

Who is the Client in Forensics?

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Abstract

Who the client is in a forensic rehabilitation evaluation has been the source of confusion and much debate among expert witnesses for many years. In an attempt to clarify the issue, several leaders within the rehabilitation forensic practice setting met in Las Vegas, Nevada on November 4, 2007 to review the various definitions of client among the codes of ethics to which forensic certificants or professional members adhere. The goal of the work group was to identify and define the intent of the relationship among the parties in a legal matter and to offer definitions to clarify those relationships utilizing terminology that might be universally accepted by certification and membership bodies to which many rehabilitation expert witnesses belong. This white paper addresses the history of the issue, the conflict caused by competing definitions, and offers a definition that has been accepted and ratified by the American Board of Vocational Experts, the Commission on Rehabilitation Counselor Certification, and the International Association of Rehabilitation Professionals.

A Historical Perspective

In the 1970s, the primary ethical problem facing rehabilitation practice was centered on a relationship triad. It comprised the client, the rehabilitation counselor, and the agency through which services were delivered. In the 1980s, ethical issues were raised for rehabilitation

counselors regarding the identity of their clients. A primary question asked was, “Were [clients] the consumers or the payers of service?” (Kontosh, 2000). Cottone (1982) emphasized that in private-for-profit rehabilitation, primary allegiance always goes to the client when rehabilitation is the goal and the client is always the person with a disability, never the insurance company. Offering a contrary opinion were Taylor, Golter, Golter, and Backer (1985) who identified the client allegiance as shifting from the worker to the bill payer. Ethical issues were also discussed by Nadolsky (1986) in the transition from public to private rehabilitation. Though rehabilitation services can help resolve legal issues arising from an acquired disability, they can also restore or provide vocational functioning and, thus, independence to a person with a disability.

Generally, within the counseling field the definition of client has been more in line with what Cottone (1982) proposed over a quarter century ago (American Counseling Association, 2005; Commission on Rehabilitation Counselor Certification, 2001). However, in other helping professions, particularly in forensic psychology (American Psychological Association, 2003), the definition was more consistent with Taylor, et al. (1985). Given that rehabilitation expert witnesses came from counseling and psychology (e.g., degrees in rehabilitation counseling, counseling psychology, rehabilitation psychology), the competing definitions left the professional in a quandary.

The Problem

Who is the client? Historically, this simple question has proven to generate anything but a simple answer. The question has been the source of much disagreement and debate among professionals who work as practitioners and as expert witnesses. Adding to the confusion is that fact that the various professional and credentialing bodies did not ascribe to the same definition. The professional was left with a definition of client depending upon: a) certification(s); b) practice settings; c) scope of practice; and, d) the type of case. This quagmire resulted in dramatic moments for the expert witness and the profession. When faced with the question of who the client was, one professional might testify that it was the person who they evaluated while another professional might suggest it was the referral source. While neither person was completely correct, it became clear that professionals had a significant challenge before them. The credibility of expert witnesses was at stake and an opportunity existed to bring key groups together to collaborate on and arrive at a consensus about a common definition.

In 2006, the American Board of Vocational Experts (ABVE) Board of Directors took the first step in clarifying the definition of the terms of referral source and client. After many years of impasse on addressing the definitions, leaders from the ABVE, the Commission on Rehabilitation Counselor Certification (CRCC), and the International Association of Rehabilitation Professionals (IARP) engaged in a history-making meeting during the IARP Forensic Conference in November, 2007.

The Role of the Expert Witness

The practice of expert witness testimony is not restricted to members of any specific organization. In fact, it is possible to be retained by an attorney to testify in court without belonging to any regional, state, or national organization. Cases in which expert witnesses testify imbed two sides of a legal equation: a) the attorney who knows the facts of the case and the rules of evidence as well as what type of expert is needed to get these facts into evidence during court proceedings; and, b) the retained expert who needs sufficient education or training

or possesses knowledge of a particular subject in greater depth than the public at large to be able to effectively respond to questions that create a pool of evidence from which the trier of fact can draw conclusions.

The main question qualifying a professional's expertise is: In what setting has the expert demonstrated relevant education, skills, training, and/or experience? If that setting places the counselor in a role where a range of services will be provided to assist the client in achieving rehabilitation needs, there is little disagreement among professionals that there are direct services provided by the counselor to that person; clearly, the person with disabilities is the client of those direct services and a counselor-client relationship has been established (Wheeler & Bertram, 2008). In this setting, there is an expectation among the parties that the counselor will use pertinent professional expertise to assist the client in meeting goals, and the tenets inherent in codes of ethics providing guidance in primary care settings are best suited for the practitioner engaged in delivering these services.

However, in a forensic setting where the professional is retained to provide admissible evidence in a court of law, the focus is different. The ultimate role of the expert witness in this setting is to communicate the truth of the matter (Blackwell, Martin, & Scalia, 1994), as the expert sees it. Expert opinion, given as admissible evidence in a court of law, relies on clinical judgment and the weight the professional gives to empirical data. As long as the derived conclusions and opinions are based on objective data and sound methodology, the retained expert has met the ethical obligations to the legal process, the profession, and to society at large.

Objectively pursuing the truth, as opposed to preserving the interests of any specific party to the legal action, places the expert witness in a neutral and educator role rather than in a direct service provision role. The testifying expert must be able to demonstrate, through admissible testimony, a reliance on factual foundations and empirical data. In the forensic setting, the expert witness should rely on evidence-based information, apply professional clinical judgment to these facts, and communicate clearly the relationships between the data analyzed and the opinions offered. No empirical case-related evidence should be ignored, discounted, or minimized in an effort to preserve the interests of a specific party.

With the above two-pronged case operational distinctions in mind, an intra-organizational work group explored and endorsed a definition of client for professionals operating in the forensic arena. This white paper is the result of months of research and discussion by members of the work group to find a shared, endorsed, and approved definition of a client in forensics.

Roles of Parties in a Forensic Setting

The work group members agreed that:

- in a forensic setting, the professional who is engaged as an expert witness has no client;
 - the responsibility of the expert witness is to communicate the truth of the matter based on the case-related facts and the education, training, and experience of the expert;
 - the opinion(s) communicated by the expert witness should be objective and unbiased and not advocate for any party in the legal matter, such as the interests of the referral source, person being evaluated, or any other party in the legal matter; and,
 - the expert witness must use sound methodology and empirical data, using their unique specialized knowledge and skills to analyze the empirical data, generate hypotheses, test their validity against the facts, and use skilled clinical judgment to express opinions that reflect the issue(s) at hand.
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Definitions of Parties in a Forensic Setting

Further, the work group agreed on the following definitions:

- **Evaluee:** The person who is the subject of the objective and unbiased evaluation.
- **Referral Source:** The individual who referred the case to the expert witness. This may be through self-referral of the evaluee, family member, attorney, insurance company, or other source.
- **Payer:** The entity paying for the services provided by the forensic rehabilitation expert. This entity may be the evaluee, family member, attorney, insurance company, referral source, or other source.

Ratifying the Definition

After complete agreement from all work group members about the definition of the client in a forensic setting, each of the work group members provided a copy of such definition to the respective organizations with which they were affiliated. The definition passed each of these organization's boards, unanimously and without changes, on the following dates:

ABVE:

Full Board: September 16, 2008

CRCC:

Code of Ethics Revision Task Force: February 2, 2008

Ethics Committee: March 8, 2008

Full Commission: June 7, 2008

IARP:

Forensic Board: November 20, 2007

Full Board: December 20, 2007

Conclusions

For over a quarter of a century, the definition of who the client may be in a forensic analysis has been controversial. Now, all major organizations with members or certificants who generally provide expert witness testimony in rehabilitation settings have come together to unanimously agree upon a definition. In their deliberations, the work group opted to put aside semantics around the word "client" and to focus on the intent of the relationship between the parties. Thus, terms more specific to these entities as well as the responsibility of the evaluator within the process became the focus of the definition. The dissemination of this definition among all sectors of rehabilitation practice will ensure that practitioners and expert witnesses will know the difference between a client and an evaluee, the quality of the relationship between the expert witness and the individual being evaluated, and the responsibility of the expert witness on and off the witness stand.

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Work Group Participants

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