



Court Testimony in the Juvenile Court System

The mental health provider has an important role in the Court process. Providers need to be aware that there are legally imposed time limits for therapeutic and evaluation services and Court hearings. Evaluation and treatment reports are considered direct testimony to the Court. The more specific, complete and objective the report is, the more the Court will be able to utilize the information in decision making. Occasionally there may be questions about the report and the provider may be called to Court to answer these questions.

Providers play two specific roles for the Court: Percipient witness and expert witness.

Percipient Witness

The service provider is a percipient witness to the facts of a case, meaning that the provider knows “facts” as obtained through direct work with the client. The service provider is authorized by the Court to provide either an evaluation or mental health treatment for the CWS client. It is incumbent on the provider to formally share case-relevant information and opinions in the form of written evaluations and treatment plans. These documents constitute direct testimony to the Court.

In most cases, evaluations and treatment plans are summarized by the PSW within the PSW's Court report; these documents also are submitted directly to the Court. Provider findings and professional opinions are taken into consideration by the PSW in making recommendations to the Court. In routine cases, the Court reviews all the information, includes the reports in the Court records, and makes the orders.

When opinions are unclear, inconsistent, controversial, or unacceptable to any of the parties, the provider may be subpoenaed to appear in Court or to provide telephone testimony at the Court's discretion. Under these circumstances, the provider is in the role of percipient witness to the facts of the case to the extent the provider knows those facts. The provider may be asked to clarify recommendations or findings via direct examination. The provider may then be cross-examined by an opposing attorney/party. If providers are going to refer to their case records, it is advisable to bring such records to Court. When the provider's Treatment Plan or evaluation report is descriptive, behavioral, and clearly documents objective findings, and the provider's opinions and/or recommendations are clearly supported by this documentation, the probability of being subpoenaed is reduced.

Expert Witness

An Optum TERM-approved provider may be qualified as an expert witness. The expert witness testimony will most often concern the provider's work with a specific client, but the provider also may be asked information related to general knowledge in the field and specialty. Further, the provider may be asked to offer an opinion regarding mental health and parenting concerns that are related to the protective issues in the case. Additionally, there are occasions when a provider may be called upon to give a second (expert) opinion in a controversial case. Under these circumstances, the provider may or may not be asked to see the client.

Subpoenas

If a TERM therapist/evaluator is served with a subpoena to testify in Court, if the provider is unlicensed (is an intern or post-doc), the supervising provider should be prepared to testify in addition to, or instead of, the intern. The treating provider (and supervisor, if applicable) should check to see whether he/she is available on the date and time requested. Often the requesting party will allow telephonic testimony and that option may be discussed. If there is a date/time conflict that cannot be resolved, the provider should contact the attorney issuing the



subpoena to advise the attorney of the conflict and try to determine if the testimony can be taken on another date. Even if there is no scheduling conflict, the therapist/evaluator should contact the attorney to discuss what information will be sought through testimony, whether the therapist/evaluator can be on stand-by, whether the therapist/evaluator can testify by telephone, and what fee will be paid for testimony. The attorney who has sent the subpoena to the provider is responsible for paying witness fees. If a parent's or child's attorney issues the subpoena, the provider and attorney should agree on the amount of reimbursement, ideally prior to the provider's appearance in Court.

Legal Testimony

A provider can be subpoenaed on any treatment plan or evaluation report that the provider has submitted to the Juvenile Court. The provider's interpretations, opinions, findings, diagnosis and recommendations must be unambiguous and related to the information obtained about the examinee, through the record review, observations, interviews, and test responses.

The provider's treatment plan or evaluation report should be focused on the client, and should refrain from commenting on other family members with whom the provider has had no contact. Questionable adherence to applicable testing standards will leave an evaluator particularly vulnerable to subpoena.

Providers are reminded that in the County of San Diego, it is considered to be outside the scope of practice for a mental health provider to opine on whether visitation should be supervised or unsupervised or to opine on "ultimate questions" such as whether or not a family should reunify, with the exception of directly addressing all Family Code 7827 criteria when completing a psychological evaluation of a parent.

When the provider submits a report utilizing the required format and containing the required elements, the probability of being subpoenaed is likely to decrease. Ideally, the treatment plan or evaluation report should "stand on its own" independent of the need for clarifying testimony.

Billing for testimony should be submitted directly to the party that issued the subpoena.