

Understanding Differing Roles of Forensic Mental Health Practitioners

BRITTANY BATE, PH.D.

LICENSED PSYCHOLOGIST AND CONSULTANT

DRBATE@BEBOLDPSYCHNC.COM

BE BOLD PSYCHOLOGY AND CONSULTING



- ▶ Doctorate in Clinical Psychology, with an emphasis in forensic psychology and assessment, from Sam Houston State University in Huntsville, Texas.
- ▶ Completed predoctoral internship at the Federal Correctional Complex in Butner, NC – forensic track
- ▶ Postdoctoral fellowship at a group practice in Cary, NC. Specialized in civil forensic matters (child custody, parental capacity) and court-ordered or attorney-referred mental health evaluations and violence risk assessment.
- ▶ Currently owner/founder of Be BOLD Psychology and Consulting – clinical and forensic telehealth/virtual services across North Carolina.
- ▶ Contract psychologist with North Carolina State Bureau of Investigation in their Behavioral Threat Assessment Unit.
- ▶ Assist in conducting small group and survey research as a contract trial consultant.

Background





- ▶ Better understand the varying roles a mental health clinician might perform in a forensic case (fact witness, expert/evaluator, consultant) and be able to better choose which type of witness, or witnesses, is right for your case.
- ▶ Learn how to use forensic mental health clinicians most ethically and effectively.
- ▶ Learn more about what questions to ask and what to look for when seeking a forensic expert or consultant for your case.
- ▶ Identify empirically-supported qualities of an effective expert witness.
- ▶ Discuss and apply today's presentation to hypothetical scenarios.

Types of Mental Health Clinicians in NC

- ▶ LP (Licensed Psychologist) ; LP, provisional (Licensed Psychologist, provisional)
- ▶ LPA (Licensed Psychological Associate)
- ▶ LCMHC /A (Licensed Clinical Mental Health Counselor / Associate)
- ▶ LCSW/A (Licensed Clinical Social Worker / Associate)
- ▶ LCAS /A (Licensed Clinical Addiction Specialist/ Associate)
- ▶ LMFT /A (Licensed Marriage and Family Therapist)

*All have different licensure requirements, ethical codes, and state Boards.

* I will be speaking to ethical codes and requirements as a licensed psychologist that inform this topic, and forensic work more broadly.

American Psychological Association Code of Ethics



- ▶ Boundaries of Competence – psychologists without forensic training should not be doing forensic work
 - ▶ How do I know if someone has forensic training?
- ▶ Multiple Relationships
 - ▶ We will talk much more about this later
- ▶ Third Party Requests for Services
- ▶ Informed Consent
- ▶ Privacy and Confidentiality
- ▶ Release of Test Data
 - ▶ Copyrighted test material (e.g., administration manuals/protocols) should not be released to anyone other than a licensed psychologist.

American Academy of Forensic Psychology Specialty Guidelines



ASPIRATIONAL GUIDELINES – NOT ETHICS CODE

- ▶ **Guideline 1.01: Integrity** - "Forensic practitioners... strive to resist partisan pressures to provide services in any ways that might tend to be misleading or inaccurate."
 - ▶ **Guideline 4.02: Multiple Relationships** - "Forensic practitioners....seek to minimize any detrimental effects by avoiding involvement in [multiple relationships] whenever feasible or limiting their assistance in a manner that is consistent with professional obligations."

Approach: Clinical vs. Forensic

(Greenberg & Shuman, 1997; Melton et. al., 2018)

	CLINICAL-THERAPEUTIC	FORENSIC ASSESSMENT
Scope	Broader	Narrowly defined
Customer	Patient	Court
Approach	Empathic/Trusting	Skeptical/Distanced
Relationship	Helping advocate	Neutral evaluator
Patient/Evallee's perspective	Heavily considered	Weighed alongside other data points
What is tested	Dx criteria	Functional legal capacities
Skills	Treatment	Evaluation
Who leads	Patient	Examiner
Truth	Trust what is disclosed	Verify what is disclosed with collateral data
Advocate for	Health, healing, hope	What the data indicate
Role of judgment	Nonjudgmental	Judgment of the data

Clarification at the outset

- ▶ In which role is the mental health clinician?
 - ▶ Fact witness, expert/evaluator, or consultant?

Mental Health Clinicians: Potential Roles



Fact Witness (operating as a clinical psychologist)	Expert (Evaluative)	Consultant
Has engaged in professional psychological relationship (therapy, assessment) outside of or unrelated to court/forensic circumstances	Evaluates an examinee, usually to assist the trier of fact in making a fully informed decision	No evaluation of examinee
Provides therapy or clinical assessment (IQ/LD eval; diagnostic clarity to inform med management or treatment)	Writes report, testifies if necessary	Identify issues in the report of another expert May help with jury selection, witness preparation, or development of cross-examination questions
Assists client in getting therapeutic or clinical needs met; Healing, mental wellness	Objective; sometimes challenging/more skeptical	Assists the attorney regarding strategic case decisions; Partisan
Goal was best clinical outcome for client	Indifferent to the outcome	Seeks to win

Clarification at the outset cont.

- ▶ If evaluator/expert
 - ▶ Clarification of the precise legal topic
 - ▶ Expectations for the evaluation or testimony
 - ▶ This is also a great place to learn more about your expert's background and training both in forensic psychology as well as the specific issue at hand.
- ▶ Ensure no conflict of interest (e.g., the expert does not know one of the parties)
- ▶ Timeline – When does the evaluation need to be completed? When would you need the report? Do you anticipate needing the expert to testify?
- ▶ Fees
 - ▶ Hourly or package/flat fee?
 - ▶ What about extra measures or hours – how are those handled or billed?
 - ▶ How is payment rendered? Who is responsible for rendering payment?

Other key nuances: Evaluator



Evaluating only the referral question

Always clarify exactly what the referral question is

Capacity to proceed?

Psychological evaluation for diagnostic clarification?

IQ/cognitive ability?

Parental Capacity

Child Custody

Risk for Future Violence

Threat Assessment



If I did not evaluate it, I cannot speak to it

So, what can I speak to as an evaluator on the stand?

- ▶ “What does this term mean in Dr. X’s report?”
 - ▶ OK
- ▶ “Why would Dr. X give this test?”
 - ▶ Qualified OK – sticking to why I did or did not give the test
- ▶ “Is this test ordinarily useful in sanity evaluations?”
 - ▶ OK
- ▶ “Can you suggest a line of cross examination questions for Dr. X?”
 - ▶ Crosses the line
- ▶ Important as a psychological evaluator to be focusing on my own opinion rather than explaining why the other expert is “wrong”

Errors: Role shifts



- ▶ Consultant to Expert is less likely
- ▶ Expert to Consultant is more common
- ▶ Why does it happen?
 - ▶ Economics—the examiner is already there, so why spend more money to hire a consultant?
 - ▶ Simplicity—the examiner knows the case, so why hire a consultant?
- ▶ Although it may be simpler and save money, shifting from Expert to Consultant poses an ethical conflict for psychologists.
 - ▶ Importantly, for the attorney, it can also potentially hurt case if/when the Expert's objectivity is called into question. This can happen if the Expert is engaging in consultative work with you.
- ▶ Importance of role clarification at outset

Other Errors in Roles: Examples

- ▶ Starting as consultant, then offering testimony as an expert later in proceedings
- ▶ Starting as expert, then offering consultant services later in proceedings
- ▶ Working as an agent of the retaining party and writing partisan reports/opinions that do not fully account for the data
- ▶ Failure to account for Allegiance Bias when hired by one side
 - ▶ Adversarial Allegiance – real, and a big deal

"You want to preserve your reputation for honesty and credibility; it is hard to earn, and easy to lose."



Pause.
Questions
so far?

Vignette/Discussion #1

- ▶ In response to the prosecutor's motion, the court ordered a psychologist to evaluate the trial competence (capacity to proceed) of a woman who had been charged with lewd and lascivious behavior.
- ▶ In the report summarizing her evaluation, the psychologist discussed the defendant's understanding of and ability to participate in the legal process, and recommended she be adjudicated competent.
- ▶ The prosecuting attorney asks about diagnosis and sentencing/mitigation considerations.
- ▶ The psychologist describes the defendant as "a psychopath" who, because of her high risk for reoffending, should receive an extended prison sentence.
- ▶ Questions:
 - ▶ In what role was the psychologist operating?
 - ▶ Do you find any issues with the psychologist's testimony? If so, what are they? If not, why not?

Vignette/Discussion #2

- ▶ A psychologist is subpoenaed as the treating clinician of a man involved in a custody battle. The man and his ex-wife had each previously been evaluated by another psychologist, who made recommendations as a result of the evaluation.
- ▶ Recommendations included that the man engage in 12 months of individual therapy, take a parenting course, and continue taking his psychiatric medication as prescribed.
- ▶ Treating psychologist engaged the man in 24 sessions (approximately 6 months) of therapy. Topics included anxiety management, communication skills relating to communicating with ex-wife in an effective manner (PT noted ex-wife is "impossible" to talk to), and parenting psychoeducation.
- ▶ Treating Psychologist discharged PT, as treatment goals has been met and PT was not evidencing/reporting significant distress or impairment
- ▶ Question: In what role is the treating psychologist operating?
- ▶ Question: At trial, opposing counsel asks treating psychologist if father is a fit and stable person to parent their child.
 - ▶ What can the psychologist do?
- ▶ Question: PT's counsel asks treating psychologist if it is possible or likely that PT's ex-wife had a substance abuse problem (alcohol use disorder) based on reports offered by PT throughout his therapy.
 - ▶ What can the treating psychologist do?

Vignette/Discussion #3

- ▶ A psychologist is court-ordered to complete a psychological evaluation and substance abuse assessment on a female who is involved in a custody dispute. The psychologist, being an expert, ethical, well-trained psychologist conducts the evaluation and offers a fair, objective assessment. The psychologist recommends that the female might benefit from individual counseling to further process childhood trauma and receive support in better managing stressors associated with the current custody process and ongoing parenting-related stressors.
- ▶ It happens that the female evaluatee was overall happy with the psychologist's assessment and findings. The female's attorney reaches out and asks the psychologist if she would be willing to begin individual therapy with this client.
- ▶ Question:
 - ▶ In what role was the psychologist initially operating?
 - ▶ Can the psychologist accept the female whom she previously evaluated as a client?
 - ▶ Pros? Cons? Potential problems?

Vignette/Discussion #4

- ▶ A psychologist is asked to complete a capacity to proceed evaluation of a defendant being charged with first degree murder. The psychologist, being an expert, ethical, well-trained psychologist conducts the evaluation and offers a fair, objective assessment that the defendant is capable to proceed to trial.
- ▶ This is accepted by the trier of fact and the trial proceeds. The defendant is found guilty.
- ▶ The defense attorney reaches out to the psychologist who completed the capacity to proceed evaluation, who is familiar with the defendant and his mental health and psychosocial history, and asks the psychologist if they would be willing to conduct a sentencing mitigation evaluation.
- ▶ Question:
 - ▶ In what role was the psychologist initially operating?
 - ▶ Can the psychologist complete the second evaluation?
 - ▶ In what role is the psychologist acting in completion of the mitigation evaluation?

Qualities of an Effective Expert

- ▶ Kwartner and Boccaccini (2008) concluded that there are four evidence-based principles of effective testimony
 - ▶ Credibility (credentials)
 - ▶ Clarity
 - ▶ Clinical knowledge
 - ▶ Certainty

Brodsky (2009) elaborated upon *characteristics* of a persuasive expert and found that the following four items lead to higher overall witness credibility/believability:

- Knowledge
- Confidence
- Trustworthiness
- Likeability

So how do we improve those things?

What else can a forensic psychologist do?

- Expert Witness Preparation*
- Jury Selection/SJQ Development*
- Sexual Dangerousness Risk Assessment
(Threat of future sexual violence)*
- Threat Assessment *
- Personal Injury Assessments
- Testamentary Capacity *
- Fitness For Duty Evaluations*
- Pretrial/Posttrial Evaluations
- Capacity to Proceed*
- Criminal Responsibility/Mental State at the Time of the Offense/ Diminished Capacity*
- Competency to Waive Miranda
- Violence Risk Assessment*
- Sentencing Mitigation*
- Atkins Evaluation (Competency to be Executed)
- Child Custody/High Conflict Divorce
 - Custody Evaluations
 - Reunification Therapy
 - Court-ordered coparenting*
 - Mental health/substance abuse evaluations in the context of child custody proceedings*

THANK YOU FOR JOINING ME TODAY!

Questions? Comments?

Brittany Bate, Ph.D.

Licensed psychologist and consultant

Be BOLD Psychology and Consulting

drbate@beboldpsychnc.com

919-300-5221

<https://beboldpsychnc.com/forensic-services/>



REFERENCES

*A big thank you as several slides were adapted with permission from a presentation given by Terry Kukor, Ph.D., ABPP – *Common Errors (And What To Do About Them) in Forensic Evaluation*. Guest Speaker, University of New Mexico Health Sciences Law and Mental Health Seminar Series

- ▶ American Psychological Association (2013). Specialty guidelines in forensic psychology. *American Psychologist*, 68 (1), 7-19. Online at:
<http://www.apa.org/practice/guidelines/forensic-psychology.pdf>.
- ▶ American Psychological Association. (2017). Ethical principles of psychologists and code of conduct (2002, amended effective June 1, 2010, and January 1, 2017).
<http://www.apa.org/ethics/code/index.html>
- ▶ Brodsky, S. L. (2009). *Principles and practice of trial consultation*. The Guilford Press.Faust, D., Grimm, P. W., Ahern, D. C., & Sokolik, M. (2010). The admissibility of behavioral science evidence in the courtroom: The translation of legal to scientific concepts and back. *Annual review of clinical psychology*, 6, 49-77.
- ▶ Greenberg, S., Shuman, D, (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice*, February 1997 Vol. 28, No. 1, 50-57).

REFERENCES

- ▶ Greenberg, S. & Shuman, D. (2007). When Worlds Collide: Therapeutic and Forensic Roles. *Professional Psychology: Research and Practice*, Vol. 38, No. 2, 129 –132
- ▶ Kwartner, P. P., & Boccaccini, M. T. (2008). *Testifying in court: Evidenced-based recommendations for expert-witness testimony*. In R. Jackson (Ed.), *International perspectives on mental health. Learning forensic assessment* (p. 565–588). Routledge/Taylor & Francis Group.
- ▶ Melton, G. B., Petrila, J., Poythress, N. G., Slobogin, C., Otto, R. K., Mossman, D., & Condie, L. O. (2018). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (4th ed.). Guilford Press.
- ▶ Murrie, D. C., Boccaccini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are Forensic Experts Biased by the Side That Retained Them? *Psychological Science*, 24(10), 1889–1897. <https://doi.org/10.1177/0956797613481812>
- ▶ Otto, R.K., DeMier, R. L., & Boccaccini, M. T. (2014). *Forensic Reports & Testimony: A Guide to Effective Communication for Psychologists and Psychiatrists*. New York: John Wiley.