

Tip Sheet for Clinicians

Testifying in Court about Trauma: How to Prepare



"It is critical that therapists willingly go to court to try to impart their knowledge to the judge. The judge will only make a good decision if he or she has good information. Therapists have that information because of the intimate relationship they have with the kids they treat."

Judge Michael Howard,
Stark County Family Court, Canton, Ohio

CASE EXAMPLE (Introduction):

Laura is a ten-year-old girl who experienced ongoing sexual abuse by her step-uncle. She lives with her parents, but was staying at her aunt's home when the last abuse incident took place. Laura finally told her aunt, who believed her and reported the abuse. The authorities were notified and, at a Children's Advocacy Center, Laura participated in a forensic assessment consisting of a trauma screen and standardized trauma symptom assessment instruments. Laura was referred for Trauma Focused Cognitive Behavioral Therapy (TF-CBT) to address her identified trauma. During the course of Laura's treatment, her mental health therapist Beth received a subpoena to testify in criminal court for the prosecution. Beth felt overwhelmed and wondered how she would manage to prepare testimony while simultaneously fulfilling her other clinical responsibilities. She also worried about having to disclose details of Laura's abuse in court and how that would affect Laura. However, as a seasoned clinician working within the field of child traumatic stress, Beth realized that appearing in court is not out of the ordinary scope of her duties and that court testimony is often required to support clients and to educate the court.

Your Role as a Witness

You may be called to testify in a variety of court cases, including family, dependency, delinquency, or criminal. While your role may be different in each of these types of cases depending on the circumstances, there is one common thread: You are likely to be asked to provide your opinion and share your professional knowledge about trauma. A therapist can use this opportunity to educate the judge about a client's mental health diagnosis, trauma symptoms, and other factors that will help the judge make trauma-informed decisions about such issues as placement, visitation, and services that support the client's recovery.

When You Are Asked to Testify

One of the parties to a case may ask you to testify about a client through their legal representative—your client’s attorney, the child welfare or other state agency’s attorney, or a parent’s attorney. The party requesting your testimony may or may not be an ally in the care of your client. As such, you should determine the role of the attorney making the request and make sure proper releases of information have been signed before providing any information.

When You Receive a Subpoena

Receiving a subpoena can be a stressful experience. The idea of being mandated to go to court and talk about issues your client has raised in confidence is unpleasant for most clinicians; it raises fears about disrupting the therapeutic relationship and causing additional trauma for the client. You may not wish to testify because of the effect it may have on the therapeutic relationship or because you feel that you are being asked to provide information that is beyond the scope of your involvement or expertise.

When you first receive a subpoena, you must determine the requested purpose and scope of your testimony. As a child trauma clinician, you may be asked to testify about how trauma affects children and what protective factors promote resiliency and recovery. Discuss with your supervisor, any designated agency personnel, or your personal legal advisor the type of case and what you expect to be asked, as well as whether you may have grounds to ask for the subpoena to be quashed (see call-out box). Carefully review the subpoena to see the documents you are required to present (see Clinical Records section below), and obtain supervision and independent legal advice on this issue. Discuss with your supervisor or independent legal advisor the materials in the clinical record and any additional materials that pertain to the client, such as trauma narrative, artwork, or assessment materials. If you feel that you cannot provide the type of information or opinion being asked for, let the attorney know. However, if you call the attorney, do not provide any information about your client unless your client has given you permission to do so. If you determine that you can provide the requested documents and if you work at an agency, ask your designated records custodian—if you have one—to initiate contact with the attorney who subpoenaed you and make arrangements to provide the requested records.

You may also have the right to be paid for your testimony, preparation time, and other related expenses. Discuss this issue with your supervisor, agency personnel, and the attorney.



Asking to Quash a Subpoena

If you feel that you have a valid reason not to testify—for example that testifying may not be in the best clinical interest of your client or that going to court might be a trauma reminder for your client—you can ask an attorney involved in the case to request that the court *quash* (cancel) the subpoena. It may also be possible for your client or your client’s legal representative to ask that your subpoena be quashed on the basis of privilege. If the subpoena is not quashed, then you must appear at court on the date and time listed on the subpoena (unless you have arranged an alternate date), or you may face consequences. At the time of your testimony, if you have not complied with any of the requests included in the subpoena, be prepared to explain your reasons for not doing so.

Attorneys are often very willing to accommodate the needs of the therapist and client. You have the right to ask the attorney to give a specific time for your testimony, to consider moving the time of the appearance, to allow you to testify telephonically, and/or to make special accommodations for your client based on clinical need.

Confidentiality and the Therapist-Client Privilege

On receiving a subpoena, clinicians are most concerned about respecting their client's right to confidentiality.



Confidentiality is an ethical rule that prevents therapists from disclosing client confidences. Client/clinician relationships are also protected by *privilege*, the legal rule of evidence that prevents therapists and their clients from being forced to reveal conversations between them.

- Depending on the laws or statutes in your jurisdiction, the communications between you and your client may be protected by privilege¹.
 - In general, it is your client who “holds” the privilege, and you cannot waive the privilege for your client; only he or she can refuse that protection.
 - Also (depending on your jurisdiction) you might be able to assert that privilege as long as your client (or his or her representative) has not waived it.
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- However, depending on the type of case, the laws in your jurisdiction, and what has occurred in that case, a judge may require you to testify in court to confidential matters that you and your client discussed during your therapeutic relationship.
 - A judge might also require that you provide information *that may be protected by HIPAA*.
 - In many jurisdictions, the therapist-client privilege may not apply in child protection and delinquency cases or in when therapy is mandated by the court.

It is best for you to work with your organization to gain a full understanding of the laws and organizational guidelines and practices prior to going to court.

Your Clinical Record

Before you appear in court, review the clinical record and have a good understanding of your organization's policy about the clinical record contents. A typical clinical record includes a treatment plan, assessments, and progress notes. Some organizations include supplementary documents such as trauma narratives, client artwork, a medical summary, results of psychological or other testing, emails, and notes of telephone conversations or consultations. If the clinical record is subpoenaed, you must bring the entire record as permitted or required by your organization's policy. It is unethical to remove documents from the clinical record prior to court.

All documents (and conversations) created (or occurring) during the course of treatment are protected by the ethical and legal principle of confidentiality, which requires that all information that clients share with their clinician shall not be shared with others without the client's written permission. The exception to this principle is when that information conflicts with the clinician's duty to warn (as in the case of a threat of substantial bodily injury) or duty to protect (as in the case of suicidal ideation). Courts may

¹Privileged confidential communications are defined as statements made by certain persons within a protected relationship, such as doctor-patient or therapist-patient, which the law protects from forced disclosure on the witness stand at the option of the person protected by the privilege. The policy is to encourage frank disclosure by a person in need of services; therefore, the patient or client controls whether to waive the privilege and submit to a lawful requirement to release information or testify about the confidential communication. Most privileges are “qualified” which means that despite refusal to waive the privilege, the court may order disclosure in the interests of justice.

order a clinician's testimony in proceedings involving child custody or when a client's emotional condition is an important and relevant issue to the case.

Preparing to Testify about Your Client's Trauma

You will likely be asked to discuss your client's referral reason, diagnosis, psychological testing, medications, treatment plan, dates of treatment, progress, prognosis, and termination or discharge recommendations. You also may be asked whether you consulted with others, including professionals or family members, during your client's treatment. You will want to take the following steps to prepare for your testimony:

- Review your notes and the content of your client records.
- Be familiar with evidence-based or commonly-used psychotherapeutic techniques in your area of expertise and the treatment clinically indicated for your client's diagnoses.
- When discussing your client's diagnosis, refer only to diagnoses recognized in the current *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association.
- Be prepared to describe or explain the meaning of terms that are commonly used by therapists but may not be known or common to persons who are not mental health professionals.
- Be prepared to explain how your client's trauma exposure is prompting current symptoms and affecting his or her functioning at home, at school or work, and in the community. As the court will examine your client's conduct in the context of the case as a whole, this is your opportunity to make sure that the court will view the case from a trauma-informed perspective.



Preparing to Talk about General Principles of Trauma and Your Client

As a witness, you will speak about your client and the treatment you are providing. However, within that testimony, you may find opportunities to educate the court—and the parties to the case—about what trauma is and how it affects your client and drives his or her functioning and conduct. You might include some of the following points in your testimony:

- What is child traumatic stress
- What is trauma and complex trauma
- How child trauma is diagnosed
- How child trauma is treated
- The interplay between child trauma and other concerns—such as developmental delays, traumatic brain injuries, and addiction—and how these factors can exacerbate symptomology
- How trauma reminders can cause reactions that lead to oppositional or aggressive behavior
- How a child's attachment to caregivers can drive social, emotional, and relational development and result in maladaptive functioning in relationships

- How behavioral interventions and punishments may not be successful with children who have experienced trauma
- How re-exposure to a threatening or neglectful environment may affect a child socially and emotionally

Preparing Your Client and Caregivers for Your Court Appearance

It is important not only to prepare yourself for testifying in court, but also to prepare your client and/or caregivers for your appearance. Testifying can have many effects on your therapeutic relationship and on the healing process, both positive and negative. Be aware that a court hearing and your appearance could be a potential trauma trigger, but could also be a liberating and positive experience for your client. Here are some suggestions for client and caregiver preparation:

- Give your client factual information about the hearing in a developmentally-appropriate and therapeutic manner.
- Explain to your client your understanding of the purpose of the hearing, who will be present, what you are planning to say, and what may happen as a result of the hearing.
- Explore with your client, if appropriate, the possibility that you may have to reveal his or her trauma narrative and other personal information in order for the court to make a decision that is in his or her best interest.
- Alert caregivers and family members that, through hearing your testimony, they may learn details of your client's history and traumatic experiences that could be distressing for them. Plan how you will assist them, if needed, in managing their reactions to hearing such details, for example sitting down with them directly after court or meeting with them the following day.
- It may be helpful to revisit your client's trauma-informed safety plan with the client and family to assist with any reactions to trauma reminders that may occur as a result of the court proceedings.
- Review your planned testimony with children and parents, especially the history or recommendations that may be difficult for them to hear.

ETHICAL CONSIDERATIONS

- **Duty to Client:** It is your ethical responsibility to consider how your testimony will affect your client, the caregivers, and family members. Just the fact that you are testifying can upset—or serve as a reminder to—your client or caregiver. Testifying can involve disclosures of statements your client made with an expectation of your confidentiality and could lead to a breach of trust. Your court appearance might result in family members and caregivers learning new details of the traumatic event that could distress all concerned. Work to strike a balance between maintaining your client's confidences and providing the court with the necessary information to make an informed decision.
- **Scope of Practice:** It is unethical for clinicians to testify in matters that are outside the scope of their knowledge and training. Prior to court, do a self-assessment to determine topics you can and cannot speak to based on your knowledge and training.

■ ***Self-assessment Questions***

1. Have I reviewed the client's psychosocial history?
2. Have I had direct contact with the client?
3. Have I interviewed or assessed collateral contacts (i.e., parents, caregivers, teachers, other providers)?
4. Have I reviewed current literature on the topic about which I will testify?
5. How would I define best practice models?
6. Do I have experience in treating traumatized children and their families?
7. Do I know my resume?

Presenting Therapeutic Work Products in Court

Professionals differ on what documents—such as a client's trauma narrative or artwork—belong in a clinical file. Some clinicians will present these materials in court to more accurately convey their client's trauma history. Before you bring a trauma narrative or other work products to court, obtain supervision and independent legal advice on what is clinically appropriate and legally required in your particular jurisdiction. Remember that while therapeutic work products are essential to the therapeutic process, they can be misinterpreted. Keep in mind that if the subpoena specifically mentions a document, you must bring it to court. If you feel your work product should not be presented to the court, you can share your professional opinion on this issue with the court at that time. Be prepared to explain to the court the difference between work products and factual information.

Theoretical Knowledge and Research

Knowing the current literature on child trauma—the validity of assessment instruments, disclosure patterns of maltreated children, common reactions of traumatized children, and the impact of trauma on children's functioning—demonstrates your qualifications and increases the credibility of your testimony. You can strengthen your testimony by describing your assessment tools, their validity, the results of testing, and the interpretation of scores. When asked to make recommendations, speak to the child's "best interest" or provide information about common characteristics of traumatized children as reflected in the current literature.

SELF-CARE TIPS

Testifying in court about a client's trauma history can be a stressful experience, so make sure that you take care of yourself and attend to your own physical and emotional needs during the preparation process. The court experience can be a trauma reminder for clinicians who have had to appear in court before for personal or professional reasons, and reviewing your client's trauma history and past experiences can lead to secondary traumatic stress. It can also be frustrating and stressful to ignore other responsibilities or rearrange your schedule to accommodate going to court. To increase your self-care through this process, consider the following:

- Speak to clinicians who have testified in court about their experiences. If you do not know other clinicians who have testified, contact local and national organizations for sources of peer support and advice.
- Address your fears and feelings about testifying (including secondary traumatic stress reactions that may arise as a result of your past experiences or from reviewing your client's trauma history) with your supervisor, or seek peer supervision or consultation.
- Identify your anxieties about testifying, and think about coping skills you can use to self-regulate during the court process.
- Practice proper self-care activities, such as adequate rest, nutrition, exercise, and stress reduction activities.



For additional information on secondary traumatic stress and prevention/intervention strategies, please review the NCTSN Secondary Traumatic Stress: A Fact Sheet for Child-Serving Professionals.

CASE EXAMPLE (conclusion)

Beth was initially nervous when she received the subpoena summoning her to court and requiring her to bring Laura's chart. However, Beth's supervisor Joe reassured her that she did not have to reveal everything that her client had told her—only that which the court determined relevant. Joe pointed out that testifying could help Laura feel relief, knowing that her abuser was being brought to justice, and he reminded Beth that she is an experienced clinician with special training and expertise in treating children affected by trauma. Joe and Beth called Cindy, the prosecutor in the case, who explained to Beth why she was being called as a witness, on what she would be expected to testify, and the estimated length of time of her testimony—about an hour. Beth felt better about testifying knowing that the prosecutor was interested primarily in hearing how Laura was affected by the abuse and the type of treatment she was receiving. She felt supported by her supervisor and felt that she could go to him with questions and concerns. Now that she had the information she needed, Beth could begin preparing for her testimony.