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Perfect Your Act! by attending the next ABVE Conference

By Estelle Hutchinson, MS, MBA, ABVE/D, Conference Chair

The ABVE Spring Conference brochure will soon find its way to your mailbox. The conference is scheduled for March 22-25, 2012 at Harrah's Las Vegas. The conference theme of *Perfect Your Act! Balancing the Many Aspects of Vocational Expert Practice* is symbolized by a tightrope walker. This plays on the Las Vegas setting for the conference with its many dramatic circus shows. And highlights the similarities between an acrobat and a Vocational Expert! Don't we balance (all the pertinent evidence), leap (to reasoned and fair conclusions), tumble (in the hands of a merciless attorney), and juggle (the many demands of our practice)?

You asked for sessions to help you stay current with the use of social media and technology in general and we have delivered! Learn about applications for social media and discuss the positive and negative aspects so that you can make informed decisions for your own practice. Las Vegas attorney Soonhee Bailey and Litigation Support Specialist Shane Godfrey will present a session on the use of current technologies for delivering evidence in the courtroom. Another session will address the impact of Electronic Health Records. Additional sessions will be presented by ABVE members who will demonstrate their own use of technology in their daily work.

Plus, get help in joining the LinkedIn ABVE community while at the conference.

There's more! Economist Terrence Clauretie will discuss the effects of facial disfigurement on earning capacity and how vocational experts can present their findings in a format that is helpful for economic projections. Lieutenant Colonel (ret.) Howard Hostrander will present developments in treatment of PTSD and brain injury that have led to improved functional outcomes. Rona Wexler will offer strategies to develop and grow your business.

Be sure to note the pre-conference training sessions. Jenipher Gaffney will guide you in a hands-on session designed to identify federal and state contracting opportunities that may be a good fit for your small business. Ron Smolarski will demonstrate use of computer programs for use in vocational and economic case analysis. Bring your laptop!

Don't miss out on the opportunity to network with peers from the U.S., Canada, and beyond. Stay current with evolving technologies. Find that important take-away for YOUR practice.

See you in Vegas!



Contents

2012 Annual Conference	1	Renewal Reminder	5
President's Message	2	Call for Nominations: Board of Directors	6
Secretary's Message	3	Future Conference Dates	6
LinkedIn Discussion	3	Welcome New Members	7
Coming Full Circle	4	Upcoming BOD/Business Meetings	7
Expert Witness Profiling	5	Certification for Canadian Professionals	8

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President's Message

By H. Gray Broughton, President, 2011-2013



This year has been a great year for the American Board of Vocational Experts. We are financially sound and had a great conference this past spring in Orlando, Florida. The expert led sessions were excellent and the sharing of experience and knowledge among the members from across the US and Canada was invaluable. Our annual vocational forensic conferences continue to be an excellent

venue for knowledge, networking, and camaraderie.

Our upcoming conference in Las Vegas, Nevada on March 22nd -25th, 2012 promises equal or exceed our 2011 conference. The theme will be *"Perfect Your Act! Balancing the Many Aspects of Vocational Expert Practice."* "If you have not already received information concerning this, you will soon. We are looking forward to seeing you in Las Vegas and carrying on the great 30 year tradition of ABVE conferences and opportunities to learn. These conferences are great venues to network with colleagues, share the best practices of vocational forensics, and expand your overall breadth of knowledge. A special thanks to Estelle Hutchinson, Conference Chair, and the many others that have helped her put this conference together. Please put 2012 conference on your calendar and register as soon as possible.

Ron Smolarski continues to excel as our Membership Chair. Please spread the word to other vocational experts about the value of membership with ABVE. If you or any potential members have questions about ABVE membership, please contact ABVE Headquarters or me. We are especially excited about our Canadian counterparts joining the ranks of ABVE and the new credential we have established, the Professional Forensic Certification (ABVE/P).

We are also in the process of validating the 5th edition of the certification exam for ABVE Diplomates and Fellows and look forward to completing that very soon. As a result of the June 2011 membership survey, we have identified two new programs which will benefit ABVE members. First ABVE will begin to develop webinars on specialized topics for vocational experts. Second, to benefit vocational experts growing their business. ABVE is partnering with an established technology company to offer a website development package. A professionally designed, easy to maintain website should help our members grow their business and credibility. I hope you will take advantage of these two new offerings when they become available.

You should have recently received information about nominations for the 2012-2015 ABVE Board of Directors. The three year terms for available Board positions commence on March 22, 2012 at the Board meeting at the 2012 ABVE Annual Conference in Las Vegas Nevada. The positions that are available for the 2012 elections are: Secretary and Director-at-Large (3 openings). We encourage anyone that has a desire to be on the Board to complete the candidate profile/ statement form located at www.abve.net. You can then return the nominations and the candidate profile/ statement form by email (abve@abve.net), fax (831-576-1417) or regular mail to ABVE

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Presidents Message (Continued)

Headquarters. These forms must be received no later than December 1, 2011. Please direct any questions to Larry Sinsabaugh, Nominations Chair, at 804-755-7705 or larry@sinsabaughconsulting.com. You can also direct any questions to ABVE Headquarters at 831-464-4890 or abve@abve.net. The elections will be administered electronically using a secure on line voting system.

Don't forget that we are always looking for articles for the *Journal of Forensic Vocational Analysis*. Please contact ABVE Headquarters regarding any submissions.

I hope you and your families enjoy what is left of 2011 and have a wonderful Holiday Season.

As always, I would like to thank Jessica Finney, ABVE's Account Manager, for her professionalism and hard work.

Best wishes to you all for a healthy and prosperous New Year! I look forward to seeing you all in Las Vegas!

Secretary's Message

By Cheryl Chandler, ABVE Secretary and Newsletter Editor

I *loved* Kourtney Layton's contribution to the newsletter! I was taken back 10 years ago to when my daughter, Kelly, wrote about her mother's work for a 4th grade project. She told everyone about how I worked for "Social Surcerity" and "Orgonomices" and if you had a bad back, problems with your wrists or bad chair, people should call me. Of course I framed it! Probably everyone who has had

children growing up while we were growing in our profession could tell a similar story. Thanks Kourtney and welcome to ABVE.

This year the membership will select my replacement on the Board. 3 years ago the call went out for new Board members and I thought it would be good for me to serve. I also hoped that it would help me to feel like I belonged

in the organization. So many of the members are leaders in the field and can be intimidating to new members. Serving has exposed me to the commitment of the Board of Directors, the importance of what we do as Vocational Experts and I do belong here. If you are considering stepping-up, feel free to contact me. It has been a great opportunity!

Don't miss out on the ABVE Group on LinkedIn

Conversations taking place on LinkedIn:

- **Depositions and being continued . . .**
- **Social Security and employer tolerances of being "off task"**
- **Withholding Vocational Report Until Payment is Received**

Join the conversation or just listen in.

Join the ABVE Group today!



The ABVE group is part of a network of vocational experts and other rehabilitation professionals to connect with colleagues, share resources and exchange ideas. The ABVE Group is open to all ABVE Members, other vocational rehabilitation professionals and professionals seeking the services of vocational experts.

Coming Full Circle

By Kourtney Layton, ABVE Associate

I've been roving about rehabilitation events ever since I was a little girl, but I only went for the vacation perks and as an (often unwilling) companion to my mother. I never understood the purpose of the meetings, why my mom went to such great lengths traveling to conference destinations or why she would spend hours behind closed doors to work on mysterious projects under the "Caribe" moniker. I remember applying temporary tattoos in the form of roses, dragons and such, adding "Tim" (Field) in artful 11 year old script; but not understanding the joke, the source of camaraderie or the strange adults in my hotel room in Jamaica. I also remember hearing that my mom had co-written a few books but I never understood what this entailed or what it might suggest for my future.

One day when I was in 1st grade, some of my classmates asked me what my mother did for a living. I thought about it, and after some time, realized I had no idea what she did. I told them that "she works really hard" and hoped they wouldn't ask any more questions. They didn't, and the conversation moved on to my more knowledgeable counterparts. Surprised by the detailed answers about what other kids' parents did for work, I went home that night and asked my mom about her job. She sat me down to explain, and the next day I went to school pleased that I had an answer to this difficult question. No one asked that day, but this question was posed by others over the years.... and I told them all she was a lawyer.

Throughout my teenage years, I continued to struggle with understanding the world of work and, specifically, my mother's profession. By

high school, I came to the conclusion that I would blaze my own career path and become a Genetic Counselor. I graduated at the end of my Junior year and began studying Biology at the University of Utah. I loved the subject, especially enjoyed the physics classes, but struggled every day with the feeling that something just wasn't right. Ever supportive, my mother suggested I complete some vocational testing. I reluctantly agreed and, after reviewing the results, she proposed that I sign up for a Psychology course. I did, attended the first class, and changed my major the very next day. I

The greatest pleasure of all, however, was how my passion for my profession was reciprocated by my private sector colleagues.

later completed my Psychology degree, went to work for a State Vocational Rehabilitation agency in 2006 and was accepted to the Rehabilitation Counseling program at Utah State University the following year.

In October of 2008, I attended my first rehabilitation conference with my mother in a professional capacity. I saw first-hand what really happens behind the conference room doors that I had so readily dismissed during my childhood. Apprehension was added to my midterm- and caseload-induced exhaustion when I discovered that my first non-State VR-related conference was to cover ethics, of all things. The only previous experience I'd ever had with a formal presentation about the subject was a lackluster speech by a well-meaning post-doc student at my agency's last annual conference and, frankly, I had been bored to tears.

Imagine my surprise when I became aware, interested, and then fully engaged in the material and began to form an understanding of why I am

here. Not just here, in this moment, but here in this life and in this occupation. The greatest pleasure of all, however, was how my passion for my profession was reciprocated by my private sector colleagues.

With a new feeling of purpose, I completed my Master of Rehabilitation Counseling degree in 2009. Although this was a great accomplishment, it only reaffirmed that I have so much more to learn. I know now that I am the future of this profession and, as a 3rd generation rehabilitation counselor; I have some very big shoes to fill. I'll need some help but I am confident,

with the support and guidance available through my family and colleagues, I will become what I am destined to be.

I'm proud to report that I started my own expert witness practice about a year ago. To me, it's more

evident than ever that I don't know much yet; and the only way to reach my potential will be to continue striving for knowledge and self-improvement. I have attained such joy in knowing that I have finally found my path...and I'm sure my mother is relieved, as well. The cosmic humor in all of this: When people I meet ask me what I do for a living, I do my best to explain but they usually respond, "Oh, so you're a lawyer".

My mom thinks it's hilarious.



Kourtney and her mom, Kristy Farnsworth, ABVE/D

Expert Witness Profiling: An Emerging Trend

Submitted By Cynthia Grimley, ABVE/D



Expert witnesses are required in complex litigation where issues arise beyond the common knowledge of most jurors. The expert must have a special skill or knowledge directly applicable to the matters specifically at hand. However, just being highly educated is not sufficient to qualify as an expert. Expert witnesses started to take heed when the Daubert Trilogy (*Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner* (522 U.S. 136 1997), and *Kumho Tire Co. v. Carmichael* (526 U.S. 137 1999)) began to govern the expert witnesses' testimony during United States federal legal proceedings.

Most experts have no real idea what motions and supporting documents have been filed regarding their participation in cases and are more often than not very

surprised if there has been a motion to exclude or if testimony admitted at trial was stricken on appeal. This could be particularly problematic for the expert witness - not just embarrassing but also de-credibilizing, particularly if the opposing attorney knows and the retained expert doesn't have this knowledge.

The problem is becoming increasingly significant because, more than ever before, litigators are taking advantage of the new and highly robust expert witness research databases that are available online, as well as new products which leverage those databases.

"Expert Witness Profiling" is an emerging trend of which testifying experts need to be made aware. Any potential referral source can now easily order an expert witnesses' profile pre-retention and the opposing counsel on

a case in which you are retained has this same access.

Here are several of the many important reasons why experts should be ordering their own profiles:

1) Designation without retention.

Attorneys will surprisingly often designate experts in pre-trial proceedings without bothering to notify them. In doing so, they are not only avoiding being tied to any agreement an expert may require but also, in effect, cheating the expert out his/ her normal

CONTINUED ON PAGE 9

Annual Dues Renewal for 2012

It is time for renewal of your personal investment in ABVE membership for continued recognition of your experience and confidence in your practice.

You should have received a renewal letter and invoice in the mail. You may also go to www.abve.net and "Click Here to Pay 2012 Dues."

Maintain your place among the best in the industry by renewing your ABVE membership in 2012!

Reminder about the Continuing Education Requirement for Certified Members

Certified Diplomates, Fellows and Professionals must acquire 42 CEUs approved by ABVE during this period to maintain certification. Active Emeritus members must acquire 14 CEUs. The current CEU period runs from 1/01/10 through 12/31/12.

Certified members can view their up-to-date CEU status at any time. Log on at www.abve.net as a member with username and password to view member profile. CEUs are located at the bottom of the profile page.

Future ABVE Conferences

Mark Your Calendars
Now!



March 23 - 25, 2012
Harrah's Las Vegas
Las Vegas, Nevada



April 12 - 14, 2013
Firesky Resort
Scottsdale, Arizona



March 28 - 30, 2014
Doubletree Hotel
Nashville, Tennessee

Call For Nominations 2012 - 2015 Board of Directors

It is time for the 2012 elections. The three year term (2012-2015) for the positions listed below commence at the Board Meeting, March 22, 2012 at the 2012 ABVE Annual Conference in Las Vegas, NV.

The positions that are open for the 2012 elections are:

- Secretary (1 Opening)
- Director-at-Large (3 Openings)

If you have a desire to work toward the advancement of the goals and mission of ABVE please consider this opportunity to be instrumentally involved in the leadership of ABVE.

Terms & Conditions for Nominations

Nominees must be either a Fellow or Diplomate in good standing and be willing to attend all of the board meetings (up to six times per year, including telephonic meetings and the annual conference board meeting). See the reverse side for position descriptions. Nomination information may also be found at www.abve.net.

Diplomates and Fellows may nominate themselves. If nominating a colleague, please obtain a letter for consent before submitting the nomination. **All nominees must complete the Candidate Profile/Statement form located at www.abve.net.** The Candidate Profile/Statement form will not be edited for spelling or grammar. Return Nominations and the Candidate Profile/Statement form using one of the following methods:

- Email to abve@abve.net
- Fax to (831) 576-1417
- Mail to ABVE Headquarters,
3540 Soquel Ave., Ste A, Santa Cruz, CA 95062

The Profile/Statement forms must be postmarked, faxed or emailed no later than December 1, 2011, the date which nominations close.

Direct any questions to:

Larry Sinsabaugh, Nominations Chair
(804) 755-7705 or larry@sinsabaughconsulting.com.

ABVE HQ at 831-464-4890 or abve@abve.net.

The 2012 Board of Directors Elections will be administered electronically using a **secure online voting** system. Make sure your email address is current! Look for details to follow in the e-News and special email notices.

Call For Nominations Continued

Open Positions (2012 - 2015)

SECRETARY – One (1) Position Open

The Secretary will oversee the records of the Board, the incorporation charter and any historical documents. Record and distribute, appropriately, meeting minutes within thirty (30) days of said meetings. When required, the Secretary will also sign notes, contracts and other official agreements on behalf of ABVE and at the direction of the Board. The Secretary will also:

- Ensure that all official documents are safely passed to the next secretary.
- Research ABVE records when necessary for information for the Board.
- Ensures that all required corporate reports are duly submitted to legal authorities, as required by IRS and other entities.
- Maintain the Board Policies and Procedures Manual on a timely basis once the Board of Directors approves policies; oversee distribution to Board members.

DIRECTOR-AT-LARGE - Three (3) Positions Open:

The Director-At-Large shall serve a three-year term of office.

- Ensure adherence to ABVE's mission.
- Attend and actively participate in all of the Board's meetings, Conference sessions and other functions of the Corporation, and notify ABVE Headquarters or Board President of anticipated absences.
- When absent from a meeting, review minutes and results of the missed meeting to maintain awareness of issues and solutions.
- Do their homework to be prepared to participate fully in Board and committee meetings.
- Serve actively on at least one committee.
- Act only with the full Board, not individually unless authorized to do so by the full Board.
- Speak for the full Board only when the full Board sanctions their doing so.
- Be prepared to vote on all issue motions unless a conflict of interest exists and is stated according to Board policy.

Upcoming Board of Directors Meetings

December 8, 2011

February 8, 2012

March 22, 2012 (Las Vegas)

Annual Membership Business Meeting

March 24, 2012 (Las Vegas)

WELCOME NEW ABVE MEMBERS!

**Congratulations to the newest
ABVE Certified Members!**

David Orłowski

Vocational Economic Services, LLC
Scottsdale, Arizona

**ABVE would like to welcome
our new Associate Members:**

Alfreda Bell

Banyan Consulting Grp. LLC
Dayton, Ohio

Linda Dezack

McMurray, Pennsylvania

Cynthia Kresak

Brampton, Ontario

Suanne Grobe Ranheim

Grobe Consulting
Minneapolis, Minnesota

Larry Stokes

Larry Stokes Ph.D. &
Associates
Metairie, Louisiana

**ABVE would like to welcome
the following new Student:**

Gerald Corbin

California State University
San Jose

Debra Shipley

California State University
San Bernadino

Frank J. Villalobos

George Washington University

ABVE Certification Promoted among Canadian Professionals

Submitted By Ron Smolarski, ABVE Membership Chair

The American Board of Vocational Experts (ABVE) was honored to be a Sponsor of the VRA Canada 2011 Conference in Regina, Saskatchewan where we informed attendees about the benefits of ABVE certification and invited Canadian rehabilitation professionals to apply. Regina is the main training sight for the Canadian Mounted Police. Many of the VRA members attended a special presentation by the Canadian Mounted Police. The members also hit the bars after each days workshops and shared info about their trade and also inquired about the benefits of ABVE.

Huge floods occurred at the time of the conference so we were diverted away from the main highways to reach Regina almost ending up in Moose Jaw. Robert Lychenko, ABVE Board Member whose practice is located in Ontario, worked with me in the ABVE Exhibit over the three day conference. His personal perspective on ABVE was an asset in providing the Canadian credibility to prospective members.

Information was shared about Associate Membership if an individual not does qualify for certification but would like to join the ABVE expert community. In particular, the ABVE conference was highlighted as a premier vocational forensics educational event.

For those Canadian professionals who do not have a master's degree and therefore do not qualify for Diplomate or Fellow status, the Professional Forensic Certification (ABVE/P) is a vehicle to demonstrate minimum expert witness competence in forensic settings. This certification level opens the certification opportunity further for Canadian professionals, many of whom are not required professionally to hold a graduate degree. Above all else one point we expressed is that ABVE doesn't give you a certification, you earn it.

Several Canadian professionals have expressed interest in

becoming certified and ABVE is expanding our base of prospective members. The ABVE Board is continuing its efforts to grow the membership in Canada and to become known as a credible resource which has been recognized in the courts for 30 years. If any ABVE Certified members would like to assist us in this membership campaign, please contact me with your suggestions at ron@beaconrehab.com. If you can talk ice hockey or figure skating, that is a plus.



Are You Displaying Your ABVE Credential?



AMERICAN BOARD OF
VOCATIONAL EXPERTS

If you are a Diplomate 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.

**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.

Expert Witness Profiling Continued

retainer. If this has not happened to you, most likely it has happened to someone you know. It seems that the seriousness from the standpoint of attorney ethics and potential disciplinary action related to designation without retention claims may vary considerably from state to state. At the very least, intrigued experts may want to know if they have been victimized in any concrete way and also what recourse may be considered in accordance with the state in which they reside or practice.

2) Challenges to testimony about which an expert may not be aware.

There are instances where experts who have been in practice awhile have ordered their profiles and learn that challenges were levied against them without their awareness. Attorneys are not required to consult with experts regarding motions to exclude their testimony, unless contractually obligated. It is typically not a common practice for the contract language in retention agreements to require the retaining attorney to notify the expert regarding all motions to exclude testimony. So, it is entirely possible that a motion to exclude the expert's testimony may have been filed and even granted without the expert's awareness.

Beyond that, there are instances where a (or even, the) basis for appeal of a case is the improper admission of expert testimony at trial. Particularly since appellate attorneys are often not the same attorneys who retained the expert at trial, there could be instances where admissibility decisions concerning an expert were reversed on appeal and the expert was never informed. Lack of awareness of these possible scenarios represents liabilities to the expert for future retention.

3) Profiling of Experts is now more general practice and commonplace.

Expert profiling is getting better and better accepted as a common practice and is likely that profiling trends will continue to grow. There currently are three companies that offer this service:

LexisNexis

(www.lexisnexis.com/expert-witness-profiles)

WestLaw Roundtable Group

(www.roundtablegroup.com/experts)

Expert Witness Profiler

(www.expertwitnessprofiler.com)

Therefore, at least theoretically, it seems increasingly more important that experts know in advance what lawyers are able to find out about them, particularly if there is

information out there which they themselves are not aware. If you know your testifying record and feel confident in your skills, there is no need to purchase anything. However, there is really no way to be certain unless you purchase a custom report. Can you imagine a retaining attorney having this profile on you and you not having it yourself? Or finding out about it for the first time during a deposition?

4) Profile report's use as a marketing tool.

The expert can use this profile to learn information about your chief rival. It also can be used to assist your retaining attorney in researching the opposing expert.

The *Expert Witness Profiler* is considering letting the experts use their profile reports as a marketing tool. However, no policy decisions have been made as of yet.

Where to purchase?

These products/services are for purchase to the legal and expert witness community. However to access the *LexisNexis* and *WestLaw* products, a rather hefty annual subscription fee is required and then an additional charge per report. Also, *LexisNexis* and *The Westlaw Roundtable Group* Expert Witness Profiles each have restrictions in terms of the use of each other's data. The *Expert Witness Profiler* does not have an annual subscription fee, only a charge for the expert profile report ordered. *The Expert Witness Profiler* is built by attorneys and expert witnesses who are leading authorities on expert witness research.

Myles Levin and his partner Jim Robinson at the *Expert Witness Profiler* are two of the co-authors of the white paper on finding and researching expert witnesses. The paper is the first chapter of a book published by the American Bar Association entitled **Litigators on Experts: Strategies for Managing Expert Witnesses from Retention through Trial** (apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5310400). You can download the chapter for free using the link.

Myles Levin and Jim Robinson are working with ABVE to offer the *Expert Witness Profiler* at a discount. Look for more information to come on the ABVE website and e-News. A sample profile can be viewed here http://expertwitnessprofiler.com/sample_profile.php.

Note: Discussion on this topic is welcome on the American Board of Vocational Experts group on www.linkedin.com, especially if you have purchased a report from any of these sources.