

WHAT DOES IT MEAN TO BE A FORENSIC EXPERT?

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Recently, I reviewed an expert's report to opine whether it complied with his professional standards and ethics. Unfortunately, the report did not, and I found his opinions were not credible, reliable and definitely not prepared forensically. Examples leading me to this conclusion included:

- Improper definitions, missing definitions, and unpublished terms
- Improper methodology (the methodology could not be replicated)
- Assumptions adopted were not supported by facts in the case (for example: lab reports, the actual nature of contamination contradicted the expert's characterization, other documents from a government investigator proved the expert's characterization to be false)
- Opinions were inconsistent and were contradicted by prior opinions that the expert published in an earlier report on the same property for a different issue for the same client
- No list of all prior expert testimony in compliance with the requirements of court in this cause (rules of civil procedure).

These problems could have been averted had the expert communicated better with the client and client's attorney. In a deposition, it is uncomfortable and embarrassing to discover that your report and opinions were not forensically prepared. Forensic is defined by Merriam-Webster "relating to or dealing with the application of scientific knowledge to legal problems." In my view, the expert's opinion was not prepared by way of a scientific process, and the fact that a peer review could not replicate the expert's opinions will likely result in serious problems for him when faced with a Daubert motion to strike his opinions. Another contributing factor and forensic mistake made by the expert was an obvious attempt to develop an opinion in an area outside the expert's background, training and experience. The expert simply wasn't competent to express an opinion on this particular topic. This type of mistake is not uncommon when experts vary outside their areas of expertise and do not take the necessary steps to become competent in the specific type of problem to be solved.

Becoming a forensic expert is both a learned and acquired skill. Primary and continued education in the expert's specific area would have prevented publication of a report that was not prepared by a forensic expert.

The takeaways from this case as it relates to a property forensic analysis are:

1. Preparation of an opinion/expert report in compliance with professional standards and ethics is absolutely necessary. The terms, definitions and methodology need to comply with recognized and industry publications (for example, peer-review articles and treatises).
2. Thoroughly investigation all the relevant facts relative to the problem being analyzed.
3. Understand that if opinions are being prepared for litigation and you represent yourself as an expert, you are likely to be subjected to an opposing expert challenging your opinions in review/rebuttal. You may have to defend your opinions in a motion to strike by opposing counsel.
4. Prepare your expert report in compliance with the jurisdictional rules of the court in the cause.