Be Prepared, Be Proactive, and Be Professional: Key Points to Testifying in Child Abuse Cases

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The key to being a great expert witness is summed up in the adage "Proper Prior Planning Prevents Poor Performance" (Tracy, 2007). In addition to always being prepared, a great expert witness must also be Proactive and Professional.

Oftentimes the thought of testifying in court is daunting, not to mention just plain frightening. Although fear and anxiety regarding testifying may lessen with experience, it helps many of us keep our eye on the ball. However, just being prepared increases your likelihood of success and decreases the stress and anxiety surrounding testifying.

Let's take a step back … actually take several. Visualize the moment you receive a subpoena or the telephone call from the attorney who informs you to appear in court on a particular day. Many times, you received a subpoena or letter requesting your presence in court with no prior notice. Like many of us, your initial response is one of irritation or confusion, or both.

The first questions you invariably ask yourself are "Why have I been summoned?" and "What do they think I know that could help their case?" Both are excellent questions! However, often we stop there. We might look at our schedule in hopes of not being available, but once we mark it on our calendars, we begin the waiting game. We assume the attorney who requested us to appear will now call us to prepare.

False assumption! Although there are some attorneys who believe in the 6 "P"s, many more are operating in crisis mode. Essentially whatever fire is in front of them gets the attention. By law they are required to provide prior notice of a specified number of days, usually a minimum of one week. But they may have forgotten the case is coming up or that they issued you a subpoena.

Our ethical obligation is to our clients, which includes being prepared for court. So, this is where another "P" comes into play; being a good expert witness requires being Proactive. Don't wait for the attorney to call you, because he or she may not. Although your testimony may be important to the case, it's likely that you are not a priority on the attorney's agenda until he has time to focus on this specific issue. Therefore, you might get a call in advance, or you might get briefed about the purpose of your testimony in the hall 5 minutes before the hearing starts.

For this reason, pick up the phone and call the attorney yourself. Don't wait! Once you receive a subpoena, verify that you have a release of information on file allowing you to speak with the attorney. Then, contact the attorney's office to clarify why you have been subpoenaed. Attorneys are often hard to reach and are notorious for contacting witnesses at the last minute, if at all. Be persistent with leaving messages or speak directly with the paralegal or secretary assigned to the case. Often you will have to leave more than one message. Don't waste time or energy becoming frustrated; it is what it is. Many times you can speak with the paralegal assigned to the case and have a message relayed. Additionally, paralegals and secretaries can often be great sources of information, especially to those who convey a pleasant demeanor and a sincere wish to be prepared. It is important to emphasize that you want to be prepared for the hearing and need to speak with the attorney before the day of court.

If all else fails, call the client. Explain to the client your desire to be prepared and your need to know why you have been summoned. Encourage the client to get in touch with the attorney and ask that she contact you. Recognize that the client is likely feeling stressed about the upcoming court day. Therefore, it is important to approach the situation in a calm and professional manner. Sometimes clients have meetings scheduled with their attorney in the week prior to the hearing and you can piggy-back on their meeting. Ask to be called during their scheduled meeting time to discuss the plan for your appearance.

Once you have the attorney on the phone, ask the specific reason for the hearing. Essentially, what is the question before the court? Just because you were told by the client that the hearing is to resolve a certain matter, don't assume that it is the only question on the docket, or that due to a technicality a more pressing matter may take precedence. Clarify your role with the attorney and the expectations for your testimony so that you are not asked on the stand to testify about something that you have no knowledge of, or that you are not qualified to testify about. Without this conversation, you may arrive at court only to find out you are not actually needed because the attorney thought you knew something you didn't, or he wasn't clear about your actual role in the case. Only a judge can officially release you from a subpoena, but the attorney who subpoenaed you can tell you that your testimony will not be needed and, therefore, not to come to court.

If an attorney releases you from a subpoena, ask for written confirmation. You might not get it, but take notice and document the conversation just in case he forgets. Once a subpoena is issued, you are legally obligated to appear. Make a habit of faxing the attorney written confirmation of your conversation days prior to the hearing.

If you have received a subpoena without adequate notice and truly cannot appear because of a prior commitment, check your specific state's law regarding this issue. Once you know how many days' notice is required, it is sufficient to write a brief letter to the clerk of the court explaining the reason you are unavailable and send a copy to the attorney who sent the subpoena. Never contact the judge directly by phone, e-mail, or in writing, unless you have specific permission to do so, essentially in a court order. Because the law is very clear about such communication, you may be viewed negatively for doing so, not to mention publicly admonished by the judge.

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If you have been provided with ample notice but are truly unable to appear, you are at the mercy of the attorney who summoned you. Generally, attorneys will work with you because they want your testimony. However, you also need to be accommodating and flexible with your schedule. Just because the hearing is inconvenient doesn't mean you can decline an appearance.

Let's assume the attorney has explained the reason for the hearing and you are available to attend as an expert witness. According to Federal Rule of Evidence 702, the definition of an *expert witness* is someone who by knowledge, skill, experience, training, or education will assist the trier of fact (a judge or a jury) to understand the evidence or to determine a fact in issue.

How do you best assist the trier of fact? Again, a good place to start is in preparation. You have to thoroughly review the case. Don't rely on your memory to get you through. Depending on the complexity of the case, you may need a few hours, a few days, or in some cases a few weeks to prepare. Generally, if you have stayed current on the latest research through continuing education or by reading the current literature, you will be farther ahead in your readiness to testify. However, if you don't regularly attend conferences or read the professional literature, you will need extra time to prepare. It's important to note that many attorneys attend special trainings on how to discredit expert witnesses, and many more are learning the child abuse literature so they can debunk witnesses who aren't properly prepared. Once you know the specific questions to be addressed and the related literature, your preparation can become more focused. However, your time needs to be concentrated both on reviewing the materials and making any collateral contacts.

You may not be permitted to look at notes while you are on the stand. It also looks very unprofessional to be fumbling thorough your notes searching for names and dates. Some courts do not allow you to look at records while on the stand unless you can state you have exhausted your memory. Also, you should understand that any notes you have with you on the stand are subject to discovery and review by the attorneys. Essentially, if you take it with you, you may have to turn it over.

You should thoroughly review all case records prior to taking the witness stand, and you should be able to accurately describe your role and activities in the case from beginning to end. Carefully and thoroughly review all social history information, case notes, letters, reports, and E-mails. You should also create a timeline of your involvement in the case. At times, you might realize that a significant amount of time has elapsed since you last saw the client. Further, while you may have good case notes, you may not remember what your shorthand means or you may not be able to read your own writing, and you will need to reconstruct the events of the case. Additionally, if you have written any letters or reports, thoroughly review them word by word because you will likely be asked on the stand why you chose to use a given word or phrase. You must be able to explain the relevance of your work with the client as it relates to the question before the court. If you want to be viewed as credible by a judge or jury, you can't stumble over documentation you authored.

You might also consider whether you should consult another professional to review the case. Consultants may or may not already be involved in the case. If there are other professionals involved in the case and you think you need input or clarification, now is the time to do it, since once the hearing has started, legal rule often prohibits discussion of the case, even if it is continued for many months. Depending on your role in the case, you may want to contact guardians-*ad-litem*, social workers, teachers, doctors, and therapists to find out how the client is currently progressing. You will need an up-to-date signed release of information to contact these collaterals, and depending on how long it has been since you initially saw the client, the authorization for release of information may have expired. If your role as an expert is to review other people's work, do so in an ethical and unbiased manner, and be sure your opinions can be supported by the literature and standards of practice in the field.

It is also important to review reports written by other professionals. You may have reviewed the report when you initially saw the client and feel you have a clear recollection of its content. However, if the report was used in any way as the basis for forming your opinion, you need to have a thorough line-by-line understanding of what it says in relation to your work with the client. If the report contradicts your findings and recommendations, you need to be able to articulate several likely reasons for the difference.

Simple things are often overlooked when planning to testify. Know how many times you met with the client and the dates of those meetings. Know who was present for the meetings, and if you met with a child, know who brought the child to your office. If you met the child at a location other than your office, be able to explain the circumstances and rationale for that decision. If you reviewed someone else's work, know how many times they saw the client and on what dates.

As the day of the hearing draws near, it is important to always reconfirm the day before to make sure the case has not been continued at the last minute. It may still be continued once you get to court, but you might save yourself an unnecessary trip to the courthouse if something has changed.

On the day of the hearing, arrive at least 30 minutes early. Usually the attorneys are there and you can get a last-minute update on the direction of the hearing. Attorneys often use time before the hearing to confer with one another. Attorneys also have meetings with each other and clients just before the hearing, which may change the order of or decrease the number of witnesses needed on that day. You can save yourself some unnecessary stress by arriving early to check the plan, tone, and direction the attorneys have planned for the hearing.

Always have an updated copy of your resume or curriculum vitae. The best practice is to regularly add trainings and continuing education to your resume as you attend them. Also, review the information on your resume prior to court. If you want to appear credible, you can't stumble over dates and information from your own professional history.

Regardless of the fact that a judge has ruled that you are an expert, having attended only one or two trainings in child maltreatment doesn't make you an expert. Remember, if you are not properly prepared, you could jeopardize someone's life, and being an expert starts with a commitment to regularly attend trainings and conferences put on by nationally recognized organizations and leaders in the field. It also requires a commitment to read the latest journal articles and books published by reputable sources. Additionally, it's important to consult with other more experienced professionals regardless of your role in the case. Ethical practice requires you to be objective and willing to acknowledge your limitations.

Never assume you know all the answers, or that your day in court will be a cakewalk. While many attorneys don't know what you do or the jargon you use to describe your professional attributes, don't underestimate the well-versed attorney who knows the research literature in your field better than you do. A seasoned attorney may just wear you down by asking you minute details or undermine your confidence by implying you are incompetent. Even an inexperienced attorney can ask you to explain a definition or term that catches you off guard. It's amazing we do our job day in and day out but when asked on the stand, we struggle to adequately explain what exactly we do and why it's important. Review your job description and practice with a colleague by explaining to her as clearly and concisely as you can what your role is in a child maltreatment case.

Be honest both before and during your testimony about what you know and what you are qualified to talk about. Don't exaggerate your qualifications or allow yourself to be sucked into talking about topics of which you have no firsthand knowledge, or topics that are outside your area of expertise.

Be professional at all times in your dress and demeanor. Regardless of what you are allowed to wear at work or how well you may know the judge or attorneys, wear appropriate business attire. Arrive at court in a timely manner. However, understand you will likely have to wait once you are there, so bring a book. Do not allow yourself to become so frustrated by having to wait that you forget what you are there to testify about. Do not discuss your potential testimony with anyone, even with people who may be familiar with the case. Attorneys should take you to a conference room or somewhere out of ear shot of others if they want to talk with you. Further, once you have been sworn in, do not discuss your testimony with other witnesses because you could be held in contempt of court, taint the case, or be disqualified.

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Maintain a courteous and professional demeanor and tone at all times regardless of how others behave toward you. Know that opposing counsel often attempt to rattle witnesses so they don't give their best performance. Be calm and appropriate. Realize that your style of answering questions may not match the attorney's style of asking, but you are required to follow his lead. Do not answer questions until the attorney has fully asked the question, and then be certain there is no objection to the question. If you don't understand the question, ask that it be repeated. Even though the attorney is asking the questions, be sure to look at the judge and jury when answering.

If you are asked about a particular document, regardless of how familiar you are with it, if you do not have a copy in front of you, ask the attorney to show you the document. Don't operate on memory when she has it in black and write. Attorneys are trained in wording questions to solicit agreement if it serves their purpose. Never assume that a document says what they say it says. Usually when you call them on it, they will back down. If not, request a moment to read the document. Don't get lured into reading only the sentence in a paragraph without knowing what was said before or after that statement. Things are often taken out of context in the course of a hearing.

After your testimony, it is important to ask for feedback on your performance from the attorneys or other professionals. If given the opportunity to review a transcript, do so with an eye for how you can improve. If you have reason to believe that your testimony

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may have placed you at risk, leave the building with others or ask the sheriff to provide you an escort to your car.

In summary, remember these key points: be prepared, be proactive, and be professional. Be prepared by knowing why you were summoned, knowing the question before the court, thoroughly reviewing the case material, staying current on the research literature, and attending trainings specific to the issues of child abuse and neglect. Be proactive by taking the initiative to get releases of information, to contact attorneys and collateral sources, and by doing everything necessary to be prepared. Finally, be professional by presenting a calm, objective, and knowledgeable demeanor, and wear proper professional attire. Finally, this article is not intended to provide you with legal advice. If you are uncertain how to proceed, you may want to consult legal counsel.

The field of child abuse and neglect is continually evolving. To stay current, you must know who the leading authorities are in the field and you must have a good understanding of the current professional literature. APSAC publishes journals, practice guidelines, and handbooks on child maltreatment that can help you stay current. Additionally, you can meet many of the current researchers and practitioners at APSAC's annual colloquium and training sessions.

Suggested Readings

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