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## HOW TO TESTIFY: Tips for the Mental Health Professionals

### I. Avoid It!

- A. Why most professionals make lousy witnesses (or: why court stinks!)
  - 1. Communication Rules (hearsay)
  - 2. Adversarial/confrontational vs. Touchy-feely
  - 3. You don't know what you know (or at least the court doesn't think so)
  - 4. The BOP
- B. Ways to avoid:
  - 1. Privilege
  - 2. Candid conversations with your client
  - 3. Enlist the attorney
  - 4. Plead ignorance: You're best friend is "I don't know."

### II. When You Absolutely, Positively, Have to be there:

- A. Abuse of a Child (particularly sexual, DV): maybe you get there through mandatory reporting
  - 1. Children's Court Proceeding (CPS, CYFD)
    - a. The attorney is your friend (probably)
      - i. GAL's, state attorneys, and respondent attorneys
    - b. The BOP: very low: preponderance of evidence
    - c. Judge makes decisions
    - d. What is at risk: Parental termination
  - 2. Criminal Prosecution (DA and PD)
    - a. Attorneys have no time and are probably not your friend
    - b. Tough cases go here
    - c. Kids may be called to testify
    - d. BOP: very high: Beyond a Reasonable doubt
    - e. Judge or jury will make decisions
    - f. What is at risk: freedom, sexual registry
  - 3. Family Court (DM and DV)
    - a. Attorney may (or may not) be your friend
    - b. The BOP: depends, usually preponderance of evidence, sometimes clear and convincing
    - c. Stick to the facts: When, where, who, how many times, goals and progress
    - d. Judge makes decisions
    - e. What is at risk: custody, supervised visitation, order of protection
- B. Expert Opinion
  - 1. "You made your bed..."

2. Don't let them make you an expert where you are not
3. Enlist the attorneys
4. Working with pro se parties

**III. While you are there: Tips to keep in mind**

- A. Pretend you are in Yoga class: breath and don't push it
- B. Watch your diagnosis: statements made for medical treatment and business records
- C. Boil it down
- D. Prepare to be grilled-cross examination