



LET'S GET TOGETHER IN ORLANDO!!!!

By Howard Caston, Ph.D.
ABVE 2011 Conference Chair

A great deal of work and planning has occurred in putting together this conference. The sessions are conducted by experts in the field, many of whom are ABVE members. The areas that will allow you to expand your professional knowledge include:

- The technical world of prosthetics, including a demonstration by patient models.
- Assessment of earnings capacity.
- The adverse effects of treatment and medication.
- Forensic testimony.
- Vocational impact of vertigo.
- Social Security, including a mock hearing
- An update on the OIDAP.
- Report writing with group review and critique (two part session).
- Acceptable absentee issues.
- Life care planning.
- Vocational application of the economic recession.
- Ethics sessions on multiculturalism and the effects on forensic testimony.

In addition, we have the honor of having a presentation by Dr. Timothy Field who will discuss the evolution of the medical aspects of disability in our profession.

The conference handbook can be used for future reference, with many links to resources and databases that will be of value in our work after the conference has ended. Every member will have a



At this time, most of us are covered in snow, digging out our cars, and freezing. It is time to think and dream about going south where it's nice, warm, pleasant, and enhancing your professional knowledge and expertise at our **ABVE Conference** **March 25 - 27, 2011** in Orlando, Florida.

substantial amount of "take away" information.

In addition, this conference is a great venue for networking with experienced colleagues. There will be a Presidents Welcome Reception, a banquet lunch, and recognition of leaders in our field.

This organization contains a wealth of talent and abilities in various aspects of forensics in the vocational and disability areas. The arena is progressively expanding and it is imperative that we maintain our competencies, especially in regards to medical advancements in the treatment and rehabilitation of individuals with disabilities. The Conference Committee as well as the ABVE Board are all committed to maintaining this high level of competence and excellence.

Please visit www.ABVE.net for registration information.

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President's Message

By Larry L. Sinsabaugh, President, 2009-2011



As my term of office draws quickly to a close, this will be my last message. Accordingly, I would like to be somewhat reflective about the American Board of Vocational Experts (ABVE), what it has meant to me, what it means to new members, and its potential to change the way vocational expert services are delivered across the country.

I joined ABVE in 1985. My purpose for membership at that time was to strengthen my credentials and to gain exposure to those experts who had made names for themselves in the field. I had just come off of a stint with the Social Security Administration as of Vocational Expert (VE) after a number of years testifying in state workers compensation hearings. Attending conferences was an exciting experience because I was able to meet people who were changing the field. These people were willing to share their experience, their techniques and their delivery styles. All in all, it was a very exhilarating time for me. Subsequently, I've heard the same from others. It wasn't until the early 1990s that I performed some minor service to the organization in the form of reviewing credentials. This brought me into contact with more of the membership, especially those that I had seen at conferences and had read about in what was at the time, "the journal." All along this time until the late 1990s, I had been working in the field and expanding my repertoire of technique and skills. One day in 1998, Dick Baine called me and requested that I speak at the upcoming conference because the scheduled speaker had canceled. From my involvement at the Pittsburgh (1999) conference, and at Dick's and Cindy Grimley's urging, I ran for office as a member of the Board of Directors and began working in ABVE leadership.

When I first joined the ABVE Board of Directors, meetings were quite contentious and I wondered if my involvement could make a difference in all of the wrangling that was occurring. However, I stuck it out because I thought I had an opportunity to contribute to the growth and development of this fine organization—and I did. I helped at conferences. I worked with credentialing, with the peer reviewers and many others to help pull ABVE together into a working team. About six years ago, Dave Martin and I agreed to co-edit the *Journal of Forensic Vocational Analysis*. Up until this year, I worked under Dave's leadership as the Associate Editor. This year, I will edit the journal with Dave supporting me as Co-Editor. Over the years, my primary focus has been upon training those new to the organization in various techniques that would improve their practice. A highlight of my service to ABVE was receiving the David S. Frank Award for lifetime service in 2006.

Although I spent much time working in service of ABVE membership, the experience also helped me build my expert practice. Over the years, word-of-mouth referral from people who had benefited from my sharing and my involvement in ABVE contributed to my receiving more and more cases. One of the biggest benefits for new practitioners in ABVE is the ability to see, hear, and try new techniques that they might not have known about before joining ABVE. Reading competing expert reports, I began seeing the benefits of ABVE educational services, or in some cases the lack thereof, within my competition's work-product during case reviews. Clearly, those competitors who used

CONTINUED ON NEXT PAGE

Vocational Expert

Presidents Message (Continued)

techniques learned from the ABVE Journal, seminars, and conferences made a better work-product. ABVE competitors were always more difficult to deal with in the forensic setting because they knew how to do it better. I found it easier and easier to compete against those who were not ABVE affiliated.

About 15 years ago, I began working in the area of methodology and ethics and sharing that work with others through conference educational forms and the journal. Over time, I began seeing threads of my work appear in other VEs' reports, especially those

affiliated with ABVE. Over the last 26 years, I have seen a change in forensic vocational expert witness practice, and for the better, too. This is what I see as the legacy of ABVE - it creates a better delivery of professional services.

What is ABVE's potential? ABVE is a teaching organization and ABVE is an

“Over the last 26 years, I have seen a change in forensic vocational expert witness practice, and for the better, too.”

international organization. Over the last four years, I worked with others to develop a way to bring in to the association individuals who might not be Fellow or Diplomate ready candidates, but could benefit by an understanding of what makes good forensic practice through the new status of membership, ABVE Basic Certification. This new status is an attempt to increase an understanding of basic forensic techniques. Finally, I see ABVE as becoming an international association. About two years ago, and definitely this last

year at the San Diego conference, ABVE reached out to its brothers and sisters in Canada. We now have a Canadian contingent on the Board of Directors led by Robert Lychenko. Although still relatively low in membership, it is getting stronger. I commend the current Board of Directors and past Directors for their

dedication and forward bold thinking. I thank Glenn Zimmerman, Jess Finney and the BTF Enterprises staff for their guidance and maintaining ABVE in good financial shape.

I am pleased to report that over my 26 years with ABVE, I have gained much from my association with this organization. I've met countless individuals who have become not only colleagues but friends who I might not have ever met had it not been for ABVE. I will not even try to mention all the people that I have met and worked with in ABVE that were instrumental in guiding my career because there were so many. For those new to the association, I urge you to learn from those who present and write. For those of you who are veteran VEs, I charge you with teaching and sharing. I want to thank ABVE for the opportunity of being its President and for the opportunity to serve. As I leave office next month and turn the Presidential leadership over to Gray Broughton, I have a positive vision about the future of ABVE - you are in good hands.

Secretary's Report: Social Security Contract News Alert

By Cheryl Chandler, ABVE Secretary

For those of you who are VEs with the Social Security Administration, hopefully you have received a letter directing you to go online and register with FedConnect. This was due by February 11. Unfortunately the letter did not go out until February 1, and they did not always use the most current mailing addresses for some of the existing VEs. Confirming emails were to be directed to the regional offices in your area. Second, you are expected to have all of the contract information found through the FedConnect website for the next contract and, according to a letter I received, all signed and completed

documents are due by Monday, February 28. These are the same forms you may have completed in the past. Once logged in, search opportunities and type in “Vocational Expert” and the contract information will show up in the document dialog box on the right-hand side.

None of the material is difficult just unfamiliar and it was not released with much warning. Very important is that your DUNS number must appear on the standard form 18, which is in the document list.

Fortunately, the VEs in my area alerted each other, but 3 out of 4 did not

receive the initial letter or it was received late due to the agency sending to the old address. I am writing this to alert any of you who might still not be aware of this issue.

As of February 18, 2011, there is an alert from FedConnect about an amendment to the contract, which is labeled as SF 30, Amendment of Solicitation/Modification of Contract. Please check these references or with your ODAR regional headquarters if this is a concern for you.

See you in Orlando!

Joseph E. Havranek, Ed.D.

4/8/1951 — 12/13/2010

That fall day in Ohio was sunny and clear as we walked from the parking lot to the conference center. As Jack Sink and I approached the front door to the building we were met by a young fellow who surmised that we were the seminars leaders for the two day conference on forensic and compensation issues. He introduced himself as Joe Havranek and explained that he would be our host during the conference and available to help us with whatever we needed. Joe was quite unassuming and quiet in his manner as he introduced us to a few people and helped us set up our materials and teaching aids for the day's presentation. From that day in the early 1980s to the present, Joe and I had forged a professional relationship that included traveling to the same rehabilitation conferences, occasionally sharing the podium, and to a long term association with developing and producing rehabilitation literature.

As we all know, during his professional career, Joe was most prolific with his reviews of nearly every book that was published in the field of vocational rehabilitation. In addition, he would write reviews of software, video and media materials, and any other resource that was available to the rehabilitation community. Along with his work as a counselor, rehabilitation consultant and expert, university educator, and seminar speaker and trainer, Joe authored numerous articles for the professional journals and served as editor for a period of five years of the *Journal of Private Sector Rehabilitation*. Joe then turned his hand to writing an occasional book, the first of which was on the topic of "work hardening" – a concept related to his work with the Cameron Center of the Ohio Workers' Compensation Program. I asked Joe if that had anything to do with "hard work, like jobs in the logging industry"? Joe just chuckled and proceeded to explain the theory and approach contained in his book (Joe always had a soft laugh and smiled often). E & F, Inc. was fortunate enough to publish this small book and our collaboration led to several other books as well. Joe co-authored a book on vocational evaluation (with three revisions), and a comprehensive two-volume book on the general topic of forensic rehabilitation. But, of all the books and papers that Joe produced, none pleased him more than his final book which obviously was a labor of love and personal pride, Joe had taken a year's sabbatical from Bowling Green State University and worked his way through some of the southern states – meeting and befriending many of the people who helped produce the "blues" music of an era gone by. The book, of course, had to have a cover printed in blue ink and also had an image of Joe playing a harmonica (above) along with one of his new found friends.



For all of his accomplishments, Joe always stayed connected to the important aspects of simply living (or living simply). Joe's family, especially his grandchildren, were essential and central to his daily activity. Joe's personal faith, beliefs, and values were equally central and governed his many interests over the years. As an example, one of his recently published papers involved a small research project on the accessibility of churches in his hometown area. Not in search of what was wrong, but rather in a spirit of helpfulness, Joe was able to show these churches and places of worship that small architectural changes could better serve people with disabilities. It was his eye for merging the theoretical, the academic, and the practical which often times made Joe's work so relevant and useful. Over the years Joe and I had many conversations about his projects, or mutual writing interests. Joe's phone calls always were chatty — him wanting to know what I was doing, or about something going on in the profession. Finally, we would get around to the business at hand and then he would always sign off with a "Well Tim, you have a nice day." For years it was always "you have a nice day!" In his final weeks I had an opportunity to talk with Joe after he learned of his diagnosis. I was impressed with his determination to make every day a positive event and, as he had always done, to enjoy the simple pleasures of life. Joe passed as he had lived, and I will always be grateful for knowing him and considering him a friend, a colleague, and a fellow traveler through the world of rehabilitation. Jeff Truthan, also one of Joe's friends, made the following observation which nicely sums up Joe's life:

Joe was a "rehabber" who has run the full gamut of professional experience, from work in the trenches, to public WC administration and vocational expertise, as an educator, and as a prolific writer, reviewer, and genuine good man. His strong personal values and Christian commitment have carried him into his next well-earned place in eternity.

Good-bye, Joe. We are thankful for the time you spent with us.

Tim Field

Originally printed in the International Association of Rehabilitation Professional, Rehab Pro V18, N4 editorial article by Tim Fields on Joseph Havranek.

American Board of Vocational Experts General Membership Meeting

March 26, 2011 | Noon – 1:15pm
Florida Hotel & Conference Center
Orlando, FL

AGENDA

Call to Order

Opening Remarks

Larry Sinsabaugh, President

Old Business

1. 2010 Minutes

The 2010 Annual Meeting minutes are made available to all members in handout form. Motion to accept & vote to accept/reject.

New Business

1. Financial Status of ABVE

Estelle Hutchinson, Treasurer
Glenn Zimmermann, Executive Director

2. 2011-2013 Election Results - Larry Sinsabaugh

Ratify vote for President Elect, Cynthia Grimley

3. Other ABVE Business

Certification Exam Validation Study
· Certified member participation requested

4. SSA Update - Claude Peacock

5. OIDAP Update - Bonnie Martindale

6. Open Discussion with ABVE Members

7. Awards Presentations

- David S. Frank Lifetime Achievement Award
- Scott E. Streater Educational Award
- Presidential Citation Awards
- Retiring Board Member – Michael Graham

Closing Announcements

Adjournment

Motion to adjourn meeting

Future ABVE Conferences

Mark Your Calendars
Now!



March 23 - 25, 2012

Harrah's Las Vegas
Las Vegas, Nevada



April 12 - 14, 2013

Scottsdale, Arizona



March 28 - 30, 2014

Nashville, Tennessee

Help ABVE Validate the 5th Edition Certification Exam and earn 4.5 CEUs toward your ABVE CEU Requirement

ABVE Diplomates and Fellows are encouraged to participate in the validation study for the 5th edition revision of the certification exam. Your participation in the study will be without prejudice and will not affect your current certification. This exam will be used for data collection purposes only as part of the validation study.

A secure online testing system is available. All certified ABVE members who would like to participate can take the test from their home or office. The exam contains 244 questions and must be taken within one consecutive three hour time limit. For best results, and to avoid computer server errors, the online testing system must be accessed using Mozilla Firefox browser (not Internet Explorer).

If you would like to participate, email abve@abve.net with the subject line “Online Exam Validation”.

ABVE will send you a link to the exam with detailed instructions, including how to download the Firefox browser. Please send your request to participate at least one week ahead of the date you are ready to take the exam. The link will remain active and you will have until April 22, 2011 to take the exam. Each certified member will be allowed to take the exam only once.

If you have any questions, call Jessica Finney at ABVE Headquarters at 831-464-4890 or email abve@abve.net.

Are You Displaying Your ABVE Credential?

If you are a Diplomat or Fellow, don't miss an opportunity to add to your credibility by listing ABVE/D or ABVE/F on your CV, expert witness listing or marketing material.



AMERICAN BOARD OF
VOCATIONAL EXPERTS

Would you like to add the ABVE logo to your website?

Email abve@abve.net subject line “ABVE logo” and we will send you a high resolution logo to add to your website.

The Occupational Information Development Advisory Panel (OIDAP)

By Bonnie S. Martindale, ABVE/D,
Chair of ABVE's Advisory Committee for OIDAP

This is an abbreviated update: In November 2010, OIDAP agreed on an additional recommendation for SSA to develop and make public an overarching project plan and timeline and a fully articulated research plan. The Social Security Administration has put much effort into developing an OIS and established the Office of Vocational Resources Development (OVRD) to oversee the project. Sylvia Karman is the Director of the newly established Office of Vocational Resources Development (OVRD). The OVRD was created to direct and conduct the research and development of the Social Security Administration's new Occupational Information System (OIS).

SSA has also developed Requests for Proposal for contractors to conduct studies in the following areas:

- Usability and data quality of the proposed data elements for the OIS – Through this study, SSA would obtain expert user feedback from SSA disability adjudicators and reviewers on the data elements as well as selected measurements and scales that may be useful in SSA's disability adjudicative process. For the purpose of this study, a test instrument will be created to provide a means by which SSA can obtain this expert user feedback.
- Development of a business process for conducting job analysis – Job analysis is performed by a variety of professionals (for example, vocational rehabilitation counselors, physical and occupational therapists, and human resource professionals). Each type of professional approaches job analysis differently. After benchmarking and thoroughly researching these various methods, the contractor will make

recommendations on how SSA should perform job analysis—including the development of processes; how to operationalize; and training, certification, and recruitment of job analysts.

Once these initial studies are completed, SSA plans to conduct a feasibility study in 2011. After that, the Agency will be able to estimate the project's timeframes and costs.

ICF International was awarded the Blanket Purchase Agreement. ICF is going to train, certify, and recruit the job analysts who will be implementing the OIS system. A draft report on training, certification and recruiting from ICF International is due in April, 2011 and a draft report on job analysis methodologies is due June, 2011.

In response to a recommendation made by OIDAP, SSA plans to develop internal expertise by hiring individuals with specialized skill sets in areas crucial to effective work analysis. These individuals will also assist as the Agency continues to design studies in the future.

The OVRD has begun with one branch to research design and development, scientific standards, testing, data collection and data analysis. A second branch will be dedicated to program integration of the OIS program. The plan addresses issues such as research design, research questions, methods to answer questions, relevant sources, resources needed, software requirements, risks/threats to validity, communication strategies and budget.

On December 8, 2010, OIDAP held their quarterly conference in Baltimore, Maryland to relate the progress of the OIS system. They released information pertaining to the new Computer Assessment Test (CAT) a data gathering tool for claimants and health care professionals. The CAT applies factors of the Content Model and was going to be pilot tested in January, 2011.

On January 7, 2011, Commissioner Michael J. Astrue renewed the Charter for OIDAP.

For further information Debra Tidwell-Peters, Designated Federal Officer, OIDAP, Social Security Administration can be contacted by e-mail at OIDAP@ssa.gov. Visit www.ssa.gov/OIDAP for more information.

WELCOME NEW ABVE MEMBERS!

ABVE would like to welcome the following new Associate Members:

Lynda Berkley

Jeffrey Cockrum

Nicole Crawford

Elizabeth Davis

James Earhart

Leslie Freels - Lloyd

A. Bentley Hankins

Guy Hostetler

Sue Howard

Robert Moseley

Otis Pearson

Rona Wexler



“New Federal Rules Change the Landscape of Expert Discovery: Striking a New Balance Between Protection and Discovery”

Fulbright Alert, December 2010

By **Matthew H. Kirtland and Kimberly Hope Levy**

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Effective December 1, 2010, the landscape of federal expert discovery and disclosure will change.

Amendments to Rule 26 of the Federal Rules of Civil Procedure (the “Rules”) both narrow and expand the universe of discoverable material, as new protections and specifications will apply to draft expert reports and certain communications between experts and attorneys, while new disclosure obligations will apply to experts who were previously exempted from the reporting requirements. There are three significant amendments:

1. Rule 26(a)(2)(B)(ii) is narrowed to require disclosure only of the “facts or data” considered by the expert witness (deleting the requirement that “other information” be disclosed);
2. Rule 26(a)(2)(C)—a new provision—requires that non-retained experts, *e.g.*, treating physicians, disclose summary reports of their intended testimony; and,
3. Rules 26(b)(4)(B) and 26(b)(4)(C)—new provisions—extend work product protection to draft reports and attorney-expert communications, except communications about three specified topics (see below).

Collectively, “these changes provide broadened disclosure regarding some expert testimony and require justifications for disclosure and discovery that have proven counterproductive.”[1]

I. The Seeds of Change

The amendments to Rule 26 reflect observations that have evolved since 1970 when the Rules were first amended to address discovery as to trial-witness experts.[2] Additional amendments were made in 1993, when Rule 26(b)(4)(A) was revised to permit expert depositions and Rule 26(a)(2) was added to provide disclosure obligations, including a written report containing “the data or other information considered by the witness in forming” the opinions to be offered.[3] Those disclosure obligations were based on the rationale that litigants would “no longer be able to argue that materials furnished to their experts to be used in forming their opinions—whether or not ultimately relied upon by the expert—are privileged or otherwise protected from disclosure when such persons are testifying or being deposed.”[4]

Guided by that rationale, courts broadly construed “data or other information considered by” the witness to permit discovery of draft reports and attorney-expert communications.[5] However, “[c]onsequences that surely were unforeseen in 1993 have demonstrated the pragmatic failure of any hope that expert opinions would be better tested by sweeping discovery of draft reports and attorney-expert communications.”[6] The regime that resulted from the 1993 amendments often did not produce the anticipated results because “attorneys and expert witnesses [would] go to great lengths to forestall discovery.”[7] Such tactics tended to increase costs, “most notoriously by increasing the simultaneous use of consulting experts

and testifying experts,” and diminish the quality of expert testimony because “attorney[s] and expert[s] fear[ed] to engage in the open and robust discussions that would lead to better mutual understanding.”[8] Those tactics also “diminish[ed] the opportunity to effectively challenge an adversary’s expert when a party [could not] afford to explore cross-examination and rebuttal with a consulting expert, and—fearing the possibility of discovery—refuse[d] to consult with its trial-witness expert.”[9]

The intention of the present amendments is to counteract those undesirable effects by balancing the scales in asymmetrical litigation, thawing the “chill” in attorney-expert communications, improving the overall quality of expert testimony, and discouraging strategies that defeat the discovery of valuable information, such as the use of dual experts (consulting and retained).

II. The New Landscape

The present amendments aim to strike a balance between protection and discovery by providing at least as much useful discovery as presently occurs while minimizing practices that hinder the effective use of expert witnesses.[10] Here are the key changes:

Facts, Not Information: Amended Rule 26(a)(2)(B)(ii) Narrows the Scope of Information Testifying Experts Must Disclose

In addition to the initial disclosures required under Rule 26(a)(1), Rule 26, both before and after the amendments, requires parties to not only identify

CONTINUED ON NEXT PAGE

Rule 26 (Continued)

their expert witnesses,[11] but also supplement such disclosure with “a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony.”[12] In turn, Rule 26(a)(2)(B), before the amendments, required parties to include in the report the “data *or other information* considered by the witness in forming” the opinions offered.[13] The amended Rule 26(a)(2)(B) deletes the “or other information” language, requiring instead that the report include only the “facts or data considered by the witness in forming” the opinions offered.[14] One of the goals underlying this amendment is “to alter the outcome in cases that have relied on the 1993 formulation as one ground for requiring disclosure of all attorney-expert communications and draft reports.”[15] Specifically, the focus on “facts or data” is intended “to limit the disclosure requirement to material of a factual nature, as opposed to theories or mental impressions of counsel. At the same time, the intention is that ‘facts or data’ be interpreted broadly to require disclosure of any material received by the expert, from whatever source, that contains factual ingredients.”[16]

Inclusion of Non-Retained Experts: Amended Rule 26(a)(2)(C) Requires Summary Disclosures by Experts Who Previously Were Not Required to Submit a Report Under Rule 26(a)(2)(B)

The addition of Rule 26(a)(2)(C) imposes a new obligation on parties to disclose a summary of the facts and opinions of a testifying expert who is

not required to provide a disclosure report under Rule 26(a)(2)(B). Such reports are less extensive than Rule 26(a)(2)(B) reports and apply to witnesses, such as treating physicians, who have not been specially retained as an expert or whose duties do not regularly include giving expert testimony. Such a disclosure requirement “will enable parties to determine whether to take depositions of these witnesses, and to prepare to question them in deposition or at trial.”[17] Moreover, it “resolves a tension that has sometimes prompted courts to require reports under Rule 26(a)(2)(B) even from witnesses exempted from the report requirement, reasoning that having a report before the deposition or trial testimony of all expert witnesses is desirable.”[18]

From Draft to Finish, Witness Prep to Witness Box: Amended Rules 26(b)(4)(B) and 26(b)(4)(C) Extend Work Product Protection to Draft Reports and Disclosures, and Attorney-Expert Communications

Rule 26(b)(4)(B), as amended, extends work product protection to drafts of expert reports and disclosures. This protection applies to all witnesses identified under Rule 26(a)(2)(A) whether they are required to provide Rule 26(a)(2)(B) reports or are the subject of the new disclosure requirements under Rule 26(a)(2)(C).[19] Rule 26(b)(4)(C) now provides comparable work product protection for communications between counsel and experts who are required to provide a Rule 26(a)(2)(B) report, *i.e.*, retained experts. No such protection is accorded to communications between counsel and non-retained experts, *e.g.*, treating physicians. In addition to protecting

counsel’s work product, Rule 26(b)(4)(C) is intended to “ensure that lawyers may interact with retained experts without fear of routine wholesale discovery.”[20]

Exceptions. The protection of Rule 26(b)(4)(C) does not apply where the communications: “(i) [r]elate to compensation for the expert’s study or testimony; (ii) [i]dentify facts or data that the party’s attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) [i]dentify assumptions that the party’s attorney provided and that the expert relied upon in forming the opinions to be expressed.”[21] Discovery of communications outside these three exceptions and discovery of draft expert reports or disclosures are permitted only in limited circumstances and by court order.[22]

III. Applicability

The amendments apply to suits filed after December 1, 2010, and may apply to suits filed before December 1, 2010, “insofar as just and practicable.”[23]

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[1] Fed. R. Civ. P. 26 advisory committee note.

[2] The 1970 amendments added an express work product provision, Rule 26(b)(3), and a provision permitting an

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Original article may be found at <http://www.fulbright.com/publications>

Rule 26 (Continued)

interrogatory about expert testimony, Rule 26(b)(4).

[3] Fed. R. Civ. P. 26(a)(2)(B)(ii) (as amended in 1993).

[4] Fed. R. Civ. P. 26(a)(2) (1993) advisory committee note.

[5] Fed. R. Civ. P. 26 advisory committee note.

[6] Advisory Committee on Civil Rules, Report to Standing Committee at 3 (June 30, 2008).

[7] *Id.*

[8] *Id.* at 4.

[9] *Id.* at 5.

[10] *Id.*

[11] Fed. R. Civ. P. 26(a)(2)(A).

[12] Fed. R. Civ. P. 26(a)(2)(B).

[13] *Id.* (emphasis added).

[14] Fed. R. Civ. P. 26(a)(2)(B)(ii) (as amended in 2010).

[15] Fed. R. Civ. P. 26 advisory committee note.

[16] Fed. R. Civ. P. 26(a)(2)(B) advisory committee note.

[17] Fed. R. Civ. P. 26(a)(2)(C) advisory committee note.

[18] *Id.*

[19] Fed. R. Civ. P. 26(b)(4) advisory committee note.

[20] *Id.* Neither Rule 26(b)(4)(B) or (C) prevent discovery of the opinions to be offered by the expert or the development, foundation, or basis of those opinions. *Id.*

[21] Fed. R. Civ. P. 26(b)(4)(C)(1)-(iii). The Advisory Committee explains, “courts should recognize that the word ‘considered’ is a broad one, but this exception is limited to those facts or data that bear on the opinions the expert will be expressing, not all facts or data that may have been discussed by the expert and counsel. And the exception applies only to communications ‘identifying’ the facts or data provided by counsel; further communications about the potential relevance of the facts or data are protected.” Fed. R. Civ. P. 26(b)(4) advisory committee note.

[22] In order to obtain such discovery, a party must meet the high threshold of showing that it has a substantial need for the discovery and cannot obtain the substantial equivalent without undue hardship. Fed. R. Civ. P. 26(b)(3)(A)(ii).

[23] The April 28, 2010 Order of the Supreme Court of the United States provides, “That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 2010, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.”



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George Washington University's Forensic Rehabilitation Counseling Program

The George Washington University's Forensic Rehabilitation Counseling program is an online graduate certificate program that can be completed in one year. It is designed for busy working professionals and will provide you with the education, training and experience needed to become an expert witness. The program offers a collaborative multidisciplinary approach with GWU's Law School, making it ideal for counselors in private practice, rehabilitation counselors, supervisors, directors of rehabilitation agencies, and counselors seeking additional education. It is offered through GWU's nationally ranked Rehabilitation Counseling Program (6th according to U.S. News and World Report).

The increased demand for national certification and licensure requirements for counselors has led to a proliferation of online academic programs offering either master's degrees or certification programs (Bollettino & Bruderlein, 2008). The George Washington University continues to remain an innovative pedagogical leader by continuing to develop counseling programs to address gaps and/or new areas of need within the rehabilitation and clinical mental health counseling fields. There is a strong need for counselors to be educated in Forensic Rehabilitation Counseling topics as the current counseling environment increasingly requires the counselor to testify in court. In today's litigious society counselors are becoming more involved in the legal system (voluntarily or via subpoena) and frequently have no formal training to prepare them for this environment. Research indicates that the majority of graduate students would select to take an online distance education course as part of a MA or PhD program (Sloan

Consortium, 2008). The latest data indicates that almost 3.5 million students were taking at least one online course during the fall 2008 term. Nearly twenty percent of all U.S. higher education students were taking at least one online course during the fall of 2007 (Sloan Consortium, 2008).

The Forensic Rehabilitation Counseling Program consists of four graduate level online distance education courses (12 credit hours) offered via Blackboard: Foundations of Forensic Rehabilitation Counseling I, Foundations of Forensic Rehabilitation Counseling II, Law and the Rehabilitation Counselor and Disability and Case Management. The first course starts during the summer semester and the student takes one course per semester until completing the program the following summer. Curricular requirements of this certificate program provide participants with the additional coursework required by the various state licensing boards to obtain licensure. Each state has its own specific requirements to obtain an LPC or LCPC.

The first GWU Forensic Rehabilitation Counseling (FRC) cohort began the summer of 2010 with 12 students with a wide variety of professional experience (rehabilitation counselors, case managers, employer risk management, economist). The demographic and educational breakdown of the initial cohort consisted of 1 student with a Ph.D., 10 students with a master's degree, and 1 bachelor's level student; 64.29% Male to 35.71% female, 78.57% Caucasian, 14.29% Hispanic, 7.14% African American and an average age of 44. The first FRC cohort consisted of 11 IARP members or 91.66% of the group several of whom serve in IARP leadership positions. GWU is currently accepting applications for the second

FRC cohort that will begin in June of 2011. The lead faculty member for the FRC program is Dr. Scott Beveridge, LCPC, CRC, CDMS, who has experience providing Forensic Rehabilitation Counseling services since 1991, working in both the public and private-for-profit sectors of rehabilitation counseling, serving as a counselor educator and researcher. For information on the GWU Forensic Rehabilitation Counseling program please visit the FRC web site: <http://gsehd.gwu.edu/frc> or contact Dr. Beveridge at (202) 994-2473 or beveridg@gwu.edu.

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