

## **Collaborating with Mental Health Professionals: Assessments of Torture Survivors Seeking Asylum**

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Attorneys and mental health professionals frequently share torture-survivor clients. Effective collaboration can enhance both legal and therapeutic services and ultimately save time for both professionals. Keep in mind that resources vary in different areas depending on the availability of torture treatment centers, forensic experts and pro bono legal programs.

### **When is a mental health assessment needed?**

A mental health assessment can be incredibly powerful corroborating evidence of past trauma. It is often impossible to provide any objective, contemporaneous evidence of torture. The only evidence, aside from the client's own story, may be psychological effects or physical scars.

Among the key questions an adjudicator is seeking to resolve are:

- Are you who you claim to be?
- Do you come from the country you claim to be from?
- Have you experienced the events you claim to have undergone?<sup>1</sup>

The mental health professional can particularly address the third question in a way that can aid the adjudicator in making the best, most informed decision regarding asylum. The mental health professional can document and explain the connection between the events alleged to have occurred, the client's current behavior and symptoms and the diagnostic criteria for any psychological condition that the client manifests upon examination.

A mental health assessment can also contextualize the client's behavior or memory gaps. For example, a flat affect could be perceived by an adjudicator as indifferent, inconsistent with the client's testimony of having experienced a terrible imprisonment. A mental health assessment may explain the flat affect as consistent with past trauma, and document the client's prior demonstration of the flat affect during therapy sessions.

### **Types of assessment**

There are two common methods of providing mental health assessments for asylum seekers. There are treating professionals and organizations, who work with a client over a period of time, providing regular therapy with a goal of helping the person deal with the trauma. There are also trained forensic evaluators who write assessments based on one or two meetings with a client, with the primary purpose of documenting the asylum claim.

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<sup>1</sup>Credit to Hawthorne Smith for this distillation.

Each type of assessment has benefits and drawbacks, and adjudicators may seek an explanation as to why one was chosen over the other. Treating professionals have a longer period of time to observe and build trust with a client. However, some adjudicators may view a treating therapist as “biased” due to this relationship. Additionally, the therapist may be in a conflicting position of working with the client to achieve a therapeutic goal but also being forced to testify about sensitive information in a legal setting under oath, which may challenge the client-therapist trust.

A single assessment does not have the extensive treatment history and relationship with the client, which may lead to the evaluation being viewed as less credible. At the same time, this may be a benefit as that evaluator can appear more objective. And the evaluation can focus on the tasks of documentation which are specific to the requirements of the asylum interview or immigration court. The professional doing a single assessment may review a letter from the treating therapist which can be part of the assessment, thereby ameliorating concerns about the history. The professional doing the assessment also can testify without concerns for the ongoing therapeutic relationship.

### **How do I refer a client for an assessment?**

It is important that attorneys making referrals to a mental health provider understand the difference between an assessment and treatment. It is also important that the client understand the purpose of the referral and be amenable. The referral should be made to the organization best prepared to provide the requested service. If a treatment center specialized in on-going treatment and an alternative program specializing in stand-alone asylum assessments is available, the referring person should know what service the client needs and wants and make the appropriate referral. Because the client will be communicating with the provider, it’s important that she understand the purpose of the services. A client should be able to articulate: “My attorney said I needed to get an evaluation to help with my asylum case,” or “my attorney recommended I call you because I regularly have trouble sleeping and am having nightmares about my past experiences.”

It may be beneficial for the attorney to initiate the first contact with the provider, or to assist the client in making contact. Additionally, the attorney and mental health professional will want to execute releases to be able to discuss the client, the case, and potentially provide useful documents, like a copy of the client’s affidavit.

### **When do I request an assessment?**

It is best to request an assessment as far in advance as possible; at least a month before any deadline. Treating therapists are focused on developing a relationship with the client and need time to be able to provide a complete and professionally competent assessment. A single assessment may also require more than one or two weeks of lead time, especially when working with a volunteer professional. It’s important to leave sufficient time to find the professional, set up a meeting time, and for that individual to draft the assessment and consult with the attorney about the contents of the assessment.

## **What should be in the affidavit?**

The affidavit should focus on mental health issues, especially the link between reported traumatic experiences, current symptoms and behaviors and diagnostic criteria for psychological conditions subsequent to trauma. It should also address where appropriate the potential impact of the client's mental state on her ability to testify. If relevant, it should also address the presence of symptoms and behaviors resulting from traumas other than the torture experience and make clear the rationale for determining the specific impact of torture on the client's condition. These are the areas of the mental health professional's competency. The guiding question to answer with the affidavit is: Did the individual go through the experience?

The affidavit should:

1. Describe how the client came to the agency or forensic evaluator, the problems the client initially presented, and the nature and type of services provided.
2. Summarize treatment, including past and ongoing therapy as well as any prescribed medications.
3. Include a psychological summary describing behaviors the client is expressing and how those have been diagnosed, referring to the DSM-IV or other professional standard.

The focus should be on whether the client's presentation is *consistent* with the reported trauma.

For example, "what I have observed in meeting with Mr. A is consistent with someone who has experienced the events he claims to have gone through." Incorporating direct observations of the client's behavior over time which attest to improvements or regressions can help corroborate the story. A client's regular attendance at therapy sessions may be consistent evidence of her improving psychological state. Avoid statements of causation in favor of statements about consistency.

Brevity is important. Adjudicators are often reviewing hundreds of pages of documents in an asylum case. The mental health affidavit can stand out by being relevant and to the point. Experienced forensic evaluators recommend four to six pages as the maximum length. It is useful to provide a summary of one page or less at the beginning and a clearly stated, brief paragraph of conclusions at the end.

## **What should not be in the affidavit?**

Lengthy recitations of the past facts and events are generally not helpful, and could open up inconsistencies. A shorter, more general and summarized history is preferable to a multiple paragraph recounting of the client's recitation of his experiences.

Statements regarding country conditions are not appropriate where the purpose of the affidavit is to address the client's mental health condition. Stay within the boundaries of professional competency and the scope of the evaluation.

## **How much collaboration is appropriate between attorney and therapist on an affidavit?**

The mental health professional writes his or her own affidavit. The attorney should talk with the therapist about particular legal issues in the case, so the therapist can address those as appropriate. A common example is addressing psychological factors impairing the client's ability to file for asylum within the required one year after entry to the country. Broad guidance is best in these situations to allow the mental health professional latitude and control over the affidavit, such as "here are the issues we're addressing in the case: one year deadline, past persecution".

For example: Esther is facing a one year deadline issue. Knowing this is partially attributed to Esther's severe PTSD and resulting social isolation, Esther's therapist Susan includes information about the consistency of this behavior with Esther's experiences in Kenya in her mental health assessment.

It is appropriate for attorney and mental health professional to review a draft of the evaluation to consider clarification and completeness of the presentation of material. All material in the report must be based on information, observations and conclusions obtained by the mental health professional directly in the course of the evaluation. Obviously, it is not appropriate to copy information from the client's declaration that has not been verbally corroborated by the client or to include information coming from the attorney rather than the client. The final product is entirely the responsibility of the mental health professional.

It is important to keep records of all correspondence between the attorney and mental health professional in the preparation of the affidavit. Some courts have questioned mental health professionals, raising questions about what input, if any, the attorney had to the affidavit and whether and why changes were made.

This information is based on the 2011 National Capacity Building Institute: *Torture Survivors Seeking Asylum: The Intersection of Forensic Mental Health Evaluation and Legal Representation*. Thanks to presenters Janet Beck, David Gangsei, Julie Kuck, Stuart Lustig, Mojdeh Rohani, Hawthorne Smith, and Lisa Laurel Weinberg for their insights and expertise which are distilled here.