

THE EXPERT DILEMMA: SELECTING AND WORKING WITH EXPERTS

EDWARD J. HYMAN, PH.D.

PROFESSOR OF PSYCHIATRY, PSYCHOLOGY AND LAW
CENTER FOR SOCIAL RESEARCH, BERKELEY

Attorneys are often challenged by understanding when and how to use an expert, what to do in selecting an expert, at what point in litigation to employ the expert, and how to interact with experts in developing one's case. Even seasoned attorneys often approach experts with trepidation. In the following set of guidelines, these issues are addressed in a general manner, as they most often apply, in an attempt to allow attorneys to come to comprehend better the selection and use of experts, and to view their use as an asset in theorizing and litigating cases. Cases, like people, are idiosyncratic and may deviate from these general premises somewhat, but the principles should apply to most cases, civil or criminal, most of the time.

EXPERTS, SCHMECKSPERTS: WHO NEEDS THEM?

In presenting a case to a jury or other trier of fact, an attorney often assumes the burden of telling an intricate story in a manner most accessible to the ultimate decision maker. Having to elucidate complex issues sometimes leads an attorney to individuals who have special knowledge or expertise, hence "experts."

Federal statutes like the Federal Rules of Evidence section 702 and applicable parallel statutes in every state provide for expert testimony. Both in state and Federal systems, the gatekeeper most often is the judge, who rules whether proposed testimony is permitted, that is, whether the proposed expert testimony will aid the trier of fact in clarifying the issues in the case. A judge may also determine the scope of the expert evidence the judge believes to be relevant, and periodically also consider whether the degree to which such testimony may cast light on relevant issues outweighs its downside (e.g. prejudicing the jury with a related issue the judge has ruled to be inadmissible, but which may be admissible on a different basis through expert testimony on a related but separate issue). Judges vary with some more restrictive and others defining admissible issues more broadly.

The need to engage an expert is sometimes not really elective. If the issue the attorney is presenting might benefit from expert consultation and perhaps testimony, and counsel does not pursue such testimony when it is called for, the lawyer could be providing incompetent assistance of counsel.

This could be true in both civil and criminal matters. The clearest example would be if there is a possibility that the lawyer's client in a criminal matter is incapable of formulating a basic working understanding of the charges against him and the key issues of his defense. If the attorney does not raise the issue adequately with the court or consult with a forensic psychologist with experience in adjudicative competency matters, counsel could readily have his or her actions carefully scrutinized by an appellate panel, or even the State Bar. In some matters, even the actions of a judge in not accepting the necessity of seeking experts' opinions might cause a case to be returned for retroactive reconsideration of the issue by the trial court [cf. *People v. Ary* (2004) 118 Cal.App.4th 1016].

Also, when the involvement of an expert is once considered, it is not necessarily put to rest. For instance, an adjudication that a defendant had been competent at one point in his prosecution does not establish that he was competent at another, as the court ruled in [Bayramoglu v Superior Court of Marin County \(1981, 1st Dist\) 124 Cal App 3d 718, 176 Cal Rptr 487](#). Further, the language of a statute can sometimes lead an attorney astray in understanding obligations to select and use an expert. In *People v Hale* (1988), for instance, the court ruled that despite the discretionary language of [Pen. Code, § 1368](#), a competency hearing is required whenever substantial evidence of incompetency has been introduced. The obligation is the attorney's to introduce that substantial evidence, and a forensic psychological expert would most likely be the proper vehicle for its introduction.

The implications of raising before the court the necessity of expert opinion can be substantial and extensive. For instance, once a criminal attorney has introduced substantial evidence of incompetency to the court, the criminal trial court then lacks jurisdiction to proceed in the absence of a § 1368 hearing, and the assessment in that matter cannot be waived either by the Bench, the People, the accused or by defense counsel. [People v Hale \(1988\) 44 Cal 3d 531, 244 Cal Rptr 114, 749 P2d 769](#).

In a civil matter in which a plaintiff's attorney is alleging pain and suffering for a client or an attorney is defending against such an allegation, the hiring of a forensic psychologist or psychiatrist to assess the damages is indicated, and under varied circumstances, failure to do so could imply ineffective representation by the attorney. Even in an employment case in which the attorney is not asserting the consequent development of a particular psychological disorder, it can be persuasive to a jury to hear from a forensic psychological expert about the emotional turmoil introduced into the life of the plaintiff by the employer's acts, or the employer-sanctioned acts.

In other employment cases, a jury hearing about particular elements of psychological disorders etiologically derivative of the acts of the employer can be of significance in terms of damages. Similarly, to defend effectively against such allegations, counsel needs minimally to have an expert consultant who can evaluate the work of the opposing expert and provide specifics about the work for the defense counsel to pursue in deposition of both the plaintiff's expert and the plaintiff, and to counter in cross-examination. More routine is for the defense counsel to secure one's own expert who can aid in defending against the findings and opinions of the plaintiff's expert by testifying about the defense expert's own assessment procedures, findings and opinions.

In short, rather than viewing an expert as a further convolution that may bring unwanted complication to a case, counsel often must approach an expert's participation as a necessary and integral component of the case, and as a potential source of clarity and strength in an otherwise involved matter.

DOING THE EXPERT COST BENEFIT ANALYSIS

If the expert is going to assist the jury in understanding the case, most often the expert will also aid the attorney in determining how to proceed. Even when the participation of an expert may not be absolutely necessary to the case, the potential of an expert in enhancing

and further elucidating an aspect of the case for the trier of fact often makes the use of one well advised, if not ethically mandatory. If an expert who costs forty thousand dollars establishes liability for several million, the calculus is simple. Similarly, if the involvement of a defense expert can introduce elements that qualify the opinions of the plaintiff's expert, damages can be pronouncedly less and more than generously compensate for the costs of the defense expert.

Two cases are instructive as to the benefits of an expert. In the first case, there is an intricate divorce between a couple that has been married for decades, has several children and two professional parents with extensive wealth. The couple had nearly come to an agreement, but one party felt if that party outlined various health problems of the other party and associated limitations, it might assist that party in paying out less. A good divorce attorney would explain that outlining such limitations might suggest that the other party requires more assistance and cannot fend for himself or herself in the open job market. An expert is not hired.

In another case, this one a federal civil rights case, the plaintiff claimed extensive psychological sequelae of the employer's acts. The forensic psychologist did an extensive assessment, which cost forty thousand dollars. The jury returned a verdict that entailed several million dollars, a million of which minimally according to the plaintiff's experienced counsel was directly attributable to the testimony of this seasoned forensic psychologist.

WHEN DOES AN ATTORNEY NEED AN EXPERT?

Experts can assist in a variety of roles, aiding an attorney in defining the nature of the case, in deciding whether there actually is a case worth pursuing, and helping in discovery by defining what materials might be sought that would prove useful to the case, assisting in the preparation of the trial, and in testifying as an expert at the trial.

Perhaps the most challenging question is whether expert consultation or testimony is applicable to the case before counsel. One of the best ways for an attorney to get a basic grasp of whether an expert is needed or not is to sit back and **conceptualize the case**. After initially meeting the client, the attorney will need to refine answers to three questions: 1) "What's the logic of the case I am going to make?" 2) "What do I need to do to prove that to a jury?" and 3) "How am I going to go about proving it?" If in doubt about whether an expert can help or not, it makes sense to contact an expert or even several experts, often for a short over-the-phone consultation that will usually cost the attorney nothing. An attorney should outline the rudiments of the case for the experts, articulate the lawyer's concerns and interests, hear what the experts opine about the advisability of pursuing the case, or how to proceed, and then consider hiring an expert.

Waiting too long to contact an expert can present a variety of problems. If defending against a claim that involves alleged mental anguish, or defending a breach of contract due to alleged incompetence to have signed the document at the time of its execution, an expert is indicated. It is obvious that it would be malpractice not to secure a defense forensic psychological expert in most cases of this nature, but it would also be of concern if the attorney waited so long that the period to declare experts had elapsed,

or so long from the date of the acts in question that the weight of the expert's assessment had been substantially diminished. Generally, the closer an assessment of a plaintiff is in time to acts alleged to have had some impact on the plaintiff, the more accurate the assessment. The exceptions are when there are postponed manifestations, such as a Post-Traumatic Stress Disorder with postponed onset, or a depression that takes a while to set in, or there were other barriers to earlier assessment. In the case of a defense expert in a civil matter, the expert might need time after the date of assessment for the counsel to pursue additional records. For instance, the plaintiff may have remembered the identity of an early treatment professional related to the matter whose name had earlier not been provided to defense counsel. In one case, such additional time allowed a defense expert to discover a history of several abusive spouses, and divorces in which the plaintiff alleged to have been had been beaten by the spouses, and the involvement of law enforcement on multiple occasions had been revealed. Prior to the defense expert's evaluation, those spouses, the violent nature of the relationships, and the circumstances of the terminations of the relationships had not been revealed. When those elements were revealed, the plaintiff's case was much altered. Had the defense counsel waited until the last moment to secure an expert, the course of the case would have been very different, with what became a defense case remaining a plaintiff's.

Often selecting an expert consultant early in a case can assist in deciding whether expert testimony will subsequently be necessary or not. For instance, when a corporate attorney is pursuing a matter in which he asserts an illegal cancellation of a corporate contract with a former executive, and the executive asserts emotional damage, a forensic psychological consultation may be indicated, despite the case largely being a corporate one in which such experts are rarely employed. Though In such cases forensic corporate accountants are considerably more routine, the forensic psychological expert may prove to be one of several experts whom the attorney requires, and other forensic consultants might include a jury consultant to assist in advising how to select a jury, or whether a case requires seeking a change of venue, which when indicated, can prove important in many matters.

In cases involving new and evolving technologies, experts may be necessary for the attorney to understand the scientific or applied issues sufficiently to assess whether a case exists, and its value, if any. Even in matters involving established high technologies or sophisticated science, such as medical device cases, securing an expert may be in order before even deciding whether any case exists. In some matters, securing the appropriate distinguished expert may make the case for an attorney's client. A further consideration may be quite practical. There are only a specific number of experts in a given field of expertise that counsel is in need of are in the proximate area. If the best expert or experts are gobbled up by opposing counsel because the opposing counsel started his search for an expert early in the case, the other side's counsel is either going to have to accept a lesser expert, or go looking for one outside of the proximity, which would render the involvement more expensive.

Selecting an expert may be a somewhat protracted process involving multiple discussions, most often by telephone, with prospective experts. In a larger firm, the litigating attorney might delegate the initial discussion with each expert to one or more junior associates. In some firms the entire process is handled by attorneys other than the ultimate litigator or senior attorney on the case. Relegating such an important selection to a junior partner could arouse subsequent difficulties for a litigator or senior

partner on a case, but also could be a genuine relief of a burden with a junior attorney properly educated in the area of expert selection. Also, to thoroughly explore the relevant issues and discern the appropriate information about the experts' educations and backgrounds, as well as references, attorneys should anticipate multiple discussions with each expert being actively considered.

EXPERTS AND THEORIES OF LIABILITY

Near the outset of the corporate matter just described in which an executive's state of mind had been established as an issue, most likely even prior to filing the complaint, the corporate attorney was well advised to seek consultation from a forensic psychologist. Counsel should outline the basic case to the consultant, who then will be able in conjunction with the attorney to understand what additional materials might assist the attorney or expert consultant in elucidating, articulating or countering arguments the attorney had considered making in the theories of liability. Counsel might learn, for instance, that a prior lengthy history of serious mental defect or illness might jeopardize the claim, and certainly limit its compensability, leading many attorneys to reject such a case. A defense counsel hearing the same from his expert, might accurately view much reduced liability.

Having an expert consultant review the plaintiff's medical records before asserting such a claim might be necessary to preparing the theory of the case. With a plaintiff who has a lengthy history of mental problems, a plaintiff's attorney might seek to delete pleadings associated with psychological impairment, and argue for more general damages based solely on economic losses. Indeed, such a forensic review might be considered prudent and appropriate by some attorneys before accepting such a case, and might lead some to reject the case as unwinnable or unprofitable. Securing the appropriate records and having an expert consultant review them prior to filing the complaint might actually lead the attorney either to understand the strength of the case, to reject the case, or alternatively move counsel to alter the contemplated pleadings in the initial complaint. Indeed, attorneys are sometimes surprised when an expert seeks all of a plaintiff's medical and educational records, but they are often a wealth of information that can either make or break a case.

Attorneys are most often well served by selecting and consulting forensic experts in the inception of the process of litigation. While the decision as to whether the expert should testify may be made much later in the discovery process, the assistance of a forensic consultant at the beginning of the process can help clarify the theories being asserted in the complaint, obviating the need to amend the complaint extensively later on. For the defense counsel, such consultations might outline new defenses not previously considered. A further downside to not engaging an expert in the front end of the process is that sanctions might evolve from such a failure if there are serious problems with the case as first articulated. An attorney's error committed without appropriate and timely expert consultation might diminish counsel's credibility and standing in front of the court, and so besmirch counsel's case in front of that jurist, that it affected subsequent rulings even when the attorney should have prevailed.

The most lamentable attorney abuse of the option to secure timely expert opinion is one in which an expert would have been of great assistance in defending against a civil claim. Only later does counsel discover that there is evidence for such a defense, but that it cannot be introduced because the deadline

for expert disclosure had already passed. In such unclear matters, it is often better for an attorney to engage and declare an expert who may not ultimately be called, than to have a matter for which counsel needs an expert, but cannot call one because of a missed deadline. While securing and declaring such an expert will add cost to the case even if the expert is not called, the ultimate cost for an attorney of needing an expert whom one cannot call may be infinitely greater.

HOW DO I CHOOSE A CONSULTANT OR EXPERT?

In selecting a consultant, counsel should employ largely the same standards they would use in choosing an expert witness. First, one should select an expert with specific expertise in the area one's case calls for. Many specialties have multiple subspecialties dictated by the needs of the case. For instance, in a matter defending the due diligence of an accounting firm in advising a company about executive stock options, one should turn to a forensic accountant with specific expertise in the specific area of executive stock options in which the expert or consultant will be providing consultation or expertise, but also in forensic accounting in general to assure the consultant's ability to comprehend the legal issues, provide appropriate opinions, and to testify accurately and persuasively before a jury.

Notice that selecting a forensic expert and not just a specialist with expertise in a specific subspecialty or field is extremely important. Many specialists with great expertise in their field have little or no idea how to formulate an issue forensically. These inexperienced "experts" do not address the questions posed by the court, cannot communicate effectively, may be of little assistance to the trier of fact, and because they often cannot differentiate important matters that influence legal issues from those that are tangential to the legal questions at hand, can actually damage a counsel's case. One example is that of a law professor who had written extensively on the issue of adjudicative competency, but had never testified. When called in an adjudicative competency matter to explain to the jury what competency actually meant, the professor fashioned himself addressing a conclave of his colleagues, spoke in complexities accessible only to law school faculties, and to no one who had not read extensively in the law. This "expert" had to be excused by the defense attorney within a few minutes after he was called to the stand. By the time the forensic psychologist who had actually examined the defendant was called to the stand, the other "competency expert" had already damaged the defense case, which luckily the experienced attorney and forensic psychologist were able to resuscitate through clear logic and precise communication to the jury.

The first step is selecting a forensic expert or forensic consultant is defining what the area of expertise it is that the attorney seeks. In developing or defending against the assertion of pain and suffering in a civil matter, it would help to turn to a forensic expert orthopedist, physiatrist, pain medicine expert, psychological forensic expert, i.e. a forensic psychologist, forensic orthopedist, forensic physiatrist, or forensic pain medicine specialist, depending on the actual predominant factors of pain. Even in such a selection there are differences. If the case strongly involves psychopharmacologic prescription medications, then a forensic psychopharmacologist is probably one of the appropriate choices. If the choice has to do with assessing an individual to determine what impact a series of events being litigated allegedly had on the individual, a better choice is probably a forensic psychologist who can generate objective data from clinical and forensic psychodiagnostic testing for both short- and long-term

problems and integrate that information with clinical examination findings, medical records and the other evidence and facts in the case.

If the case has to do with construction failings by a contractor, the first step would be identifying the specific nature of the failure, and then turning to a forensic building contractor or a forensic structural engineer with experience in the specific construction field (e.g. concrete quality, or the engineering and construction of skyscrapers) and extensive experience in testifying. It is often a risk to select a professional who holds herself or himself out to be a forensic expert, but has limited forensic experience. An attorney does not want his or her case to be part of the expert's learning curve. Also, experts in a specific area are not necessarily forensically gifted. Richard Christie, the social psychologist who founded the National Jury Project and was the first expert to select a federal jury, always reminded his students that a good expert is one who can make it so a farmer can understand it, which Christie referred to as farmerizing one's testimony. An expert who cannot farmerize is no expert at all, as an expert whom the jury cannot understand is literally worthless to the case.

In a product liability case, an attorney wants someone with specific expertise in the design of the manufactured product, but also with fairly extensive forensic expertise. Turning to the Directory and locating forensic mechanical engineers would likely be a good first step. If the item is electrical in nature, searching for a forensic electrical engineer would be in order. It is also possible to inquire of colleagues and other legal contacts about whether they know specific experts with whom they have successfully worked. Various legal sources like the San Francisco Bar Association, and others have websites that can also prove quite useful, while professional associations like the American College of Forensic Psychology also maintain websites listings experienced experts.

EVALUATING THE EXPERTS

The ideal expert would have the relevant academic or other professional expertise, the necessary academic training and degrees, membership in scientific, professional or industrial groups, societies or associations, publications or peer-reviewed presentations before scientific, industrial or professional bodies, and an interest in the specific narrow area being addressed in the case. Not all these can be established in every case, and an attorney may have to discern what is really essential to the case, and what is desirable, as well as what is optimal or ideal. This may vary according to the role of the individual in the case. An individual who is grand-fathered in with a masters degree as a licensed psychologist and is treating a client may not be ideal as a percipient witness, but will do much less harm than using the same masters level psychologist as a forensic expert. This masters level psychologist may be an adequate choice to treat a particular patient, and may be able to point to years of experience with the same patient population, but would be woefully lacking in most expert roles.

It is necessary to discern what the attorney is trying to prove, how the expert falls into that schema, what role professionals may play as both expert and percipient witnesses, and ideally what possible experience, licenses, board certifications, credentials or qualifications the expert should have. An expert, however otherwise impressive, who has never treated a substantial number of PTSD patients, will not prove terribly persuasive in most cases that allege PTSD, regardless of what side engaged the expert.

However, most clinicians who treat the same disorder day in and day out will be woefully inadequate as expert witnesses. A forensic expert needs both specific technical expertise in the area he or she will be testifying in, and also experience testifying. The absence of either can be fatal to an attorney's case.

What the expert will actually do is often quite important. Though twenty states retain Kelly-Frye standards, one of the impacts of Daubert on academic, scientific and professional societies has been to establish standards of care within the professions of reliable and valid techniques, so that these normally accepted elements of practice within the professions insert "Daubert-Kumho" issues into standards of care and practice even in Kelly-Frye states like California. Discuss with an expert the methodology which the expert will employ, and make sure it sounds systematic, logical and rational, and that it conforms to the standards of care within the expert's profession. Often simultaneous or sequential consideration of several experts will assist the attorney in this area. Since most forensic experts are guided by Daubert-Kumho standards

Frequently, **experience in formal university teaching** is a good key to how well an expert will do before a jury or judge. One of the reasons counsel seek an expert is because the trier of fact will have difficulty understanding the complexities of a scientific or professionally intricate field. Selecting someone with experience as a professor or with other teaching of non-technical individuals is essential.

While presenting papers at professional scientific meetings may strengthen an expert's credentials and reputation in the field, it will not enhance the expert's ability to communicate effectively with laypeople. An attorney requires an expert who is respected for his or her expertise, but also one who explains things clearly to people who are not in his or her profession, and most likely are not professionals at all. Importantly, the expert should be liked by the triers of fact. A professor who has taught General Psychology to freshmen who know nothing about psychology might prove more effective in front of a jury than one who has never taught anything but doctoral students or post-docs. Similarly, a physician or engineer who has practiced extensively in the field but who has never taught might prove quite adequate as a percipient witness, but most likely is not competent as a forensic expert. The ability to express opinions that are professionally and scientifically sound but accessible to a lay audience is a skill honed over decades by qualified forensic experts. A good forensic expert is a person who understands the scientific and legal issues as they pertain to the case, addresses them thoroughly and systematically in a manner that can be logically defended in terms of science or the particular non-scientific area of expertise, but who is accessible to juries, and is liked and respected by them.

In the same case, an attorney might well require two types of professional witnesses, a percipient one and a forensic one. In a personal liability case, for instance, it may make sense to subpoena the treating orthopedist to describe how he diagnosed the case and what treatment he performed, but to secure the services of an experienced forensic orthopedist to answer questions of professional opinion such as how much additional treatment the individual requires, what the prognosis is for the patient, and what pain, suffering, disability or impairment derived from the legal issues in question, and to what extent impairment, disability, pain or suffering might be apportioned to prior or subsequent events. Even experienced physicians rarely feel comfortable responding to these forensic issues, whereas they are de rigueur for forensic experts.

Having both percipient and expert witnesses would allow the treating physician to testify about what he did, but not to proffer opinions. Medical and Psychology Boards prefer such arrangements, as psychologists and physicians who perform both functions most often alienate the patient by testifying to something the patient does not like, or something that does not enhance the patient's case. The admixture of patient and plaintiff for the treating physician is an invitation to multiple difficulties, including opposing counsel inquiring, "Doctor, isn't it true that many physicians in your specialty will not testify in court as to anything other than what they did and why they did it?" Such inquiry is then followed by, "Doctor could you explain to the court why that is so?" A genuinely prepared attorney might then ask, "Doctor, isn't it true that the California Medical Board in the last three months has suspended one of your colleague's license for a period of five years for failing to distinguish between the the role of treating physician and that of testifying expert?"

Calling an expert other than the treating physician solves a variety of inherent problems. Such an arrangement precludes the treating physician expressing an opinion with which the patient might disagree, and one that might negatively affect future treatment of the patient. More importantly for the case, the physician or other professional providing the opinions cannot be savaged by the opposing counsel because of the alleged "bias" of a treating physician towards one's patient. This is especially true of a general physician, internist or family physician, who would be subject to opposing counsel inquiring, "Doctor, you testified you have treated the patient for over twenty years. Doctor, wouldn't it be safe to say you like the patient? Wouldn't your relationship with the patient biased the opinions you're expressing here?" Nor can the opinion of the treating physician about future treatment be ridiculed as self-serving, since the treating physician would benefit economically from the additional treatment. Even if the treating physician when testifying is paid as an expert, as is required in some states, it could diminish the case by raising ethical questions about the treating physician who expressed opinions about the patient's prognosis and future treatment. It is best with treating physicians and other professionals to essentially have them provide percipient testimony about what they did and when they did it, and rely on forensic experts to provide appropriate professional opinions.

In the case of treating health care professionals, many will actively resist any attempt to put them on the stand, and are best replaced in their entirety by forensic experts. Some areas of medicine and the allied health professions find it ethically objectionable for treating clinicians to testify about their patients. This is increasingly the case, and is currently particularly true for treating psychologists and psychiatrists, as well as for other mental health professionals. An attorney needs to be very careful in such cases not to call the treating doctor, whose unethical behavior in testifying could be questioned quite effectively by the opposing counsel on cross-examination. More broadly, many healthcare professionals find courts so distasteful that putting them on the stand will, either by calculation on their part, or just by their alienation from courts of law, not only prove unproductive, but potentially harmful to a case. **It is easy for an attorney to compel such testimony, but only rarely useful to the case.**

Putting off selection of an expert to a few days prior to disclosing experts can be fatal. An attorney, rushing not to miss the filing deadline to declare an expert, may select the wrong one, or even incorrectly define the area of expertise that counsel needs. But once the attorney has defined a general area of expertise, does the lawyer need someone in the specific area of expertise? There is no facile

reply. In some cases, such as estimating in either civil or criminal cases the degree to which a jury pool has been contaminated by pre-trial publicity, a jury selection expert with extensive experience in doing such polls among mock jurors clearly is required. Similarly, in a civil matter in which state of mind is being questioned, a forensic psychologist is indicated. In a civil matter addressing infringement of copyright in a software matter, forensic software engineers would be indicated, minimally as consultants, and possibly in addition to percipient witnesses to establish elements of the case such as standard practices within the field of software development, and to illustrate the application of those standards to prevailing statutes, and to explain why such standards pertain to this case.

However, there are many cases when a forensic generalist trained and experienced in the questions posed by the case might be better than a researcher in the specific area who is not experienced as a forensic witness. For instance, in a case where a schizophrenic may have been insane at the time of the commission of a crime, an attorney would be better suited by a seasoned forensic psychologist who understood and was experienced both with the diagnosis and treatment of schizophrenia, but also with the nature of insanity in a criminal proceeding. The world's leading researcher on a new direction in the pharmacology of schizophrenia might be quite impressive at first, but might prove quite unable to relate the elements of the disease to the specifics of how the defendant understood and knew the nature and quality of the acts in question. Indeed, such a psychopharmacology expert would probably not even know what the "nature and quality" mean in the forensic context.

A forensic psychological expert with experience in the area of sanity would understand how to extract pertinent evidence from the results of clinical and forensic testing, and from clinical and forensic examinations, as well as from the defendant's medical records, family history, educational history, developmental history and an analysis of events proximate to the time of the acts in the crime being adjudicated. The schizophrenia expert would most likely never be able to venture effectively in any of those directions, as none of them pertains to pharmacology, his real expertise.

A PROSPECTIVE EXPERT'S WORK HISTORY?

An attorney is best advised to review with a prospective expert which attorneys the expert has worked over the last decade in the area of in which the lawyer seeks consultation. If the expert has worked solely for defense attorneys in civil matters, whether intrinsically an excellent expert or not, the expert may not serve the case well. Such experts are often viewed by juries as "expert whores" who have ideologically allied themselves with one side, and will not carry the same weight as an independent expert articulating exactly the same analysis, but who has a fairly even record of having worked for defense and plaintiffs' attorneys. The same is true in criminal matters. An expert who works overwhelmingly for the prosecution or defense is viewed by triers of fact as less independent and trustworthy, and consequently is less valuable to a case than one with extensive backgrounds in both camps.

THE EXPERT AS CONSULTANT

In many cases, an attorney might decide for various reasons not to call her or his own expert. In some matters, counsel may believe that the opposing side is making such a specious argument that merely effective cross-examination will suffice in exposing the opposing expert. In such a matter, however, an attorney is well advised to seek the careful consultation of a forensic expert in the field of the expert testifying for the adversary. Attorneys without expert consultation can rarely “out-expert” an expert. One reason the individual being called by opposing counsel is termed an expert is that he or she has demonstrated expertise to the court. An attorney should never try to be his or her own expert. The attorney’s knowledge in the law may be extensive, but in the expert’s area of specialization can never compare, even if the attorney foolishly has come to believe it can. Where the other side has declared an expert, it is most often a substantial error to fail to consult one’s own expert. A short-term attempt to save money may become an error that costs the entire case.

Even if an attorney believes s/he has a good grasp of the issues revealed previously in a professional report or deposition, counsel is still well advised to secure a forensic consultation to review those materials. Though the attorney has understood what is in the report, the expert would be able to detect defects in a report an attorney would not. AN example might be a well-written report that addresses 95% of the necessary content, but absents opinions that by standards of the profession or by administrative laws (e.g. California Business and Professions Code) are required. Such defects might be virtually invisible to anyone but the most astute expert.

Obviously, it is a much better strategy to secure a forensic expert’s consultation prior to formulating questions for the deposition. Even if a lawyer has taken hundreds of such expert depositions, each case poses unique questions for an expert, and often ones from which the attorney could benefit from review with a forensic consultant in the specific field. Even if the attorney had decided not to call an expert as a witness, the consultation of several hours of a forensic expert’s time might well prove useful and quite a bargain.

The most commonly understood notions in the legal community for which experts are required are the “routine” issues like determining if a client was sane at the time of commission of a crime, or how a plaintiff suffered as a result of particular acts of defendant. These frequently raised issues most often beckon seasoned forensic experts who can assess the client’s current and past competencies. While an attorney might well have some insights into both of these matters, an expert assessment could raise and properly evaluate issues about which an attorney might have no expertise or insight, and might well have simply not recognized nor understood at all.

The necessity often of a forensic expert’s assessment of competencies also carries over to civil issues. The degree of damage, pain and suffering a litigated event or series of events may have inflicted on the life of a plaintiff must be assessed to determine if the person suffered diminished or impaired competencies, whether emotional, cognitive or perceptual changes, or a combination of any of areas of a person’s psychological state. Then those impairments must be demonstrated logically to have arisen

as a result of the acts being litigated. In most cases in which substantial issues of damages have been raised, an assessment by both plaintiff's and defense forensic experts is indicated.

The determination of competency to sign a will or alter one, testamentary competence, is another example of a civil matter where a forensic psychological assessment is often in order. This assessment involves the expert's determination of a specific set of competencies in the individual executing the document involving that person's understanding the elements of the document being signed, grasping the conditions under which the document is being prepared and being capable of recognizing and being able to resist any coercion or undue influence. This is a further example of a situation where an attorney, in doing due diligence, would be well advised to seek consultation from a forensic psychologist with experience in assessing seniors in medical-legal matters.

This consultation and a related examination of the client at the time of the signing of the testamentary document would be particularly important if counsel could reasonably anticipates challenges to the client's mental state at the time of the signing, or if the counsel comprehends any family members to have an interest in seeing that document challenged. A client who specifically excludes or limits giving to a particular child or relative who, absent the document to be signed, might otherwise be considered invested in the client's property, should present a warning sign to an attorney to seek such expert consultation. The attorney would be well advised to seek the expert's examination of the client, and a written report of it with accompanying documentary evidence, and retain them until any issues related to the estate are fully resolved. It would also be useful to have a court reporter videotaped series of questions to the client by the forensic examiner about what s/he is doing and why. Such a tape would be admissible in most courts adjudicating the matter.

Forensic assessments can be remarkably complex. In both civil and criminal matters, experts are often called on to derive scientifically accurate estimates of prior situations or states. For instance, in assessing sanity, a forensic psychologist is required to make a post hoc determination of a prior state: the expert psychologist must determines at a later date what the individual's state of mind was at the time of the commission of prior acts. Where questions might emerge, based on the client's mental state or illness, of the defendant's ability to know and understand the nature or quality of his or her acts, or to know the difference between right or wrong, a forensic examination of the client is indicated. Even if there are difficulties with the prosecution case, and a possibility exists of a positive defense in the guilt stage, in most cases an attorney would be obligated to consult a seasoned forensic psychologist with the ability to provide objective clinical and forensic data that differentiate the chronic and acute states of the client's emotions, perceptions, thoughts and cognitions. Those areas along with educational and medical records provide the body of information from which an expert can establish and elucidate before the jury an opinion about the defendant's prior psychological state at the time of the commission of the acts in the alleged offense. This is an example of an intricate posterior forensic assessment that should be performed by a seasoned forensic psychologist with years of such experience.

Similarly, there are other posterior assessments of capacities that are widespread in civil matters. In defending or attacking a contract, when the issue is one of the voluntary consent of the individual to the contract at the time of signing, an expert's post hoc assessment of factors related to the state of mind at

the time of signing is strongly suggested. As in sanity issues in criminal matters, there is need for an expert to engage in a retrograde determination of a prior mental state. This also beckons the consultation of a forensic psychologist who can interview all relevant contacts who knew the individual well at the time of the document's signing. Such a consultation would be most pertinent and would also reflect due diligence on the part of the attorney.

SELECTING AN EXPERT

If an attorney practices in an area of law in which experts are frequently employed, and is experienced in litigation, the lawyer may already have familiarity with a good cross-section of experts in areas related to his or her specialization. Most attorneys, however, are unfamiliar with experts.

The first step in selecting an expert is **deciding on what field or fields of expertise are needed**. In an employment law case in which there is an allegation of a hostile work environment inducing both physical and mental reactions on the part of the employee and of consequent wrongful or constructive discharge, a forensic cardiologist may be necessary to explain the development of somatic illness arising allegedly out of the employment, a forensic psychologist to elucidate the psychological condition and its etiology as related to work, and a forensic accountant to explain the wage loss.

An error in initially selecting the field of expertise at an early stage in litigation is not fatal, since contacting an expert in an allied area may lead to an appropriate referral. For instance, in consulting an expert in Internal Medicine about a particular aspect of a case, the attorney may be informed by the internist contacted that the case requires not a forensic internist, but a forensic gastroenterologist or a forensic liver specialist. As long as the attorney starts the search for an expert at the beginning of the case, such errors are readily corrected, and the first expert may even indicate several referrals to more appropriate experts. A good expert will not accept a case that exceeds his or her area of expertise. Selecting a particular field of expertise may be more complicated than it initially appears, and guidance from experts in other areas may be quite helpful. Leaving the time to elicit such guidance is essential.

If an attorney is familiar with a partner or colleague who has had a similar case and successfully used experts, contact the colleague for a referral. If the attorney has determined the area of expertise required, but hasn't the foggiest notion of whom to contact, turning to a fairly exhaustive and authoritative source like the SF Bar Association's Directory of Experts can provide clear guidance. Reviewing the listings in the field the attorney seeks can provide a feel for various experts' specific areas of specialization, and their experience in forensics.

EXPERT DEFICIENCIES TO AVOID

There are several deficiencies in an expert an attorney should normally avoid. 1) Reject experts whose opinions are formulated without knowing the specifics of the case. Experts must appear to be dedicated to the objective application of their area of expertise, and to be independent of the attorney calling them. Avoid the selection of someone who is well known for always having the same opinions and writing the same reports. 2) Shun experts with an axe to grind. If the expert demonstrates some

ideological attraction to the case, the result will most likely be an expert who does quite poorly on cross. For example, a masters level social worker known as a “domestic violence expert” who has treated dozens of individuals from a particular ideological perspective, but has no notion of the systematic research in the area most likely will be devoured on cross examination by a talented opposing counsel. 3) Stay away from experts who largely work for one side or the other. Triers of fact do not put adequate weight in the opinions expressed by these perceived “whores.” Experts are better viewed as guided by science than allegiance. 4) Dodge experts who are unnecessarily abstract and difficult to understand. If the attorney cannot understand an expert readily, a jury won’t! 5) Resist experts who are unnecessarily verbose and who may get into difficulty in cross-examination. 6) Do not consider a neophyte expert. Working with an expert is sufficiently complex without an attorney attempting to transform into a forensic expert a professional with expertise in a field, but none in the forensics of that area. Don’t allow your case to become her or his learning experience. Simply put, avoid individuals with little forensic expertise. It’s difficult enough to associate a technical area of expertise to a legal case, often referred to by experts as “the marriage of heaven and hell.” Allow the neophyte expert to learn on someone else’s case. 7) An expert who is scientifically or professionally knowledgeable, but is terse and too formal in presentation, or one who does not employ similarities and metaphors that make compound, difficult and abstract matters more real and accessible to the trier of fact.

Selecting an expert early who is objective and independent can aid in defining the attorney’s case. Such an expert in consulting with the attorney can point out defects in the case that might otherwise not have been evident to the attorney. Also, if a consulting expert is selected at the onset of a case, and provides an opinion that is incompatible with the theory of the case or otherwise not beneficial for the case, the attorney can either revise the theory or seek another expert, neither of which is possible would be possible if the case had progressed in the litigation process.

CONTACTING AN EXPERT

After outlining the confidentiality of the communication, the first question an attorney would pose to a forensic expert, since he or she most likely has a lengthy history of involvement in litigation, is to establish that the expert has **no conflicts**, is not currently working for the opposing counsel, has never treated the plaintiff, etc. A quick review of names over a few minutes most often suffices to alleviate such necessary considerations. Next, one wants generally to describe to the expert the case in question, outline ones ideas about the role of the expert, and hear about the expert’s experience in similar cases. If the expert believes herself or himself not to be suited, inquire who is. This discussion should lead the attorney to **confirm that the correct type of expert is being sought for the case, as well as the identity of an expert well-suited to the particular case.**

Then the attorney wants to outline the general course of the litigation and assure that the expert will be **available in the time period required**. The attorney should solicit from the expert the names of other lawyers with whom the expert has worked in parallel cases and **hear what colleagues have to say** about their interaction with the expert. It is appropriate, having generally outlined the case, for an attorney to solicit a preliminary opinion of the expert about the case based on the materials they have reviewed and the expert’s experience with such cases.

Finally, an attorney will want to determine the expert's **fees**. A review of multiple experts along these same lines will produce valuable information. **Do not choose an expert based on low hourly figures.** Most experts who are good ultimately charge in the same ballpark. Some may read more slowly, but prepare more rapidly for trial. A cheap expert may not be a good one. Also, the expert with a high per hour fee who reads quickly may cost you less than one with a lower hourly fee who reads slowly. Also, experts who communicate well with juries and are liked by the triers of fact are worth their weight in gold. Selection of an expert based largely on fees is often a deceptive practice, leading one to the least costly but not necessarily most qualified expert. Bad experts can cost direly.

Never engage an expert by establishing a contingent interest for the expert in the case. Contingent relationships to a case violate most local, state and national ethical codes of the scientific and professions organizations engaged in forensic activities. Further, allocating to an expert a contingent relationship, or even the appearance of a contingent relationship, can create the impression of expert bias in the eye of the trier of fact, and render the expert worthless, or even harmful to the case.

Further, there are other ways to contain costs besides choosing a deficient expert. Every expert can approach a case in several ways. Seasoned experts often outline for their clients different approaches. For instance, they may outline the assessment process that provides the most conclusive relevant data, i.e. the most expensive, one that provides a minimally acceptable approach, the least costly, and one that combines elements of the other two, producing a mid-range cost analysis. Such exploration of how the expert will proceed and what alternative methods can be employed are often illustrative of the expert's ability to grasp the key issues, communicate the germane issues effectively, even if cost is not a factor.

INTERVIEWING THE EXPERT

To control costs, experts are initially best contacted by telephone. In the initial call, the attorney should seek information about 1) whether the expert has any potential conflicts; 2) the expert's availability at the time of the litigation; 3) an adequate synopsis of the expert's background to establish the candidate's expertise in the area the case requires; 3) experience with litigation support; and 4) a list of attorneys who can provide references in the specific areas.

If the expert's responses in the areas delineated above strike the attorney as strong, the lawyer would next ask the expert to 1) email or fax a CV, and would then 2) contact some or all of the attorneys cited by the expert as references who had used the expert previously in a similar case. From the CV of an expert you should be able to determine the expert's formal education and the degree and pertinence of the expertise in the case's specific area of concern. Normally an attorney would query multiple prospective experts in this manner, and consequently would be able to discern commonalities and differences among them, educating the attorney not only about the differences in their education, experience, approaches and skills, but also the range of fees they charge.

Do not be surprised if much more experienced experts charge much more. Often they are just factoring into their fees the work they routinely do staying abreast of recent techniques, innovations, instruments, research and key findings in their own and related fields with which less experienced

experts may be unfamiliar or only minimally familiar. Forensic experts in a field read more extensively in the journals and scientific publications than clinicians or non-forensic practitioners. An experienced forensic structural engineer would be expected to be extensively more conversant with the scientific literature in structures than the average practicing professional engineer. Such scientific familiarity most often enhances the ease with which these seasoned experts can communicate complex notions in ways juries and jurists can understand.

After the initial interviews and subsequent review of the experts' CVs and contact with their references, the attorney will have refined the initial list of experts to a shorter list of serious candidates. The attorney may then choose to have further discussions over the phone with the prospective experts, or to meet them in person to interview them. In either situation, some attorneys might challenge the prospective expert on one or more assertions to judge the expert's responses under stress. However, it is most often much more fruitful to solicit from attorneys whose names have been provided as references how the expert performed in deposition, on direct and on cross.

MAKING THE CHOICE

Initially, the attorney should decide if the expert being selected will actually testify or might serve as a non-testifying consultant. In the process of selecting an expert, the attorney should review his own reactions to the prospective experts. If one is particularly difficult to comprehend, how will a jury understand him? If the expert is difficult to deal with, how's the same expert going to be to work with when an attorney is juggling the multiple demands of trial? Will the expert be an asset or liability to the case? Does this expert seem more determined to "impress" the attorney than communicate effectively? Does this expert evoke respect? Has this expert communicated an approach to the questions posed by the case in a way that is coherent, systematic and makes sense? Does the attorney view this expert as independent and professionally credible? Will a jury?

Every expert should rapidly demonstrate extensive familiarity with the basic elements of forensics such as maintaining confidentiality, reviewing and accumulating appropriate records, the role of the expert in assisting in litigation by educating the attorney about the expert's area of specialization, some familiarity with appropriate legal issues, and the articulation of the expert's belief in a manner appropriate for a legal forum. The candidate should be queried sufficiently to either qualify the initial perception of deficiency, or to confirm as correct the initial inclination to strike the candidate from the list.

Contrastingly, if a candidate demonstrates knowledge and understanding of how to apply the area of expertise to the case in a manner that is coherent, systematic, insightful and productive, and is a helpful and available person who evokes respect as an independent force to be dealt with, the lawyer has probably found an incisive expert who can contribute abundantly to the success of the case.

PROVIDING RECORDS

Once the attorney has considered the budget and contacted references to confirm an expert's appropriateness, and has chosen the expert, the next issue is what to provide the expert. Most experienced experts will first ask for copies of the statutes, decisions and germane pleadings or reports associated with the case. An attorney needs to assure that the expert has reviewed all documents and facts that opposing counsel either has access to or will gain access to during the process of litigation. If an attorney is not sure the fact or document is relevant, it should be provided to the expert, who may find significance for the case that the attorney's own expertise has not revealed. In both criminal and civil matters, educational and medical records of a plaintiff or defendant are often sought. In other civil matters, architectural plans of a building and associated working sketches may be required. When the expert outlines the approach to the case, an attorney should clarify what documents are available and which the expert requires.

Failure to provide documentary evidence to experts in a timely fashion can often lead to great difficulty for an attorney. For instance, attorneys in one civil matter failed to seek the plaintiff's medical records until late in litigation, and did not receive them until after their expert had been deposed. The expert's opinion was offered with the proviso that he required the records, but when subsequently provided to the expert, the records included ample evidence of serious and multiple sources of difficulty for the plaintiff other than those being litigated, and rendered the expert's opinion of no use to the plaintiff's litigation. Had the attorney sought the records early on in the matter, the expert could have analyzed for the attorney the difficulties involved in those records and their implications for the case long before extensive investment had been made in the litigation.

In civil matters, all relevant pleadings should be provided to the expert to allow the expert to form a broad general notion of the case and its theory, and to locate accurately within it what the expert's role will be. In criminal matters, the expert should have received all police reports relevant to the issues the expert will address, similarly allowing the expert to have developed a general understanding of the case as a whole and to define the expert's role with greater precision. Experts who are not so informed, particularly less experienced ones, often form a disfigured notion of the case that evolves solely around their contribution and one that is distorted in a manner that might negatively influence their contribution.

WORKING WITH AN EXPERT

If one has secured an expert early in the case, the relationship may endure over several years. This is not at all infrequent in both civil and criminal matters. One should develop questions for an expert on an on-going basis. Attorneys should anticipate that a skilled and experienced expert will define the forensic issues in scientific or professional terms, and then assist the attorney in a collaborative effort to translate those issues into admissible questioning and arguments in lay language, not medical-legal terms. The two are not equivalent.

Experts in science, like other areas of expertise sought out in a courtroom like forensic accounting, are sought because these areas are complex and technical in nature, requires systematic and elaborative

explication of procedures, techniques and findings. The application of science to legal questions is not always a facile one. Scientists and other experts would not be called into courts of law if their areas of endeavor were not so foreign to the average juror and to the courts where the expertise of a witness with expertise in an area outside the realm of capacities of the normal percipient witnesses.

Whether in direct or cross, the answers or questions themselves may also, of necessity, turn to the validity and reliability of the techniques employed, even in a Kelly-Frye jurisdiction. Experts not only have to describe their objectives, methods and findings clearly and interestingly, but also have to be able to defend their results under intense attack. This requires an expert who can remain calm in the face of intense controversy, not allowing opposing counsel to evoke from the expert inappropriate emotions that would diminish the credulity or value of one's expertise in the eyes of the trier of fact.

If the expert chosen cannot keep the attorney abreast of her or his progress in a manner that is clear and comprehensible, the lawyer needs another expert. If what the expert proposes to do or is doing, does not make sense to the attorney, and the lawyer cannot receive a explanation that is satisfying, again the attorney should seek other consultation. The expert also needs to be someone whom the attorney personally can work with. The attorney has particularities of his or her own personality. The attorney and the expert need to work closely as collaborating colleagues, so the two of must be able to interact minimally well to sustain the relationship over the necessary period, often years.

However, the attorney should never allocate to the expert work a lawyer must do. Even if the expert is experienced, provide the expert with the relevant statutes and decisions that pertain to the case. An attorney should not rely even on an expert, even one with a law degree, to distill the legal issues and points of authority in the case as they relate to the expert. The attorney and the expert should discuss the legal issues, the expert should become familiar enough with them so her or she can define properly how to proceed on a sound legal, scientific and professional basis, and perform the assessment or activities associated with the consultation.

This process of providing the material to the expert can also add to the attorney's own clarification of the issues in areas that the lawyer does not often confront. The attorney may be a seasoned estates lawyer, but never before experienced a litigious relative of a client about to execute a change to a testamentary document. The lawyer realizes the client is going to alter allocations to the litigious relative, or to someone with whom the litigious relative believes herself or himself to have a fiduciary interest, and that a substantial amount of money is in question. The attorney sees the red flag and correctly believes that a formal psychological assessment of the client at the time of the substitution of documents is in order. The lawyer hires a forensic psychologist, but one who hasn't dealt directly with testamentary capacity in many years. The attorney researches the statutes and decisions, and creates a packet for the expert, as well as for the attorney herself.

EXPERT INSURANCE

Timing in law is something like location in real estate. Securing an expert at the start of litigation also assures that if the attorney finds that the consulting expert has come to a conclusion or opinion that in its totality is not useful to the case, the lawyer can still pursue other experts' opinions, and decide if

there is an opinion more consistent with the interests of the case, and when the appropriate time comes, designate the new consulting expert as the expert witness.

THE EXPERT'S ROLE IN ATTORNEY'S PREPARATION

The role of the expert often extends to aiding the attorney in preparing legal documents or for legal proceedings. In civil matters, attorneys might be well advised to seek the assistance of their expert in preparing for the deposition of an opposing expert, even if the attorney has taken many depositions. Since each case poses particular problems for an expert, knowing the expert's view of the professional issues in the case in the expert's field of expertise should enhance the lawyer's ability to engage in a useful deposition. In the best case scenario, the attorney might establish a record of significant deficits in the opposing expert's training, experience, or in his or her actual assessment techniques that might prove fatal to the expert opinion in the case. In less dramatic instances, the attorney can document a "fly by" assessment technique that is a substandard deviation from the prevailing forensic standard of care, or mistakes that the opposing expert has made. In other instances, you may be able to document that the opposing expert has ignored important data, or did not have access to crucial material.

Some consultations are more common to family law. In a family law case, for instance, an expert forensic psychologist who is a certified and experienced custody evaluator can sometimes offer a very different perspective on the same data that has led a custody evaluator in a very different direction. At other times, the second expert provides a different set of data, because of investigating matters the other custody evaluator did not. It is often necessary to hire a custody evaluator as an expert to have a deficient custody evaluation set aside, and to have the court appoint another custody evaluator. In one case, the court appointed custody evaluator had failed to contact witnesses to an assault alleged to have been made by the father on the child in which the child had sustained a broken arm. When another expert contacted the witnesses, who were later deemed quite credible to the court, the information they provided the second expert was the basis for his opinion that the assault on the child had indeed been perpetrated by the father, as the child had alleged, and was not the result of the child falling independently down the stairs, as father had alleged. In another matter, a move-away, contacting the children's teachers, which the court-appointed custody evaluator had not done, but the second evaluator had, proved to be consequential to the courts in ruling in a way not endorsed by its own expert.

In a criminal matter, attorneys often benefit in case planning from consultation with an expert. For instance, in a homicide in which the plaintiff had pled not guilty by insanity, the attorney was considering putting him on the stand. The forensic psychologist on the case pointed out that the individual made a very good first impression, and that his pathology took quite a while to expose itself, despite its severity, and that his testimony would further confound rather than assisting his defense. The attorney reversed her decision to put the defendant on the stand, and they prevailed in the jury decision. The attorney attributed to the expert's insight into what the defendant's impact would otherwise have been on the jury.

Attorneys often benefit greatly from collaborating with their expert in preparing court documents related to their assessments, evaluations, depositions or other factors specifically related to the expert. Often experts will find the drafts an attorney crafts to be acceptable generally, but specifically deficient in describing the expert's actual practices, or other technical factors that may pertain to the case.

THE ULTIMATE QUESTION OR ISSUE

While in most matters, the determination of the ultimate question is with the triers of fact, the expert can greatly assist the jury by constructing a clear picture of what facts, questions and issues should be focused on determining that ultimate issue, and in what context to approach them. Guided by the attorney's questions, the expert crystallizes a schema for approaching the pertinent legal questions in the expert's area of specialization and reaches conclusions about the questions asked by the attorney. While the ultimate question is one posed to a trier of fact, a successful expert will impart to jurors a strong notion of the path to the desired answer, and why the expert has concluded that to be the answer. For example, in a competency trial the attorney cannot ask the expert whether the defendant is competent. However, the attorney can carefully ask the expert about the defendant's ability to accomplish tasks inherent to competency [e.g. "Is the defendant capable of assisting counsel? Why not?"]

SIT BACK AND CELEBRATE

If an attorney secured a solid expert early in the litigation process, worked collaboratively to define areas in which the expert could support the process of litigation, allowed the input of the expert where appropriate, and deliberated with the expert about the implications of the expert's opinions, the litigation process can actually become clearer and the job easier. Relax and enjoy!