



## **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 CFWB 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, facts have been obtained since the report was submitted, or draw further questions from any of the parties, the provider may be subpoenaed to appear in Court or to provide testimony via virtual platform 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. Each attorney/party will have the opportunity to ask questions of the provider during cross-examination. If providers are going to refer to their case records, it is advisable to bring such records to Court. Although providers cannot read from their notes, witnesses may be allowed to refresh their recollection if they cannot remember certain details. 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, the provider should check to see whether he/she is available on the date and time requested. If the therapist/evaluator has a conflict that he/she cannot resolve, 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 via virtual platform, and what fee will be paid for testimony. If the provider is rendering services on referral through TERM process then the provider may seek compensation for expert testimony from CFWB by submitting the Provider Request for Invoice Payment Delegation – Court Testimony form that is located on the Optum website under the CFWB Treatment tab.

## **Legal Testimony**

Conceivably, a provider could 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 exercise caution about commenting on other involved parties (e.g., the parents in a child assessment case). 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.

## **Stipulated Testimony**

At times, the Court and attorney/parties may agree to stipulated testimony from the provider, which does not require being present in Court. Stipulated testimony may apply when the parties need additional information from a witness, but do not need direct testimony. Instead of having the witness testify on the stand, the attorneys/parties agree upon questions to be asked of a provider. The provider then gives written responses and all attorneys/parties read the answers. If there are no objections or follow up questions, the attorneys/parties agree to have the questions/answers submitted as evidence and the judge can consider the "testimony" without hearing the witness testify in person.

## **Therapist-Client Privilege**

TERM providers who receive a subpoena to testify in Court should be mindful that therapist-patient privilege still applies when asked to provide testimony to the Court. The attorney representing the client can object to questions during cross-examination by other attorneys/parties. If a privilege objection is made, the judge will overrule or sustain the objection. If the objection is sustained, the provider does not answer the question. For further guidance on privileging, subpoenas, or court testimony, it is recommended that providers refer to their licensing board code of ethics or seek their own legal counsel.