



**ABVE in Sunny California  
April 4 - 6, 2008  
Town & Country Resort  
San Diego, California  
By Larry Sinsabaugh, Conference Chair**

This year the American Board of Vocational Experts (ABVE) is doing something quite different; **the entire conference is devoted to the ethics of vocational testimony.** Nested within the conference is a very different section, too. It addresses new developments in California law affecting workers' compensation claimants, known as Diminished Future Earning Capacity (DFEC). How one works within this system requires new thinking. This seminar is designed for California worker's compensation (WC) providers—hence the title, *The Ethics of VE Testimony and Diminished Future Earning Capacity California Style.*

ABVE endeavors to offers **pre-conference workshops** which are opportunities to work with specific individuals in the field on basic and advanced topics. This year continues the pre-conference workshops. Dr. Tim Field will present an advanced topic, **Assessing Alternative Methods of Estimating Lost Earning Capacity** and Dr. Mike Graham and Dr. Larry Sinsabaugh will lead a basic workshop addressing **protocols, processes and underpinnings of VE testimony**, designed for those new to VE work.

It has been said, obtaining ethics continuing education credits are hard to find. More to the point, ethics credits are needed by most vocational Experts (VEs) to meet state license and national certification requirements. The focus of this conference this year is around those ethical issues confronting the VE. It is a unique opportunity to obtain continuing educational credits in this specialized forensic area. In addition, during the regular conference programming on Saturday, there will be a separate track addressing Diminished Future Earning Capacity (DFEC) that has come about by a change in California WC law. Also new to this conference is revised brochure. Folks, you don't see this happen often either! This came about because the DFEC seminar changed during the development.

Here is a listing of the conference topics just to wet your appetite:

**GENERAL CONFERENCE – ETHICS**

- Ethics: An approach to Professional Practice – Dr. E. Davis Martin, Jr.
- Ethical Expectations of the Vocational Expert in Administrative and Employment Venues, Mr. David H. Parker, Esquire.
- Ethical Considerations in the Analysis & Testimony in PTSD Cases – Ms. Barbara Berndt, CED, CRC, ABVE/D
- Ethical Concerns in the Assessment of Work Capacity and Determination of Future Care Needs for the Vocational Rehabilitation Expert – Dr. J. Williams (in Memoriam) Dr. Anthony Dorto and Dr. Patrick Dunn.

**Continued on Page 6**

**Contents**

ABVE Spring Conference .....	1	Conference Update Continued .....	6
President's Message .....	2	Favorite San Diego Experiences .....	7
Welcome to New Members .....	3	Editor's Laptop .....	8
In Memory of John M Williams .....	4	Expert Witness .....	9
Eulogy of John M Williams .....	5		

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## President's Message

By G. Michael Graham, ABVE President, 2007-2009

This issue of the ABVE Newsletter contains many tidbits that are designed to further the forensic knowledge and skills of our members. This issue also acknowledges the sudden passing of one of our own, Dr. John Williams. I am certain that there are many ABVE members who knew John better and in more depth than I, who became more acquainted with John as he served as a member of the ABVE Board of Directors. One of John's skills that he brought to our Board, was his ability to listen

while we all had our say about an issue, then to summarize the concerns and thoughts in a way that shed a different or new light upon these issues and got all of us re-thinking the attitude path we had set ourselves upon. John had a way of grasping what was not only important to that body in the moment, but more importantly, what might be critical to our profession in the future. The sudden passing of John did not give most of us the opportunity to tell him how we felt about his contributions to our field or to say "good-bye" to a colleague and friend.....a task that we now must do in our own private way, some of which you will read in this issue of our Newsletter.

On to other things I want you, as ABVE members to be informed about:

**(a) The National Committee of representatives of the American Bar Association and ABVE members**, designed to stage training sessions with personal injury attorneys in every state to enhance the awareness of these attorneys in the value of ABVE certified members as expert witnesses. However, progress on this is currently stalled by the non-responsiveness of Attorney Neukom of Seattle WA, who became the President of the ABA during Nov 2007. Several attempts have been made in the form of letters to Mr. Neukom and telephone calls to his office manager, Mrs. Ward by myself and Member Harry Whiting, Jr. We have not been able to schedule a meeting with Mr. Neukom, speak to him by phone, or participate in any other form of communication with him on this project to date. Our letters of communication have explained the nature of this project, the background of ABVE and its certification process, and our need to have the ABA endorse a grant proposal we have written.

While both Mr. Whiting and I will continue to pursue this connection (with calls and letters to Mr. Neukom, President of the ABA) I am open to any other ideas and suggestions from you, the membership. If you have an approach that you think might have some success, please send me an email at [gmgedd@yahoo.com](mailto:gmgedd@yahoo.com) and I'll give it a try.

**b) AREA – The American Rehabilitation Economics Association** – will hold their Spring 2008 conference in Pittsburg, Penn on May 15-18, 2008. A unique feature of this year's conference is the pre-conference "BOOT CAMP" for persons with little economic experience who are interested in learning how to work within this narrow focused econometric area. This Boot Camp will feature topics such as Vocational (economic) Approaches 101, Forensic Economics 101 and Working with Other Experts in Constructing a Life Care Plan. The main conference, scheduled for May 16-18, 2008 is also packed with practical elements such as Chronic Pain Syndrome, Alternative Worklife Models, and Foreign National Issues and Earning Capacity. You can learn more about this conference by going to the AREA website at [www.a-r-e-a.org](http://www.a-r-e-a.org)

**c) The ABVE Conference is scheduled for the first week in April.** ABVE members have received an initial conference brochure and should have received a second conference brochure recently resulting from some errors in the initial brochure, which were corrected in the 2<sup>nd</sup> printing and distribution. The conference is set in San Diego, California and will feature sessions that revolve around ethical decision-making by vocational professionals. There are 2 pre-conference sessions, presented by Dr. Tim Field and by Drs. Graham & Sinsabaugh. The session by Graham and Sinsabaugh is designed to address the

CONTINUED ON NEXT PAGE

## President's Message Continued...

“need-to-know” elements of the beginning forensic specialist. Gather your colleagues and those professionals who are contemplating getting into forensic testimony or who are already there but want to increase their depth of knowledge, and encourage them to come to this unique conference. Read the other articles in this Newsletter which discuss the April 2008 ABVE San Diego California conference and make your reservations now. You can register on the web at [www.abve.net](http://www.abve.net)

Lastly, Dr. Philip Spergel, a long-time ABVE member, has proposed that ALL ABVE officers of the Board be elected by the membership to enhance the democratic process of representation. Dr. Spergel has asked the ABVE Board to look at this issue and then to ask the membership to vote on their preference. For the past many years, the members of the Board, who are elected by the membership with the exception of the President Elect and the President, have elected from the Board, a President Elect. This position then ascends to the office of President at the end of the President's term of office. Under the Spergel plan, there would be no President elect as this position would be changed to Vice President. The ABVE membership would then have the opportunity to vote for ALL officers of the Board INCLUDING the Vice President and the President as well as Board-members-at -large, as their staged terms expire. This proposal, along with “pro” and “con” statements, will be soon emailed to each ABVE member so that you can voice your opinion regarding this change. Be on the look out for this proposal in your email (during the end of February) and take the opportunity to email back your vote.

### Welcome to the Following New Members

The American Board of Vocational Experts would like congratulates the following new members. Continue to watch us grow!

Leigh Ann Godinez  
David Harning  
Natalie Tessari  
Alina Kurtanich  
Tania Shullo  
Ray Cestar

Christopher Reese  
Richard Bielecki  
Michael Stinson  
Timothy Field  
Douglas Gorman  
Janet Walsh

**ABVE members who refer a qualified candidate who becomes a certified member will receive a \$100 “finder's fee credit” to be applied towards their next conference registration.**

**So get out there and spread the word!!**

### Journal Guidelines Available

Those interested in submitting manuscripts for ***The Journal of Forensic Vocational Assessment*** can request specific guidelines from:

E. Davis Martin, Jr.  
Phone: (334) 844-2083  
email: [martiev@auburn.edu](mailto:martiev@auburn.edu).



### Future ABVE Conferences

Mark Your Calendars Now!

**Spring 2008**  
April 4th, 5th, 6th, 2008  
Town & Country Resort & Convention Center  
San Diego, CA  
(619) 291-7131

**Spring 2009**  
March 27 - 29  
Hotel Monteleone  
New Orleans, LA

**Spring 2010**  
Las Vegas, NV

## In Memory of John Myers Williams, PhD September 19, 1949 - January 29, 2008

February 1, 2008

It was a beautiful day. The sun was shining, the sky was bright blue with intermittent clouds floating with the breeze. This would be just as you would expect for Southern Florida. The temperatures were in the low 80's which were above average for this time of year. I thought to myself...how appropriate because John M. Williams was above average too! This was the day that we gathered at St. Elizabeth Ann Seton Church, Coral Springs, Florida to celebrate the life and mourn the death of our friend and colleague.

The mass of the Christian Burial was held midday. It was difficult for most to endure and to feel the pain and sorrow of Ann Williams knowing that her pain was magnified one thousand times more than our own. I thought about the many of you who would have wanted to be here but could not. The homily and the eulogy that was read to us were so meaningful that I asked each author if I could reprint their words for all of you. My hope is that this will bring some comfort and closure for all as we read these words and reflect on John. Go in peace my dear friend and know you left a huge legacy behind for all of us....thank you a million times over. You will be sadly missed but never forgotten.

Cindy Grimley

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February 1, 2008

Today we gather in sadness to mourn the death of John and to pray for his immortal soul. His death, at age 58, came as a real shock for all of us. And, we are still dealing with that shock. Death is a mystery, which we cannot begin to understand without faith; death in itself leaves us puzzled and forlorn perhaps, angry too! But the Lord had other plans. "Life is what happens while we are making other plans". As we deal with John's sudden death, let us remember that through the teaching of Christ, through His Life, death and resurrection we have hope for the future. In this hope, we pray for John, this morning, that he may enjoy eternal life with God. We remember his days on earth and are grateful that we were part of his life.

The Gospel (good news) we just heard spoke of "eternal life" And soon in the preface of the mass, we will hear the words "the sadness of death gives way to the promise of eternal life". With all of John's gifts: intellectual, social, his empathy and compassion for others, his many accomplishments and material success, he sensed there was more to life, something more to strive for. Those of us who have been raised since childhood in Christianity become perhaps desensitized to the truths of Christianity....namely that we are known and valued by our creator, that each person is so valuable in the sight of God that he/she is destined to a permanence we call "everlasting life". It is interesting that on the last days of his life on earth John's thoughts were focused on Christ and his suffering on the cross and what the cross means in our lives. This theology, I'm told, was reflected upon in the Monday night RCIA class. Those classes were preparing him to enter fully into the Catholic faith at the Easter Vigil.

On behalf for Ann, his beloved wife and best friend, his mother Maggie and his sister Jenai, I thank you for your presence here. I thank Father Kelly. May God Bless and comfort us all.

*Prepared and reprinted with permission by Rev. Michael H. Marchetti, Pastor of Our Lady of Lodes, Montoursville, PA and cousin of Ann Williams, who celebrated the mass of the Christian Burial and gave this homily.*

"We will miss John as ABVE Board members for his fearless challenges to each of us in an effort to improve the quality of the work the Board is about and the mission of ABVE.

Fortunately, he leaves behind a wide ranging body of work in the form of the many articles, papers and opinion papers he has written over the years and that we can review and gain from his insights."

*Michael Graham, President, ABVE*

"John was a can do person who was very visionary. While on the board, John worked on the membership survey project, and test evaluation, along with writing many articles. John was committed to improving the profession by contributing his time and money to ABVE. He was well respected by his peers and was a leader in the profession. We will all miss John's smile, energy and contributions. "

*Glenn Zimmermann,  
Executive Director, ABVE*

"I found Dr. John Williams to be unique in the field of Rehabilitation. Single handily, he wanted to enrich the field of rehabilitation research and the field's literature. He published many articles and book chapters. When John would meet me, he would always urge me to write an article. John believed the only way our field of Rehabilitation Counseling would have stature was to publish in medical journals. He was extremely proud of the fact that he was the ONLY non-physician who published a chapter in the most recent AMA Disability Evaluation book. He was very client oriented and included a rehabilitation plan and the costs of the plan for the disabled person he would evaluate in a Forensic Consultation. John was an extremely dynamic person, always in motion. What many people do not know, is that John loved model trains and when I visited his office, he would proudly demonstrate them for me. I will miss him as a friend and colleague."

*Ed Prover,  
Colleague and long time friend*

## ~ EULOGY OF DR. JOHN M. WILLIAMS ~

John Myers Williams was brilliant, driven, talented, educated, organized, loving. It is one of the highest honors I've ever been given, to be close enough to John and to Ann to be invited to say these words. If only it weren't at such a terrible juncture. For most of the past 15 years, I knew John as co-worker, research-partner, and friend.

With regard to John's personal life... John and Ann were not just happily married, it was more than that. They were made for each other. They fit into each other's worlds, and needed each other, and nourished each other, and thrived. Regardless of the pressures that the two dealt with at the office every day or maybe because of those pressures, they cherished their personal time immensely.

John and Ann had active social lives that often included their beloved dogs Daytona and Kismet, and their cat Squash. Their social lives and friendships sprawled across two cities- Fort Lauderdale and Hilton Head.

In addition to friends and family, John loved his toys- particularly his sleek sexy Corvette (can I say that in a church?), and his miniature trains with their history, their mechanical precision, their non-major dissonant shriek in the night.

Together for 21 rich years, John's and Ann's lives together began in Pennsylvania with Ann working as a Social Security Disability Determination Clerk and saying to one scruffy bearded Expert Witness who was giving her some grief, "Oh, and I'm supposed to be some kind of impressed with you because you have a doctorate?" Needless to say, after a line like that, the rest is history. They were married a month after meeting in 1986, took the chance of moving beyond the shadow of John's beloved alma mater, Penn State, and came down to South Florida a year later, so that John could take the job running the Barry University Rehabilitation Department.

With regard to John's professional life... I and many, many others view him as having moved mountains. With his education and his native intelligence and skills and personality and drive, John built a huge and wonderful legacy. How can I make clear to you in just a few words just how much his thoughts and actions affected that part of the world? Bear with me as I list three...

1. There are the hundreds of cases in which people (often with devastating injuries and disabling conditions), turned to the court system for justice, which were well-served by John's untiring fight for honesty and precision.
2. There are the Counselors, Co-workers, Peers, Friends, and Students who were mentored by John, among them: Dr. David Heaston, Joan Driscoll, Pat Brock, Dr. David Stein, Nick Fidanza, Dr. Ted Mitchell, Dr. Tony Dorto, Dr. Patrick Dunn, Cindy Grimley, and me. Not one of us will ever stop hearing John's words.
3. And there are the Rehabilitation Counselors and other colleagues who will rely for years to come on the huge body of research that the famous Dr. John M. Williams conducted and published concerning assessment of disability related issues.

All of these will remember you forever, John.

Just one final thought about how hard many of us are finding it to believe that John has died. We friends and family knew him as the essence of vibrant, strong, and involved—involved in new research, in ongoing relationships, in Catechism studies, involved in nourishing the growth and professional thinking of peers. We see him as so vibrant that many of us would not have a hard time imagining this conversation... "God, I am not questioning your authority, I am only asking you to show me the objective medical evidence."

*Prepared and reprinted with permission by Steve Bast*

"The passing of Dr. John Williams was deeply saddening news, not only for those who knew and loved him, but also for countless others who were touched by his grace, generosity, intelligence and compassion. A seminal thinker, full professor and department chair, as well as a professional practitioner and author, John was truly a Renaissance man. His numerous contributions to the professional literature in forensic vocational rehabilitation and life care planning, both published and presented, were insightful, often seminal in terms of pushing knowledge forward and always well researched and thought out.

Too often, we lose true giants in our profession before they have the opportunity to complete a full life cycle. The works John left behind serve as a reminder of what has been lost. The true impact isn't felt until other issues arise and the input from those few like John isn't forthcoming. John Williams was a great friend, as well as a scholar, thinker, writer, practitioner and teacher. More importantly, he was a tremendous human being who freely shared his time, wit, knowledge and thinking with his peers in the selfless way of those who are secure within themselves. His loss is immeasurable, as is ours. "

*David Stein, PhD,  
Colleague and friend*

"I was happy to be John's friend.

John was a leader in the field of rehabilitation and rehabilitation education. He was a tireless researcher, and published cogent articles to benefit both the academic community and people with disabilities.

John has made immeasurable contributions to our field by developing what is seen by many as the quintessential model in the development of forensic rehabilitation opinion and delivery of forensic rehabilitation services. He was a valued colleague and will be sorely missed."

*Bob Lessne, PhD,  
Colleague and friend*

“Dr. Williams and I have known each other through our mutual interest in vocational research, beginning in 2002 and continuing until the time of John’s tragic and untimely passing.

In Dr. Williams, I saw someone who had come from a successful academic career and made a very successful transition to private vocational forensic practice. I believe that John saw me as someone who, with my work as an academic, had a very similar set of career experiences to his own when he was my age. In terms of our views on research, especially the need for more and better investigation of forensic issues, we rarely disagreed. Our relationship was one of mutual respect and collaboration. I was fortunate to have had this relationship with John, and very flattered that someone of his stature in our profession chose to work with me.

I probably learned more about forensic research from John than anyone I ever met. Among his many qualities were a strong dedication to integrity and the application of scientific methods to the study of forensics. He was dedicated to moving the state of the art of vocational forensics to ever-increasing levels of quality. Personally, I will greatly miss John as a friend, mentor, and research partner. Vocational forensics has lost a true leader, and in his memory I hope those of us that remain dedicate ourselves to carrying on his work and his vision.”

*Patrick Dunn, Ph.D., CRC  
Associate, ABVE*

“In the early 1990s, John and I wrote *Assessment of Rehabilitative & Quality of Life Issues in Litigation*.

John and I were proud of the fact that our book was purchased by state Supreme Court libraries throughout the United States. Furthermore, the state of New Mexico finally permitted expert testimony on quality of life damages in civil courts shortly after the book was published. In January, John and I discussed the selling of our book online and the use of the book in CEU education. Sadly, we will no longer have an opportunity to do this together but the book will be available on my upcoming website. Ann Williams and I are discussing the creation of a John M. Williams Scholarship. Part of the book proceeds would go toward funding that scholarship in John’s memory.”

*Patricia A. Murphy, Ph.D.  
Founder of the Disability Studies Program*

## 2008 Spring Conference Continued...

### GENERAL CONFERENCE – ETHICS CONTINUED...

- Acting Ethically or Not as a SSA VE – Mr. Bruce Billman, Esq., Past President of National Organization of Social Security Claimant’s Representatives (NOSSCR).
- Ethics for the Vocational Expert: The Good, The Bad & The Ugly – Dr. Howard Caston
- Ethical Considerations with Case Management/Expert Billing Systems – Mr. Kerry Augustine, CEO of Time Orlando and Innovation Leadership, LLC
- VEs Practicing Ethically While Under Attack: Recognizing the Red Flags and the Need for Protective Orders – Ms. Jenipher S. Gaffney, MA, CRC, ABVE.
- Ethical Considerations in the Translation of Neuropsychological Results to the Functional Requirements of Real Work Environments - Dr. Dennis Helffenstein, PhD, ABVE/D
- Ethical Considerations in Fee and Engagement Agreements & Collecting Money – Dr. Larry Sinsabaugh
- The Ethics of Publication & Research: A Panel Discussion – Dr. E. Davis Martin, Jr. et al.

### CALIFORNIA DFEC (SATURDAY ONLY)

- Historical Development of the Future Earning Capacity Factor as Applied to the California Schedule for Rating Permanent Disabilities – Dr. Eugene Van de Bittner & Mr. Enrique Vega, MS CRC, CDMS. (8:00 – 11:45 a.m.)
- A Successful and Ethical Plan for Managing a DFEC Practice – Dr. Eugene Van de Bittner, Dr. Susan K. Van de Bittner, Ph.D., RN, & Mr. Enrique Vega, MS CRC, CDMS. (1:00 – 3:00 p.m.)

**Because the major focus of the conference is on ethics, we urge every attendee to download from the ABVE website ([www.ABVE.net](http://www.ABVE.net)) a copy of the ABVE, CRC, and NBCC codes of ethics so you’ll have those with you during the presentations. Also, if you need another brochure, just download it from the ABVE website.**

ABVE is ready to go. Like in the movie *Forest Gump*, when the psychologist told Ms. Gump, “Ma’am, your son is different,” Well—this conference is really different, too! Come and see for yourself.



## Frommer's Favorite San Diego Experiences

Here are just a few suggestions for recreational activities to round out your trip to San Diego. This beautiful city and surrounding area has many options to explore. Come early, stay later, or just plan an evening out with your ABOVE colleagues, friends, or family. Enjoy!

**Driving over the Bridge to Coronado:** The first time or the 50th, there's always an adrenaline rush as you follow this engineering marvel's dramatic curves and catch a glimpse of the panoramic view to either side. Driving west, you can easily pick out the distinctive **Hotel del Coronado** — or, as the locals say, the Hotel Del — in the distance before you reach the “island.”

**Escaping to Torrey Pines State Reserve:** Poised on a majestic cliff overlooking the Pacific Ocean, this state park is set aside for the rarest pine tree in North America. The reserve has short trails that immerse hikers in a delicate and beautiful coastal environment.

**Watching the Seals at the Children's Pool:** This tiny La Jolla cove was originally named for the toddlers who could safely frolic behind a man-made seawall. These days, seals and sea lions sunning themselves on the sand are the main attraction. The beach had been off-limits to humans since 1997, but following much public debate was reopened to swimmers in 2005. Keep a safe distance — these are wild animals — and you'll be rewarded with a unique wildlife experience.

**Taking in the City's Best Panorama:** Drive out to the tip of Point Loma on a clear day for an unsurpassed 360-degree view that takes in downtown, the harbor, military bases, Coronado, and, in the distance, Tijuana and San Diego's mountainous backcountry.

**Renting Bikes, Skates, or Kayaks in Mission Bay:** Landscaped shores, calm waters, paved paths, and friendly neighbors make Mission Bay an aquatic playground like no other. Explore on land or water, depending on your energy level.

**Strolling through the Gaslamp Quarter:** You'll be convinced you've stepped back in time when you walk through this 16 1/2-block area filled with Victorian commercial buildings. The beautifully restored structures, in the heart of downtown, house some of the city's most popular shops, restaurants, and nightspots.

**Spending a Day in Balboa Park:** Head to the San Diego Zoo and explore the superb city park that surrounds it. The buildings that grew out of Balboa Park's 1915-16 exposition create a Spanish Golden Age fantasia. The park also holds mature gardens, the acclaimed Old Globe Theatre, and 15 of San Diego's best museums.

**Listening to Live Music Outdoors at Humphrey's:** An intimate, palm-fringed venue on the water at Shelter Island, Humphrey's has name acts from mid-May to October and puts those impersonal summer concert “sheds” found in other cities to shame.

**Floating Up, Up, and Away over North County:** Sunset hot-air-balloon rides carry passengers over the golf courses and luxury homes north of the city. Do it while you can — open space for landings is fast disappearing, making ballooning an endangered species here.

**Wildflowers and Serenity at Anza-Borrego Desert State Park:** California's largest state park attracts its most visitors during the spring wildflower season, when a kaleidoscopic carpet of blooms blankets the desert. Others come year-round to hike more than 100 miles of trails.

**Frolicking at La Jolla's Beaches:** It may be misspelled Spanish for “the jewel,” but there is no mistaking the beauty of La Jolla's bluff-lined beaches. Each has a distinct personality: Surfers love Windansea's waves; harbor seals have adopted the Children's Pool; La Jolla Shores is popular for swimming, sunbathing, and kayaking; and the Cove is a top snorkeling and scuba diving spot, and the best place to spot the electric-orange California state fish, the garibaldi.

**Playing a Round of Golf at Torrey Pines Golf Course (La Jolla):** Two 18-hole championship courses overlook the ocean and provide players with plenty of challenge. In January, the Buick Invitational Tournament is held here. The rest of the year, these popular municipal courses are open to everybody.

**Spending a Day at San Diego Zoo, Wild Animal Park, or SeaWorld:** At the zoo, animals live in naturalistic habitats such as Monkey Trails and Forest Tails (the most elaborate enclosure ever created here), and it's one of only four zoos in the United States where you can see giant pandas. At the Wild Animal Park, most of the 3,500 animals roam freely over an 1,800-acre spread. And SeaWorld, with its water-themed rides, flashy animal shows, and detailed exhibits, is an aquatic wonderland of pirouetting dolphins and 4-ton killer whales with a fetish for drenching visitors.



## Advertising In The Newsletter

The ABVE Newsletter now accepts selected advertisements. Although ABVE does not endorse any product or service from our advertisers, advertising sales benefit our entire membership. If you work with a professional or organization who's products or services would benefit others in our membership, please encourage the business or individual to contact Betty Lindsey Hale at [blhale@insightbb.com](mailto:blhale@insightbb.com) about advertising in the Newsletter.

## CHANGE IN BY-LAWS CONCERNING ELECTIONS DEFEATED

Dr. Philip Spergel recently spearheaded a proposition that would have required a By-laws change regarding the election of the President and a Vice president by the membership rather than by the Board members, which has been the process for some time. A batch email statement was sent to all ABVE members which contained a "Pro" & "Con" statement regarding this issue. Members were asked to respond so that your Board could get a grass-roots impression. The results of this member solicitation indicated that out of 350+ members, only 54 members felt strongly enough about the issue to vote. The outcome was 31 "NO" and 23 "YES" votes; so in a democratic manner, the NO's have it and the proposal is defeated, no change will be implemented at this time

## From The Editor's Laptop

*By Betty Lindsey Hale, Newsletter Editor*

In addition to my duties and privileges as an ABVE Secretary and Newsletter Editor, I'm currently serving as the chairperson of the Ethics Committee. Two issues have arisen over the past few months that I will use as instructive examples in this issue and the next. The first was a complaint from a member of a counseling profession, but not a member of ABVE. This individual felt that one of our members had committed an ethical transgression after being retained by the attorney representing one side of a marital dissolution case. The attorney provided a copy of this professional's report and asked the ABVE member to assume a person of the same age, sex, education, and work history and identify occupations existing in his/her local labor market for which he/she would be qualified and representative earnings for those occupations. The ABVE member utilized labor market data specific to the individual's area and identified positions that were consistent with their past work and transferable skills, along with corresponding earnings. You may be wondering upon what was the ethical complaint based? The counselor who filed the complaint felt that the ABVE member had not performed due diligence in gathering information since he/she never met with the individual, while she had spent several weeks with this person administering several tests and providing career exploration and guidance relative to life after divorce. This individual felt that it was inappropriate for the ABVE member to simply utilize her report to gather information specific to this person's age, sex, education, and work history and to form opinions regarding employability and earnings without even meeting with the person to determine their desires with regard to re-entering the workforce.

As chairperson of the Ethics Committee, I explained to the counselor who had lodged the complaint that the ABVE member had not breached our Code of Ethics since it appeared that they had simply been asked to provide appropriate and feasible occupations and earnings to which the individual in question could reasonably have access based on an assumed set of facts specific to age, sex, education, and work history. This practice is similar in many respects to a hypothetical that is presented to the vocational expert by an administrative law judge in SSA disability cases. There was no need to meet personally with the individual since this information could be provided without determining the desires of the individual because the opinion is based upon what they are capable of doing, rather than upon what they prefer to do. Naturally, the counselor who had complained did not agree with this theory and emphasized the amount of time that she had spent with "her client" over the course of several months to determine what her wishes were and develop a plan for achieving them. The position of ABVE is that the TRUTH is the client, rather than either the individual who has referred the case, or the individual who is under consideration. In the situation that was described above, there does appear to be an ethical violation, however it would be on the part of the professional who had spent a considerable amount of time functioning as a counselor and providing career guidance only to attempt later to serve as an impartial expert witness in the individual's divorce case. This represents a dual role and is strictly prohibited by the ABVE Code of Ethics. The counselor naturally did not agree with this assessment of the circumstances and asked how to defend against "this type of report" when she faces it in the future. To which I replied that she should instruct the attorney who had retained her to question the opposing vocational expert as to their methodology and opinions. Neither the attorneys who are advocating for their clients, nor the vocational experts who are retained by the respective sides are responsible for determining credibility and rendering judgments. That responsibility lies with the finder of fact and it is that individual, or individuals in the case of a jury, who must be persuaded by the expert's efforts to educate with facts and defend their conclusions.

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# Expert Witness

## Deposition Location Matters

Since such a low percentage (less than 10%) of civil cases make it to court, deposition is an important part of the litigation process. Settlements, dismissals, and use of deposition transcripts or video at trial can mean that the expert's last word on the issue occurs at deposition. In order to do the best job possible, you should reduce the potential stress of a deposition as much as you can through the factors within your control.

The following article, excerpted from Depositions: The Comprehensive Guide for Experts, was enlightening to me about one factor that can be neglected - the location the deposition is given/taken. — Meredith

### **DO NOT HAVE THE DEPOSITION IN YOUR OFFICE**

Counsel taking the expert's deposition has the option of conducting the deposition at her own office, at the office of the expert, or at some neutral location. To save costs, many busy experts have traditionally been deposed at their offices. By simply asking retaining counsel, an expert may be able to move the location of the deposition to or away from his office. There are advantages and disadvantages of having the deposition taken at one's office. The advantages include the following:

1. less travel involved
2. more time available for other activities
3. feeling more comfortable "on your own turf"
4. control of logistics: seating, temperature, etc.
5. staff available to assist
6. records available when needed

While the advantages of being deposed in one's own office may seem obvious, the disadvantages are more subtle. These are discussed below:

#### **DISADVANTAGE 1: INTERRUPTIONS**

Interruptions may occur, which can be annoying and distracting. A distracted expert is unlikely to excel during his deposition.

**Q.** Do you want to answer that phone?

**A.** No, let it ring. The service will eventually get it.

#### **DISADVANTAGE 2: UNWANTED DISCLOSURE OF INFORMATION**

Unwanted disclosure of information may occur inadvertently by being deposed in your own office.

**Q.** When we talk about a concussion of the brain, so as I understand it, you don't think that that term is synonymous with mild brain injury?

**A.** No.

**Q.** I see on the desk you have a green journal, *The Journal of Neurology*. Is that a journal that you utilize in your practice?

**A.** Yes.

**Q.** And is it not one of the hotter topics in neurology, concussion in sports?

**A.** It has been discussed recently, yes.

**Q.** In fact, I think in the March issue, Drs. Rosenberg and Kelly wrote an article with regard to concussion in sports?

**A.** There were several articles, yes.

**Q.** Have you read them?

**A.** Yes.

**Q.** And am I not correct that they used the term "concussion" and "mild brain injury" interchangeably?

— **Practice Pointer:** Having the deposition in the expert's office was used against her. The attorney was able to determine that the expert used and read the journal in question.

**Q.** I see from your diploma that you graduated from MIT in 1991. Your CV says 1989. Which is correct?

— **Practice Pointer:** This question might never have been asked had the deposition not taken place in the expert's office.

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## Expert Witness Continued

### DISADVANTAGE 3: THE TIME OF THE EXPERT'S STAFF

The expert and his staff will be responsible for cleaning the office and the staff may be called upon to assist at the deposition. This could cost business time, which translates into money.

**Expert:** Let me clean up my desk. Here you take this chair. Let me get two more chairs. Is a stool okay? You need how many copies of this 29-page document? Here, let me see if I can get a staff member to help us.

— **Practice Pointer:** There may be a cost to your business if you have the deposition in your office.

### DISADVANTAGE 4: AVAILABILITY OF ON-SITE RECORDS

Experts may be called upon to produce additional records or documents that are available on-site. The expert may or may not be prepared to give testimony concerning these records or documents.

**Q.** I see the billing information is not in the file you provided. Could you have someone pull the records and bring them in?

— **Practice Pointer:** This request would never be made in this form if the expert was not in his office.

**Q.** There's a reference on page one, item number five, of a letter dated October 10, 2005, addressed to Kenneth Webber. Do you have that letter with you?

**A.** It must be around somewhere.

**Q.** Can you check your file for me?

**A.** Yes. Wait a minute.

**Q.** If you are buzzing your administrative assistant, I'd also like the letter of January 12th.

**A.** I'm going to tell her to bring everything in that is out there.

**Q.** Okay.

— **Practice Pointer:** It may be disadvantageous to have a deposition held in your office.

### DISADVANTAGE 5: DISTRACTIONS

Experts may be distracted by office noise, emergencies, and the usual anxiety about one's "to do" list. A distracted expert is much more likely to slip up.

### DISADVANTAGE 6: LESS LIKELY TO PREPARE

Experts deposed in their offices may be less likely to prepare properly and to focus mentally. If the deposition is in one's office, it may subconsciously be considered less of an "event" than if it required travel. An expert might, therefore, spend much less time preparing for depositions held at her own office.

In the authors' opinion, an expert witness may be better served by having the deposition held in a neutral site out of the office. Counsel may be amenable to this and the expert's travel time may be billable. For the reasons discussed above, it may be to the expert's disadvantage to have the deposition held in her own office. If the deposition is conducted at the expert's office, care should be exercised to use a sterile/bare room so counsel cannot utilize books, articles, diplomas, certificates, or other materials to cross-examine the expert. The opposing attorney should not be permitted to sit in the expert's waiting

room and listen to the conversations of the office staff. The attorney should immediately be isolated in the "sterile room" and encouraged to stay there until the deposition begins.

— Excerpted with permission from Depositions: The Comprehensive Guide for Expert Witnesses by Steven Babitsky, Esq., and James J. Mangraviti, Jr., Esq. (See more about this text at <http://tinyurl.com/32xd4n>)

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