client and yourself.
- Unless you are a forensic expert, **consult** before you respond to a subpoena or take the stand.



To learn more about these and other pertinent issues, take our new online course on [Forensic Dual Relationships](#) for 1 CE.

We also offer a full-length, 16 CE Credit introductory course on [Forensic Psychology](#)

To understand the complexities of dual relationships, take our highly popular 6 CE credit [Online Course](#).

Our [Subpoenas](#) online course is offered for 1 CE credit.

Consultations are available by [Dr. Eisner](#) or [Dr. Zur](#)

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