

# Threats to the Livelihood of the Forensic Neuropsychological Practice: Avoiding Ethical Misconduct

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**ABSTRACT.** We review six diverse issues that have the potential of devaluing our profession, in that ethical missteps could lead to the perception or reality that the work of forensic neuropsychologists is “for sale.” By resisting temptations or overtures to engage in inappropriate conduct, such as attacking colleagues or failing to recognize how our own biases might influence our behavior or opinions, neuropsychologists strive to create a work product that enhances the reputation of our profession and makes a positive contribution to the public-at-large. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2005 by The Haworth Press, Inc. All rights reserved.]*

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Clinical neuropsychologists are increasingly called upon to act as expert witnesses in legal cases, including both criminal and civil cases. The range of possible civil cases may include disability assessment, workers' compensation, personal injury, product liability, medical malpractice, Social Security determination, and competence to make a contract or will. The performance of an independent forensic neuropsychological examination, also referred to as an independent medical examination (IME), typically differs from that of the clinical neuropsychology evaluation. For many neuropsychologists, the transition from clinician to forensic neuropsychological examiner is an arduous task, because most neuropsychological training occurs in clinical contexts. As a result, the clinical neuropsychologist working in the forensic examiner role may feel uncertain about how to negotiate the unique ethical requirements of this role. However, if neuropsychologists wish to continue working in these venues, they must learn of potential ethical improprieties and then avoid them. Otherwise, the value of both their and the profession's services to the court system may be irreparably harmed. The following six questions typify some of the potential threats to ethical neuropsychological practice. Because ethics evolve across time, we have attempted to provide a range of potential solutions to these questions.

*Question 1.* I observed ethical misconduct by a colleague retained by the opposing attorney. Should I report the misconduct now or wait until the case is concluded, thus allowing similar behavior to continue for months or years?

*Answer 1.* Neuropsychologists frequently have the opportunity to review the work product of their colleagues, which may include reports, raw data, and deposition or trial testimony. At times, this review may raise questions about whether the colleague has acted in an ethical manner. The first author and colleagues have previously written about what a concerned neuropsychologist might do when confronted with possible ethical misconduct on the part of a colleague (Grote, Lewin, Sweet & van Gorp, 2000). This article will be briefly summarized, as related questions about *if* and *how* one should contact a colleague, or make a report, must be addressed before one decides *when* to make the report.

Although the Ethics Code of the American Psychological Association (2002) has been revised since the Grote et al. (2000) article was

published, this revision has not changed the responsibilities of the neuropsychologist who suspects that ethical misconduct has occurred. The revised Ethics Code still requires neuropsychologists to attempt to informally resolve the issue with the offending colleague, as long as it “appears appropriate and the intervention does not violate any confidentiality rights that may be involved.” If the ethical violation cannot, or should not, be worked out informally, “psychologists take further action appropriate to the situation,” which may include referral to state or national licensing and professional groups.

What is less clear from the APA Ethics Code are the circumstances under which one should initiate a complaint and how one might go about it. Discussion with other colleagues about this dilemma likely will lead to feedback that such effort “isn’t worth it” for fear of reprisal from the offending colleague or because of the premonition that the state board will be non-responsive. However, closer review of the language of the Ethics Code, legal precedents, and related texts suggests that not responding at all may not be an ethically or legally defensible posture. Standard 1.05 (Reporting Ethical Violations) of the Ethics Code simply states that “psychologists take further action appropriate to the situation.” A commentary on the Ethics Code stated that psychologists are *required* (emphasis added) to take action when unethical practice is suspected (Canter, Bennett, Jones, & Nagy, 1994).

A review of the legal literature, however, concluded that there seemed to be little risk for failure to report a colleague suspected of ethical misconduct. While every case has to be judged on its own circumstances, it seems unlikely in most instances that others would be aware of a neuropsychologist being privy to knowledge of an offending psychologist’s ethical misconduct. A search of the available legal literature did not show any reported cases in which professionals were publicly disciplined for failure to report a colleague’s professional misconduct.

Besides there appearing to be little legal risk for failure to report misconduct, many neuropsychologists may be reluctant to move forward for fear of reprisals from an offending colleague, including counter-complaints and litigation. While anyone could be sued at any time, a review of the literature indicated that ordinarily there would be little or no risk of such an attempt at reprisal being successful. The review by Grote and colleagues (2000) indicated that the likely purported grounds for such reprisal litigation might include defamation, malicious prosecution, abuse or misuse of process, interference with contract rights, unfair competition, violation of antitrust laws, or deprivation of property rights. A detailed review of these topics led to the conclusion that a re-

porting neuropsychologist's risk of liability appears to be low, if the report was based on reliable information that the psychologist reasonably believed to be true and if the report was made only to an appropriate professional organization or public official. Of course, it would be improper, and perhaps would serve as grounds for successful reprisal litigation, if a reporting psychologist would announce his intention to file a complaint in a public forum or in other ways that could be seen as an excuse to "bad mouth" or otherwise embarrass the offending psychologist.

A summary of the above points suggests that neuropsychologists may be ethically required to report misconduct, but that there is relatively little legal or ethical risk for failing to do so. Thus, it is incumbent upon one's sense of "right and wrong," and duty to the public, to follow up on concerns about a colleague's misconduct. Before the offending colleague is contacted, or a complaint is filed, it is suggested that a number of steps be undertaken. These include a determination of which ethical principle may have been violated, and whether this violation is significant enough for a complaint to be generated. The reliability and persuasiveness of the evidence should be assessed, and one should be aware of one's motives in possibly making a complaint. It is possible that one might have a negative relationship with the offending neuropsychologist. While this does not necessarily suggest that a complaint should not be filed, it does leave one open to the possible charge that the complaint was filed out of personal spite or animosity. Finally, one must consider whether any contemplated actions would violate any type of confidentiality, and what trusted colleagues might have to say about your proposed actions.

Assuming that a decision has been made to contact a colleague or file a complaint about their perceived misconduct, one must decide when it is an appropriate time to move forward. Should the matter involve one's role as a treater in a non-litigated case, there may be no obvious reason to hesitate. The difficulty arises in cases in which one is retained as an expert, typically in cases where an examinee is seeking compensation for alleged cerebral dysfunction. These cases often arise in the context of personal injury litigation, such as when an individual has filed a lawsuit because of injuries suffered in a motor vehicle accident. Other commonly encountered situations include workers' compensation or disability insurance applications. It is not unusual for litigation and disability cases to be "open," or unresolved, for many months or even years. In these circumstances, neuropsychologists must decide when it is appropriate to wait, perhaps for years, for related litigation to resolve,

versus when they must take immediate steps to redress perceived wrongdoing.

In many, perhaps most, cases, it may be best to wait for the resolution of litigation before contacting a colleague or filing a complaint about perceived misconduct. There are at least two reasons to wait. The first is that litigation is an adversarial process and does not necessarily engender feelings of respect for colleagues and their opinions. Attorneys have different agendas than retained neuropsychologists, and might covertly or overtly attempt to influence the neuropsychologist's opinions and attitudes. It may not be uncommon for the neuropsychologist to begin to identify with the side which has retained them as the "right" or morally/intellectually superior side and to view the "other" side as being less than noble. During the discovery process, the neuropsychologist may uncover real or perceived factual or opinion errors from other neuropsychologists but may over-react to the significance of these because of the heightened sense of competition brought on by the adversarial process. Therefore, waiting for the resolution of the litigation may allow the reporting neuropsychologist to calm down and see events in a more dispassionate manner. Upon further reflection, he/she may realize that differences of opinions, or scoring errors, were not quite as significant as first reacted to in the course of events. A second reason for waiting is that doing so reduces the opportunity for such action to interfere with the litigation process. Although no reported cases could be identified through a literature search wherein a filed complaint caused such interference, it seems sensible to assume that this could occur. If attorneys, judges, or juries learn of a filed complaint, it could lead to the perception that one neuropsychologist is trying to "smear" the other. Even if the reporting neuropsychologist's intentions were noble in filing a complaint during ongoing litigation, it may be impossible to convince others that he/she was not trying to besmirch the reputation of a colleague retained by the other side.

Discussion of related issues can be found in a recent official position paper from the American Academy of Clinical Neuropsychology (2003). This paper points out that, in some parts of the country, there is the appearance of a strategy on the part of some to discredit neuropsychologists by filing ethical complaints against them while related litigation is still ongoing. The Academy made several recommendations on ways that ethics committees or licensing boards might respond to such filed complaints. These suggestions include setting aside investigation until the end of any adversarial proceeding, and having members of the investigating body remove themselves from deliberations if there are any

real or perceived conflicts of interest. The National Academy of Neuropsychology (NAN) has issued a position paper on Independent and Court Ordered Forensic Neuropsychological Examinations (NAN, 2003), which states, in part, that it agrees with the AACN position on when ethics charges should be either filed or investigated.

There might be circumstances under which a neuropsychologist might elect not to wait until the end of litigation to file a complaint. It is conceivable that one might come across a situation where immediate reaction is needed. Examples of such might include situations where a colleague has a dual or sexual relationship with a client, or where there is the appearance that a colleague is taking unfair financial advantage of an impaired patient through over-billing. In such cases, the reporting neuropsychologist might feel the need to act immediately to protect public interests. If they do contact the offending colleague, or file a complaint, they might then seek advice from colleagues about how or when to notify any retaining parties about these actions. While the Grote et al. (2000) article made it clear that a reporting neuropsychologist runs the risk of a successful counter-complaint or litigation from an offending colleague if he or she inappropriately conveys concerns to others, it is not clear that such risk would extend to reports made to retaining attorneys or insurance companies. It would seem that the retaining party has the right to know of developments that affect the case, and this would seem to include knowing that one expert has filed a complaint against another expert. However, a reporting neuropsychologist should try to not have the retaining party exploit this development. After all, the point of making a complaint during, or after, litigation is to protect the public from perceived wrongdoing, and not to serve as grist for the retaining attorney to use against adversarial experts. Further, a filing of a complaint is not the same as a finding of guilt. Anyone can complain to anybody about anything. Of course, one should not presume that a reported colleague is guilty unless, and until, a responsible body has come to such a conclusion.

*Question 2.* At times, attorneys will ask me to change wording in my reports. It's usually just a couple of words here or there that doesn't alter my conclusions. Is it ethical for me to do that?

*Answer 2.* Attorneys may have good reason in asking for a draft of a psychological report so they can review it. The attorney may wish to see that relevant questions have been answered clearly, and may want to assure themselves that the report is factually correct. Indeed, there are cases in which referral questions may be ambiguous or complicated, and the retained neuropsychologist may not be fully cognizant of the

number, or type, of questions that is being asked of them. Further, attorneys and neuropsychologists may come to problems differently. Because of the adversarial nature of litigated cases, attorneys may be more interested in exaggerating or ignoring certain claims or facts, whereas in some cases neuropsychologists might be viewed as making more of an attempt to be fair or balanced. By virtue of temperament, training, or occupation, neuropsychologists may be more equivocal or “wishy washy” than attorneys, who may be less interested in subtleties. For any of these reasons, attorneys may wish to preview reports. It is not inconceivable, however, that, in other instances, attorneys simply wish to re-write reports more to their liking. While neuropsychologists are typically paid an hourly fee for their time, regardless of the content and findings of a report, attorneys may reap millions of dollars in contingency fees for successful outcomes in personal injury cases. While perhaps not defensible, it may be understandable then that some attorneys wish to influence their expert’s opinions.

Of course, it is rarely, and perhaps never, advisable for a neuropsychologist to offer a draft of a written report for the retaining party’s review. Similarly, they should not re-write a completed report at the request of either attorneys or examinees. The earlier-cited position paper from The National Academy of Neuropsychology (2003) also advises that reports not be re-written at the request of others, as compliance with such a request can result in the neuropsychologist being a biased advocate instead of an objective expert. Agreeing to change a neuropsychological report at the request of another might also put one in violation of the Ethics Code (2002), particularly those standards related to Conflict of Interest (3.06), Bases for Assessment (9.01), and Explaining Assessment Results (9.10).

While it is clearly inadvisable to send a draft report for review, or to edit an already-completed report, it may be permissible to discuss one’s findings and opinions with a retaining party after the assessment is complete but before the report is written. If such discussions occur, they should be prefaced with the admonition that the discussion is only to ensure that all relevant questions are being answered clearly. The retaining party should be told that the discussion is not an invitation for them to suggest revisions or alterations of opinions, or in any way to become a co-author of the report.

It may or may not be practical or necessary to discuss this topic with a retaining party at the time of retention. Some colleagues may have a number of documents that are routinely sent to retaining parties at the time of retention which discuss retaining fees, presence of third parties



during evaluation, billing practices, and such. Other forensic neuropsychologists may not be so formalized and might only discuss these issues at the outset, while others might not make any specific attempts to discuss such issues until they become relevant. No one approach seems mandated by APA or any other organization. At a minimum though, neuropsychologists should convey to others at the time of retention, or later on as needed, that any resulting opinions are those of the neuropsychologist alone and are not open to revision or co-authoring.

*Question 3.* I'm confident that I'm as objective and impartial as a neuropsychologist can be. However, I've heard colleagues say that working for one side in forensic cases lends itself to greater objectivity than the "other" side (which happens to be the side that retains me most often). In civil litigation cases, should I only accept retention by the other side?

*Answer 3.* Although competent clinical neuropsychologists desire to remain objective and impartial, in civil litigation cases, neuropsychologists are many times faced with the question of whether they should primarily work for the plaintiff or the defense. Regardless of the referral source or retaining party, a primary responsibility of the clinical neuropsychologist is to provide information based on scientifically-validated neuropsychological principles and clinical methodology (Ethical Standard 9.02, Use of Assessments). Further, neuropsychologists must interpret results in a manner that is free of the effects of bias. Perhaps the most important test of objectivity and impartiality is an assessment of the extent to which neuropsychological reports may be presented unchanged for use by either the defendant or the plaintiff.

Recognizing and correcting ethical conflicts that arise when neuropsychologists are retained by either plaintiff or defense is a complicated issue for neuropsychologists, regardless of their experience or intentions (Martelli, Zasler, & Johnson-Greene, 2001). The need to remain objective represents a potential hardship for neuropsychologists in forensic arenas because the retaining third party may attempt to bias the neuropsychologist's conclusions and recommendations (Sweet & Moulthrop, 1999). In certain situations, plaintiff attorneys may try to coerce neuropsychologists to report results in a manner that is more conducive to their desired outcomes. Correspondingly, defense attorneys may refuse to use a neuropsychologist that delivers an unfavorable report. Neuropsychologists who wish to remain objective should take steps to balance cases from defense and plaintiff attorneys. Further, in their attempts to resist coercion to report results favorable to one side or



the other, they should also resist only accepting retention by one side in civil litigation cases.

Neuropsychologists need to take steps toward developing and employing safeguards to increase the probability of objectivity (Brodsky, 1991; Martelli, Zasler, & Johnson-Green, 2001). Sweet, Grote, and van Gorp (2002) suggested that when neuropsychologists are retained as experts, they should “embrace the notion of an ‘angel on your shoulder’ throughout involvement in a case. That is, imagine that an esteemed neuropsychologist was listening in on your conversations with a patient or attorney” (p. 119). It is important for neuropsychologists practicing in forensic arenas to perform self-examinations and remain as objective as possible. Specifically, data interpretation should ideally be made without preconceived ideas about the examinee (Sweet & Moulthrop, 1999). Unfortunately, the retaining third party may not be sensitive to the neuropsychologist’s ethical considerations and, as a result, may bias conclusions and recommendations. Consequently, it behooves neuropsychologists to be prepared for these potential biases, and it is their responsibility to take action against such biases (Iverson, 2000; Shuman, Greenberg, Heilbrun, & Foote, 1998).

According to Sweet and Moulthrop (1999), there are a number of self-examination questions that clinical neuropsychologists should utilize when conducting forensic assessments. First, the authors discuss general self-examination questions regarding bias for neuropsychologists. They discuss favorability of conclusions to the side that has retained the neuropsychologist, comparison of current findings with base rates, and relation between emotional responses and objectivity. Next, they discuss self-examination questions pertaining to written reports. These questions include discussions of whether a panel of peers would reach consensus with the neuropsychologist’s findings, the ways in which one deals with contradictory facts, whether evidence was unduly included or excluded, and assessment of whether exaggerated descriptors were employed. In a response to Sweet and Moulthrop, Lees-Haley (1999) suggested that self-examination alone is inadequate. Neuropsychologists need to increase the probability of objectivity through formulating and practicing externally validated safeguards. Taken together, these suggestions for endogenous and exogenous examinations of bias offer neuropsychologists a host of heuristics for assessing and correcting bias.

*Question 4.* I believe that concussions without loss of consciousness can lead to permanent neurological damage and cognitive deficits in some patients. Does that make me biased? If so, am I unethical?

*Answer 4.* Biases in the neuropsychological evaluation are not limited to professional issues. Neuropsychologists must also examine themselves to assess whether they are harboring personal or political biases. Although competent neuropsychologists strive to be as professional as possible, there is no denying that each neuropsychologist is influenced by a personal, as well as professional, *weltanschauung*. Neuropsychologists have been conditioned by both their clinical neuropsychological training and other life experiences. As a result of these experiences, languages develop and become underlying structures for the neuropsychologists' worldview. The result is an organization of causal perception of the world and linguistic categorization of entities. As van Gorp and McMullen (1997) pointed out, "professionals have personal views regarding individual responsibility, social justice, scientific, and even social liberalism or conservatism, and so forth" (p. 186). Even though these views may appear to be personal (not professional) biases, they represent the neuropsychologist's personal and collective worldview. It is very likely that one's worldview may frequently act as a subtle influence upon the interpretation of neuropsychological evaluation results (van Gorp & McMullen, 1997).

At times, neuropsychologists may make judgments based upon availability heuristics, rather than complete data. Availability heuristics are unrealistically simple rules that result in errors when neuropsychologists estimate the probability of a cognitive deficit based upon the ease with which that outcome is imagined (Tversky & Kahneman, 1973). As a result, neuropsychologists may make errors when judging the likelihood of events. Deidan and Bush (2002) pointed out that neuropsychologists making use of the availability heuristic may judge particular diagnoses as being more common than they in fact are. For example, a neuropsychologist working primarily with traumatic brain injured patients may view permanent neurological damage and cognitive deficits as more common in concussion patients than it actually is. According to Deidan and Bush "Such a bias may affect his or her clinical judgment, resulting in an overestimation of the presence of the diagnosis and a decreased likelihood that diagnostic conditions with better prognoses will be considered" (p. 282).

Neuropsychologists may also be guilty of attribution bias, in which they incorrectly attribute current symptoms to an injury or to the event in question. Attribution bias, for the neuropsychologist, is the tendency to over-emphasize dispositional explanations for behaviors observed in patients while under-emphasizing situational influences on said behavior. According to Martelli, Bush, and Zasler (2003), attribution bias

“typically results in a confounding of accurate diagnosis and appropriate treatment. Examinees can demonstrate attribution bias when they mistake common cognitive symptoms or inefficiencies as direct sequelae of a mild traumatic brain injury when they are instead due to the emotional sequelae of an accident or stress” (p. 39).

How do neuropsychologists assess whether they are guilty of cognitive biases? Martelli, Bush, and Zasler (2003) suggested that these errors can be prevented by making use of data from careful observation, history, and collateral sources. Further, it is important that the neuropsychologist review base rates of relevant symptoms and carefully develop differential diagnoses that consider all possible symptom explanations. Deidan and Bush (2002) would add that it is important that neuropsychologists “refer to appropriate guidelines/criteria each time a diagnosis is made, rather than basing judgment on memory of the characteristics of various categories” (p. 284). In sum, neuropsychologists interested in “debiasing” their neuropsychological assessments should look for unseen causes. Since salient factors tend to be overattributed, neuropsychologists may want to look for factors of which they would not normally take notice.

*Question 5.* I learned in graduate school and residency to use conditional statements or modifiers in my conclusions because it’s not that often that we can be certain about causality or prognosis. However, I’ve recently reviewed forensic reports by colleagues, some very well known, who make statements with apparent certainty about such issues. What gives? Were my mentors out of touch?

*Answer 5.* Conditional statements or modifiers are an important part of clinical neuropsychological practice because it is not that often that we can be certain about causality or prognosis. A review of forensic reports, however, may reveal statements proffered with apparent certainty about such issues. The dilemma for neuropsychologists is that, while attorneys typically request help in reaching a final decision, neuropsychologists have been trained to present evaluation results using statements of probability and confidence intervals. Neuropsychologists are scientist-practitioners and should use conditional statements or modifiers in conclusions when causality or prognosis cannot be established with certainty. The dilemma for neuropsychologists working within the forensic arena is that such cases pull for causative links between neuropsychological deficits and a related event.

First, as scientist-practitioners, neuropsychologists are bound by their ethical obligations to ensure that their judgments are based upon established scientific and professional knowledge of the discipline (Ethical

Standard 2.04, Basis for Scientific and Professional Judgments). Ethical Standard 2.04 stipulates that psychologists rely on scientifically and professionally derived knowledge when making professional and scientific judgments, or when engaging in scholarly or professional endeavors. Standard 9.06 (Interpreting Assessment Results) directs psychologists to note factors that may require a limited opinion. Further, within the context of expert testimony, it is important that neuropsychologists make a reasonable effort to ensure that their services are used in a forthright and responsible manner (Committee on Ethical Guidelines for Forensic Psychologists, 1991). Finally, it is important that neuropsychologists communicate to the referral sources as to the limits of their knowledge.

Second, attorneys or the court may ask “yes or no” questions, such as “Does the plaintiff’s neuropsychological evaluation indicate that the plaintiff has brain damage as a result of the mild head injury sustained in the motor vehicle accident?” Neuropsychologists making affirmative statements about causality need to be able to demonstrate a causative link between the neuropsychological deficits and a related event. This sentiment is expressed in Hom’s (2003) statement that, “The forensic neuropsychologist must be able to demonstrate a causative link between the cognitive impairments and the event at hand” (p. 833). Hom argued that the establishment of causal links requires the appropriate application of scientifically-validated methodology. Hom reviewed the relevant literature, including that pertaining to the Halstead-Reitan Neuropsychological Test Battery, and concluded that “The HRB is the most extensively researched and validated neuropsychological battery in use today in regards to the neurological condition of the brain” (p. 837). For Hom, this means that it is incumbent upon forensic neuropsychologists to be well-versed in these findings and techniques in order to fulfill their responsibilities.

In summary, although neuropsychological training emphasizes the use of conditional statements or modifiers in conclusions, retaining parties in forensic contexts tend to prefer statements proffered with apparent certainty about neuropsychological issues. To balance the need to make statements that are conclusive enough to be of value to the court and the need to avoid making unsupported statements, neuropsychologists in forensic contexts need to communicate their conclusions with a “reasonable degree of certainty.” Of course, this requirement raises the issue of what is meant by “reasonable certainty.” According to Sweet, Grote, and van Gorp (2002), this could mean being at least 95 percent certain that something is the case, or it could mean that some-

thing is considered to be true if it is supported by a preponderance of evidence (something greater than 50 percent certainty). Hence, neuropsychologists working in forensic settings should consult with retaining attorneys beforehand to ascertain whether the specific jurisdiction has defined what is meant by “reasonable certainty.”

*Question 6.* The opposing attorney hired a neuropsychological trial consultant, whose identity was never revealed to me. Based on questions the attorney asked, it seemed that the trial consultant pulled out all stops to attack my work, and me as a neuropsychologist, as vigorously as possible. How much can I get paid to do that kind of work? Any reason not to do it?

*Answer 6.* This question might be rephrased, “When and how is it ethical to oppose a colleague?” Three possible scenarios are reviewed here, where these questions are considered: (a) a treating neuropsychologist is asked to critique the work of a retained expert neuropsychologist whose testimony is viewed as being damaging to the patient; (b) a neuropsychologist is asked, as a retained expert, to evaluate a claimant and then is asked to critique the work of the opposing neuropsychologist; and (c) a neuropsychologist is not asked to evaluate a patient, only to review and possibly critique the work of another expert neuropsychologist. The primary ethical concerns involve potential dual relationships and conflicts of interest.

If a neuropsychologist were treating a patient, either through psychotherapy or assessment, and then took on role as a trial consultant, it would be difficult for the neuropsychologist to know whose interests were of primary concern. It would be possible, or even probable, that the patient and the retaining attorney would have different needs and expectations from the neuropsychologist, and the neuropsychologist would be unable to meet both sets of demands. It is less clear if the second scenario presents any ethical problems. If a neuropsychologist is retained to produce opinions about an evaluation of a claimant, it is not necessarily incumbent upon that neuropsychologist to critique the work of the other neuropsychologist. However, it is quite possible that different opinions will emerge between the two neuropsychologists, and it may well be appropriate for the neuropsychologist to outline for the retaining attorney why these differences in findings or opinions exist. In the third situation, there is relatively little chance of dual relationships or a conflict of interest, since the consulting neuropsychologist never has the opportunity to meet the litigant.

In all three scenarios, neuropsychologists should remember that it is their role to assist the retaining party, and the court, in understanding the

“truth” of the matter and not simply to win the case for the retaining party. Items that might be critiqued would include significant scoring errors, poor test selection, and opinions that seem to significantly differ from what would be expected based on relevant scientific literature. It would not be appropriate to make “ad hominen” attacks on the opposing expert, or to otherwise bring up irrelevant issues.

### SUMMARY

Review of the six questions above is meant to serve as a reminder to neuropsychologists that they need to conduct themselves in a way that both brings credit to our profession and adds to the public good. Failure to be aware of potential ethical problems, and possible subsequent mishandling of these dilemmas, could hurt our profession, our clients and others with whom we work, and the larger community. We contend that the following behaviors will help neuropsychologists avoid some potential ethical concerns: (a) appropriately making reports about perceived unethical conduct of other neuropsychologists, but usually deferring such reporting until a client’s litigation has been resolved; (b) being prepared to discuss one’s findings and preliminary opinions with a referring party, but not offering draft reports for reviews by others; (c) making attempts at self-examination for bias in one’s work; (d) being aware that one’s life experiences and clinical training are necessarily individualistic and potentially biasing, and recognizing how they might influence one’s work and opinions; (e) recognizing the tension between acknowledging the limits of our knowledge base and needing to make definitive and defensible opinions about clients and other matters addressed to us; (f) being mindful of the need to explain why or how our opinions may differ from those of other involved experts, without engaging in *ad hominen* or other antagonistic maneuvers. It is hoped that these recommendations will further improve the quality, and thus value, of neuropsychological practice in civil and criminal forensics.

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