

AAPL: Ask the Experts-2014

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Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to nskaye@aol.com.

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Q.: The plaintiff in a civil suit, pro se against his parents (alleging sexual abuse,) is serving two life sentences. The records are clear that he has an antisocial personality and no other diagnosis. Why should I even try to interview this "jailhouse lawyer"?

A. Kaye.: The AAPL Ethics Guidelines, Section IV state: For certain evaluations (such as record reviews for malpractice cases), a personal examination is not required. In all other forensic evaluations, if, after appropriate effort, it is not feasible to conduct a personal examination, an opinion may nonetheless be rendered on the basis of other information. Under these circumstances, it is the responsibility of psychiatrists to make earnest efforts to ensure that their statements, opinions and any reports or testimony based on those opinions, clearly state that there was no personal examination and note any resulting limitations to their opinions.

It has long been held that making a diagnosis without interviewing the individual creates a bad impression of psychiatry and leaves our field open to harsh criticism. However, there are situations when a person cannot be interviewed and an opinion can be rendered. This is common in contested will cases (testamentary capacity) but also is common when one party refuses to be interviewed, often for fear of self-incrimination. It is also common in threat assessment cases where interviewing a person may increase the risk to the public or retaining party.

While making a diagnosis without an interview should generally be avoided, there are times where sufficient other information is available to make a diagnosis. In all cases, it is an affirmative duty of the evaluator to make it clear that the basis of the opinion has not included an interview.

A. Sadoff.: First of all, do not take a pro se case. I teach my fellows and students never to take a pro se case, especially if the defendant (or in this case the plaintiff) is in jail or prison. The likelihood of your getting paid is slim to none. Non-lawyers do not know about retainer fees and are reluctant to pay in advance and would be especially challenging in this case where your diagnosis is antisocial personality disorder.

Having said that, why should you examine the plaintiff? For several reasons:

- 1) Assuming you receive your retainer fee and are comfortable examining the plaintiff with no bias toward him because he is serving 2 life sentences, presumably for murder, you may find that he has other diagnoses that other examiners may have missed (e.g., PTSD).
- 2) You may be able to connect the murders with his claim of sexual abuse by his parents and demonstrate serious emotional or mental impairment that stimulated the violence or that he could not keep from committing the acts that led to his conviction: e.g., the victims for which he was charged with and convicted of murder may have been sexually abusing him at the time.
- 3) He is entitled to a comprehensive examination by a competent forensic psychiatrist for both his civil claim against his parents and for the criminal charges that may be related to his claim of sexual abuse. However, he may also be malingering or lying about the abuse, so evidence must be obtained to confirm or deny his accusation.

Having said all that, I still would not get involved with this particular plaintiff for a number of reasons besides the economic one. He feels like trouble and is late in accusing his parents of sexual abuse, most likely to gain an advantage legally and to get back at his parents. What would keep him from accusing you of malpractice if you do not find in his favor? We do not have to accept every case that is offered to us. Using good discretion is an important part of any forensic practice. There are perils and pitfalls we need to avoid in order to practice comfortably.

Take Home Point:

Even when there is sufficient other information available, it is usually preferable to conduct an interview. So doing, makes it harder to allege bias and shows the evaluator is striving to reach an objective opinion. Absent the interview, one could be accused of potentially missing information or of doing sloppy work. Certain jurisdictions (California) actually allow an expert to be sued by the plaintiff for failure to conduct the interview. However, there are times when it is appropriate to not conduct the interview. It is important to be clear of the basis of your opinion. Pro Se cases have significant problems and in general we both advise against getting involved.