

## How Much Weight Does a Social Worker's Opinion Carry in Court?

Elisa Reiter and Daniel Pollack | October 10, 2021



How much weight a social worker's opinion carries in court depends upon if the social worker is an expert witness, a lay witness, or a character witness. It also depends upon if the case is a criminal, civil, or administrative matter.

In the [Benchbook in the Behavioral Sciences](#), written as a guide to judges and litigators, the authors write:

When the behavioral sciences are limited to the empirical world, and based upon only those hypotheses that have properly grown out of the methodology of science, then they have immediate utility to legal decision making. When the behavioral sciences stray from the methodology of science, their spokesmen are no more valuable to law, than the telephone psychic hotline.

Let's suppose that parents decide to become involved in growing and selling marijuana. That activity may be perfectly legal in California or Colorado, but not in Texas. Presume that:

- Parents wrap 1,200 pounds of marijuana in trash bags — taped, with a layer of baby powder between the trash bags holding the marijuana, and an outer layer of trash bags;
- The trash bags, heavy with marijuana, are packed into a truck, interspersed with the many toys and games;
- The parents transport their minor children in a truck used to haul this illicit cargo to Texas or to New York (jurisdictions where growing and distributing marijuana remains illegal);
- The parents are pulled over for a routine traffic stop;
- The drugs are found in the course of that routine stop; and
- CPS workers, advised by police officers at the scene that a massive amount of marijuana was discovered by drug sniffing dogs, are called to remove the children from the parents at the scene of the arrest.

There are a variety of issues that flow from this fact situation. The CPS social workers could prove a valuable asset in presenting testimony about their observations at the scene of the arrest regarding the appearance of the children, the excited utterances of their parents, how the parents reacted to their arrest and separation from their young children, and how the children might have reacted when first presented to grandparents as a potential kinship placement alternative. In general,

social workers can provide valuable testimony in civil, criminal and administrative matters.

How can social workers prepare for court? Assume there is an allegation of sexual abuse or an outcry made to a social worker by a child. Bill Eddy suggests that the social worker who receives such an outcry should maintain an open mind (a willing suspension of belief), and explore all theories, including:

- Pre-existing abuse;
- Divorce related abuse;
- Sincere but false allegations;
- Intentionally false allegations;
- Sexual abuse by someone else;
- All pertinent scenarios.

In family law matters, judges must have the agility of an acrobat on a high wire, balancing immediate concerns about the physical and emotional well-being of the children against a thorough, unbiased child custody evaluation. Like any other witness, social workers must understand that they need to:

1. **Tell the truth.**
2. **Answer the question asked.**
3. **Refrain from volunteering extraneous information.**
4. **State their inability to understand a given question.**
5. **If a compound or multifarious question is asked**, containing multiple parts, learning to ask which question the attorney wants answered first.
6. **Answer simply** with “yes,” “no,” or “I don’t know,” if possible, and wait for the attorneys to follow up with additional questions.
7. **Stop talking if an objection is raised**, and wait for the judge to rule.
8. **Be concrete, in notes and in testimony.** For instance, rather than observing that a parent appeared to be “high”, the social worker should note that the parent had an irregular gait, held on to the hallway wall for support, had bloodshot eyes and slurred speech, and that the parent had difficulty remembering the last time they saw their child.

Regarding appearing in court, even if remotely, social workers must remember to:

- **Dress appropriately.** First impressions count.
- **Speak up.** The court cannot consider what is not heard.
- **Be professional.** Do not argue with the judge or counsel.
- **Review your notes in advance of the hearing.** Be able to discuss vital statistics in your case. A termination or disability case may have taken years to get to trial.
- **Know your flaws.** The attorney “backing you” will want to know if there is a problem or issue in the case prior to trial rather than learning of that issue during trial.
- **Practice.** Social workers are often overworked and underpaid. Nonetheless, they must make time to practice to be prepared for court.

Attorneys presenting social workers as witnesses must present the witness’ qualifications. “Even if the social worker is not qualified as an expert, he or she will emerge as more credible or knowledgeable than a lay witness.” Social workers present to gatekeeping judges with distinctive viewpoints:

Social work’s unique perspective entails explicit, simultaneous focus on environmental and structural phenomena that often exacerbate mental health challenges faced by lawyers’ clients, such as poverty, unemployment, homelessness, substandard housing, environmental threats, poor health, and neighborhood violence, among others. Also, social work is the only human services profession whose national code of ethics (National Association of Social Workers) highlights the profession’s particular concern for people who are oppressed and living in poverty, along with related social justice issues.

Social workers can assure due process of law – or not. In a recent Alaska Supreme Court opinion, a case involving termination of parental rights

was reversed and remanded, in part because an inadequate foundation was laid as to the qualifications of a social worker witness. Cora G. v. Alaska Dep't of Health & Social Servs., 461 P.3d 1265, 1283 (Alaska 2020) A while ago, Barton Bernstein wrote that “The social worker has tools of investigation available to gather and interpret data meaningfully for the benefit of judge, jury, and clients.”

In a recent administrative case, a plaintiff appealed from her denied application for Supplemental Security Income. One of her contentions was that the Administrative Law Judge (“ALJ”) “improperly evaluated the opinion from Plaintiff’s treating mental health therapist,” who was a social worker. The court reasoned that the “ALJ afforded ... [the plaintiff’s social worker’s] opinion “partial weight” or “little weight,” noting that a “social worker is not an acceptable medical source...” The court held: “However, the ALJ should consider information from ‘other sources,’ such as social workers, which ‘may also help . . . to understand how [the claimant’s] impairment affects [her] ability to work.” Krach v. Comm’r of Soc. Sec., quoting 20 C.F.R. § 404.1513(e)). Although the ALJ is “free to decide that the opinions from ‘other sources’ . . . are entitled to no or little weight, those decisions should be explained.” Piatt, 80 F. Supp. 3d at 493 (quoting another source). Furthermore, an ALJ may not disregard a medical opinion solely because the opinion is from a nonmedical source. Allen v. Comm’r of Soc. Sec. As with a treating physician, “[t]he amount of weight to give such opinions is based in part on the examining and treatment relationship, length and frequency of the examinations, the extent of relevant evidence given to support the opinion, and consistency with the record as a whole.” Williams v. Colvin.”

Whenever social workers are called to the witness stand, they will be thoroughly scrutinized. The judge, attorneys, and jury will examine microscopically everything that is said. Appreciating the appropriate procedure and demeanor of a courtroom can give added weight to any social worker's opinion.

**Elisa Reiter** *is an attorney, Board Certified in Family Law and Child Welfare Law by the Texas Board of Legal Specialization.*

*Contact: [ereiter@uplawtx.com](mailto:ereiter@uplawtx.com).*

**Daniel Pollack** *is an attorney and professor at Yeshiva University's School of Social Work in New York City. Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu).*