

CONTRASTS IN CLAIMS:

EVALUATING EMOTIONAL DISTRESS—Part I—the “Eggshell Plaintiff”

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Employment law Title VII claims often include allegations of significant emotional distress allegedly caused by reportedly inappropriate remarks, touches, and other behaviors in the workplace. When a supervisor, as opposed to a coworker, has been the alleged instigator of the reportedly offensive behavior, emotional distress claims are frequently enhanced because of the “power differential” between the supervisor and supervisee. Evaluating the validity of such emotional distress claims can be challenging. This paper will describe how expert psychiatric forensic consultation can assist in determining which claims may have merit and which may be false, the ultimate determination to be made by the trier-of-fact.

Case # 1—VALID CLAIM (The case study below was fabricated for teaching purposes, although the psychiatric issues illustrated are drawn from a variety of actual cases and archival data.)

Janice was a 31 year old minority woman, who had worked as a secretary for a construction company for 10 years. Prior to that, she had held a series of short-term positions as office assistant but had left for a better job or personal reasons. In her current job, her supervisor, Jack, was a “rough-and-ready” guy, who had an excellent reputation for his ability to get the job done. A loud, boisterous man, he commanded the respect of the all-male sub-contractors by balancing a stern iron will with a seemingly endless supply of rough jokes that often had off-color, sexual, or racial overtones. He often socialized with his sub-contractors after hours, and his alcohol problem was well-known, since he kept a stash in his office and sometimes was seen to imbibe at work. Management tolerated his personality and habits because of his extraordinary ability to complete construction projects within the time and budgetary limits mandated by contracts.

His overbearing personality style created tension among office staff, who tried to avoid provoking Jack’s anger and never complained to higher management about him. However, Janice was the subordinate that most frequently received his ire, especially when contracts contained spelling, grammatical or other errors, or materials were misfiled. Despite these frequent verbal reprimands, Janice received “meets expectations” on her performance reviews, although her frequent requests for time off for medical reasons was mentioned in most of her reviews. She was always given the same raises as other employees. She tended to isolate herself at work and was considered by others to be quiet and aloof but cooperative when her help was needed.

Jack's loud verbal confrontations of Janice could be heard throughout the office complex. Others saw her in tears following these incidents, after which Janice often either went home immediately or took the next day off. She usually went to her primary care physician complaining of intense insomnia, anxiety, and depression related to her job or other stressful life problems of various kinds. The physicians usually prescribed anxiolytic, hypnotic, or antidepressant medications, which Janice usually took briefly before discontinuing them on her own. The pattern of verbal abuse by Jack had intensified over the years and grew to include demeaning remarks about Janice's "stupidity."

At her performance review on the 10th anniversary of her employment, Jack again began to berate her for ongoing spelling and grammatical errors that had changed the meaning of terms of the contract and caused the client to move the business elsewhere—problems that had occurred from time to time over the course of Janice's employment.irate, Jack confronted Janice, called her a name involving a racial epithet, rated her performance as "below expectations," and denied her a merit raise. She left in tears, went home, and overdosed on her anxiety and hypertension medications. Her brother, who usually visited her apartment daily, found her unconscious and took her to the ER. Coworkers complained to management about Jack's treatment of Janice. Management investigated and terminated Jack immediately.

In the ER, Janice complained of voices that sounded like Jack's yelling at her and repeatedly calling her names with racist and sexist content. She disclosed that for several months, the voices had awakened her at night, leaving her anxious and unable to return to sleep. She had complained to her doctors of insomnia, anxiety, depression, and, recently, paranoid ideas, but she had never mentioned the voices until this ER visit. After the current meeting with Jack, the voices had started again, leaving her highly agitated, suspicious of others, and suicidal. She overdosed in order to stop the voices. The ER doctor admitted her to the hospital and started anti-psychotic and antidepressant medication, which decreased her symptoms. However, as before, she discontinued the medications after discharge. She received a medical leave of absence and short-term disability, following which she applied for and received Social Security Disability. After being absent for a year, the company terminated her.

She retained an attorney and filed a complaint with the EEOC, alleging sex and racial harassment/discrimination, hostile work environment, and other torts. After obtaining a "right to sue" letter, she filed her legal complaint, which included a claim of severe emotional distress, exacerbation of a medical condition (hypertension), and permanent disability caused by Jack's actions, which had created a "hostile work environment." Her counsel alleged that management was aware of and tolerated Jack's alcohol problem and propensity to be verbally abusive and intimidating. Defense counsel's response was that employees, including Janice, had never before complained about Jack's behavior, and when management was made aware of the problem, it investigated and took appropriate action.

During the litigation process, which was very stressful for Janice, she filed bankruptcy due to inability to make ends meet on a reduced income. She continued to go the ER for situational stresses including those caused by the litigation. She remained unemployed on SSDI. The Independent Psychological Evaluation by the plaintiff's expert concluded that Janice had PTSD caused by Jack's verbal abuse, the hostile work environment, and management's retention and lack of supervision of Jack. Despite a lack of training in HR or management, the expert further opined that Janice had been too intimidated by her supervisor's "position of authority," and that the "power differential," along with inadequate reporting procedures within the company fostered a climate of abuse of which employees, including Janice, were reluctant to complain.

Defendant's Forensic Psychiatric Analysis of Plaintiff

Counsel for the company requested an Independent Psychiatric Evaluation of her emotional distress claim. Legal, medical, and employment records were reviewed and psychological testing completed. There were coworker affidavits supporting Janice's perception of Jack's behavior as chronically verbally abusive. Janice's past history included being raised in poverty by an alcoholic father who was physically and verbally abusive to all of the 10 children. Once he had called Janice racist names, after she had brought home a report card consisting of mostly Ds and Fs. She graduated from a public high school with a class rank in the lowest 10th percentile. She was a loner all of her life, had been married once, and had no children. Legal history was negative except for two prior bankruptcies during her prior marriage to an alcoholic man who, like her father, was verbally and emotionally abusive. Since her divorce, she had been able to support herself on her income from the defendant company. She had a limited social support system that consisted mainly of her Church and her original family members. Family history included a great uncle who had been institutionalized for schizophrenia. Medical history included longstanding hypertension, a problem that had worsened with age and weight, becoming increasingly difficult to control with medications. Her physician had discontinued a beta blocker due to concerns about depression. Records included over 50 ER visits over the years due to complaints of anxiety, stress, depression, or vague physical complaints that could not be explained medically. These ER visits were related to situational stresses, including work, quarrels with her ex-husband, or thoughts that others, even strangers, were against her.

The psychological testing included the MMPI-2, MCMI-III, Rorschach, SIRS, and Sentence Completion. The first four instruments are standardized tests, while the fifth is a critical items test that can alert the examiner to potential acute psychiatric disturbance possibly requiring intervention. The MMPI-2, the "gold standard" of personality testing, provides information about both Axis I (treatable psychiatric disorders) and Axis II (personality disorders that are developmental in nature, having a significant genetic component as well as potential inputs, such as sexual or physical abuse/neglect). Her MMPI-2 revealed an F scale (exaggeration of symptoms) that was at a level commonly seen in psychiatric inpatients. There was a borderline clinically significant scale on L indicating a view of herself that was more righteous and moral than the general population. Clinical scale elevations included Scales 1 (Somatization), 2 (Depression), 6

(Paranoia), 7 (Anxiety), 8 (Schizophrenia), and Scale 9 (Social Introversion). The computerized interpretive Personal Injury Report was based upon the two-point elevations of Scales 8, 6, and 2 and suggested a breakdown in thinking with significant depression and paranoia. Significant elevations on Scales 7, 9, and 1 suggested accompanying high anxiety, panic, social isolation, and somatic reactivity under stress. MMPI-2 research indicated that this was a generalized distress pattern.

The MCMI-III, a test for personality disorders, showed elevations on Schizoid, Paranoia, and Obsessive Compulsive scales. The Structured Interview of Reported Symptoms, a test for feigning or malingering of psychological symptoms, revealed no primary scales that deviated from "Honest Reporting" of symptoms. One supplementary scale that measured endorsement of everyday problems was elevated. The Sentence Completion contained responses that suggested chronic feelings of emptiness, despair, and self-worthlessness. The Rorschach, which was administered, scored, and interpreted according to the Comprehensive System of John Exner, Ph.D., revealed an individual with a Coping Deficit and thought disorder. Strong pessimistic thinking directed inward was indicated along with problems with emotional control secondary to an elevated number of situational stresses in a woman with a limited supply of emotional resources to cope. Individuals with this result are expected to have frequent "breakdowns," in which they seek medical or psychological intervention.

The psychiatric Mental Status Examination revealed a depressed and anxious woman who was guarded. There was psychomotor retardation. Thinking revealed paranoid and somatic delusions that involved concerns that Jack or other members of management were out to get her and had been poisoning her food, resulting in physical problems and ER visits. Their voices were arguing day and night, interfering with sleep. Her style of communication revealed looseness of associations consistent with a thought disorder. She had stopped her medications, because she had thought the doctors were part of the company's conspiracy against her. Diagnoses were Axis I: Paranoid Schizophrenia and Axis II: Personality Disorder, Not Otherwise Specified, with Schizoid and Paranoid features. The evaluation was inconsistent with PTSD.

The expert concluded that although the history suggested a latent schizophrenic process caused by a genetically determined (rather than work-related) Coping Deficit, low-normal IQ, and a predisposition to schizophrenia, a history of physical and emotional abuse by her father and ex-husband, and poor social and overall life adjustment, she had been able to cope by restricting her life to work, Church, family, and medical interventions. This strategy succeeded until the final incident with Jack. Despite the emotional parallels between Jack and her father and ex-husband, parallels that had intensified her emotional responses to Jack's behavior, the final confrontation had "tipped the scales," breached her psychological defensive structure, and resulted in a florid psychotic breakdown. Her current ongoing psychotic state and Schizophrenia diagnosis was judged to carry some degree of permanency, although part of the permanency had resulted from her non-compliance with medications and follow up. The expert opined that although there were no guarantees, if she complied with medications and received ongoing psychiatric care, it was more likely than not that her emotional condition would

improve. However, it was unlikely that she could ever return to a secretarial position. No opinions were rendered about policies, as this was outside the realm of the expert's training. The case was settled out of Court.

Case Lessons

This case illustrates the psychiatric equivalent of the legal term, "Eggshell Plaintiff." It illustrates the importance of a comprehensive psychiatric evaluation in order to determine diagnosis and causality in work-related legal claims of emotional distress. Only through a review of records, psychological testing, and a comprehensive psychiatric evaluation could the complicated and interrelated biological, social, and psychological forces be understood sufficiently, so that the question of psychological injury could be fairly assessed.

In this case, the litigant's claim had merit, even though she had not mitigated her damages. Defense counsel had feared the plaintiff's expert's PTSD diagnosis, since this diagnosis permits explicit causality to be assigned to a known causal factor. Although relieved that the evaluation did not support such a diagnosis, since the workplace conduct did not, in the opinion of the expert, rise to the level needed for such a diagnosis, defense counsel had a far worse problem. The defense expert explained that emergence of a florid Schizophrenic process was potentially far more serious from a legal perspective because of the issue of permanency of harm to the individual's personality functioning.

Also discussed with counsel was the other evidence bolstering the validity of her claim. This included overwhelming coworker support through affidavits, lack of evidence of feigning on the psychological test instruments and in the interview, absence of personal complicating factors (e.g., substance abuse, a prior history of similar claims against prior employers, antisocial behavior, etc.), and evidence that coworkers and management alike knew of her supervisor's alcoholism and poor control of anger but did not confront him. These factors had to be weighed against her limited IQ, which raised the question of why her poor performance had been consistently rated as "meets expectations," when it had clearly been poor, increasing Jack's frustration over time and jeopardizing the company's relationships with customers.

CONTRASTS IN CLAIMS: EVALUATING EMOTIONAL DISTRESS—Part II— A “False Claim”

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Employment law Title VII claims often include claims of significant emotional distress allegedly caused by inappropriate remarks, touches, and other behaviors in the workplace. When a supervisor, as opposed to a coworker, has been the alleged instigator of the reportedly offensive behavior, emotional distress claims are frequently enhanced because of the “power differential” between the supervisor and supervisee. Evaluating the validity of such emotional distress claims can be challenging. This paper, which is Part 2 of a series on Evaluating Emotional Distress Claims, will describe how expert psychiatric forensic consultation can assist in determining which claims may have merit and which may be false, the ultimate determination to be made by the trier-of-fact.

Case # 2 – False Claim

Background Facts

Bitsy was a 23 year-old single Texas woman who worked in sales for two years for the Southwest division of an advertising agency. She held this job since graduating from a local college, where she had earned a degree in business. She reported to the regional manager, Tom, and worked hard at her job. She was an attractive, outgoing, flirtatious woman, who joked around and socialized outside of work with the largely male sales force and her boss. At her first annual retreat of the national sales force, alcohol flowed freely as a “Number One in Sales Award” was presented for the best national performer. Although her sales numbers were high, she did not win the award, much to her disappointment. On her performance review, she was rated “meets expectations” in most categories and “above expectations” in some. In the section entitled, “Your Personal Goals in the Company,” she usually wrote, “To win the “Number One Award” and be National VP of Sales, and I think I am good enough to do it!”

At her second annual retreat, Bitsy’s boss invited the division team for lunch and early cocktails in the hotel bar. Bitsy and six others (five men, one woman) attended. They talked about work and their families. Other than Bitsy, everyone, including Tom, showed pictures of their spouses and children. Bitsy talked about her current boyfriend, who was “rich and cute.” After several rounds of Margaritas, the level of banter, including sexual innuendo, increased. The other woman excused herself, stating that she wanted to go shopping and inviting Bitsy along. Bitsy declined, preferring to remain “with the boys.” They continued to drink and banter until about 6 PM, when all of the men except for the manager, departed for the convention meeting, which was starting. Alone, Bitsy and Tom discussed her goals with the Company and her frustration that she had not won the

achievement Award either year. She also said that in addition to a higher raise, she felt that she was entitled to a promotion to Sales Manager for Texas. Tom suggested they discuss her thoughts later in the evening after the meeting was over. They sat together at dinner, in which more alcohol flowed.

After the meeting, Tom suggested that they talk in his suite. Both were highly intoxicated by that time, Bitsy having consumed five Margaritas and four glasses of wine. She again discussed her expectations, while Tom listened but said nothing. She became angry by his lack of response and began to cry. He put his arm around her, and she cried into his chest. Tom told her not to worry, that he would “take care of her,” and that “all would work out just fine, although she was “not yet ready” for the promotion she desired. However, he said that he was confident that she would someday be given the job. All she had to do was to “keep doing what she was doing,” i.e., working hard. Reassured, Bitsy told him how relieved she was to work for “such a big, strong, handsome man who will always protect me.” She asked if he would “always take care of me,” to which he “promised he would.” They acknowledged a mutual attraction, and Tom brushed her breast, as he dried her tears with a tissue. After considerable “petting,” they disrobed and began to have sex. Bitsy later testified that over the course of the night, they engaged intercourse four times and mutual sex twice, and that during the proceedings, Tom had “promised” to approve her promotion when they returned, if she would “keep doing what she was doing,” i.e., performing sex.

The next day, they returned to work. Bitsy went to Tom’s office and asked when he would finalize her promotion. A shocked Tom asked to what she was referring. Bitsy described the previous evening’s events and his “promise” of a promotion in return for sex. Tom said that there was no such promise and that, in fact, he had told her that she was not yet ready for the promotion. The sex, which “both of us enjoyed, had nothing to do with anything.”

Enraged, Bitsy went to the V.P. of Sales, broke down in tears, and told him about what had happened and the reported promises made. He called in HR, who launched an investigation after interviewing Bitsy. As per their usual protocol, HR immediately referred her to an Employee Assistance Program (EAP) counselor, who recommended a medical leave of absence.

Tom denied issuing promises but acknowledged that there had been consensual sex at the meeting. He was issued a written warning and given mandatory sexual harassment training. Bitsy was informed about HR’s determination that although there was a difference of opinion about the sexual activity being consensual and no determination could be made about that, Tom had been given a written warning, additional training, and reminder about the policy against retaliation. Bitsy asked HR when she would be getting her promotion, but the V.P. of Sales affirmed Tom’s judgment that she was not qualified for such a promotion. Bitsy sought legal counsel and issued a Complaint of sexual assault, discrimination, *quid pro quo* sexual harassment, and retaliation. Her Complaint stated that she had suffered “extreme emotional distress and psychological injury” from

the reported events and retaliation. Her EAP counselor diagnosed PTSD and recommended disability. They continued counseling on a weekly basis.

After two years out of the workplace, Bitsy's attorney stated that because of her ongoing psychological distress from the "sexual assault, harassment, and discrimination," she was still too "traumatized" to return to any form of work, and her ability to trust men was damaged. She could not work with men, because such would result in "reminders of the sexual assault and discrimination." An additional legal claim of permanent disability due to psychological injury was added. Her EAP supported her legal claim, noting that in sessions, any discussions of what had happened or the prospect of work resulted in her client's collapsing into tears and shaking with anxiety and panic. She said that her client had reported "freaking out" when she saw "big men who looked like Tom and was very frightened that any big man might assault her." She described problems sleeping, diminished appetite and weight, low energy, and loss of motivation and self esteem. The EAP said that she was working hard to keep her client "stable and functional" but was having a hard time because of the stress of litigation. Bitsy saw her General Practitioner (GP) and complained of headaches, nausea, stomach and throat spasms, chest pain, and back pain whenever she thought of what had happened with Tom. The GP prescribed Prozac, which Bitsy took briefly but discontinued because of weight gain.

The Plaintiff's Medical Expert

Her attorney retained an expert, whose assistant reviewed only the legal Complaint, interviewed Bitsy for two hours, and administered psychological inventories and tests, including the MMPI-2 and other tests designed for individuals who had experienced a PTSD Criterion A stressor (Criterion A of the DSM-IV diagnostic criteria for PTSD is defined as witnessing, experiencing, or confronting an "event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others.") The expert also administered other inventories designed to measure a claimant's "emotional reactions to the harasser." These non-standardized inventories, which were described in the social science literature, were found to yield highly significant results consistent with PTSD, extreme distress, and sexual trauma. The expert testified Bitsy had PTSD and was functionally disabled, and that her disability was 100% caused by the "sexual assault, harassment, and discrimination." No Axis II diagnosis was made. The expert further opined that Bitsy exhibited all of the clinical signs seen in women who suffered psychological damage because of sexual harassment by a male superior who had used the power of his position to "get her alone, intimidate, and sexually assault her." The expert further stated that it was common for women, who were "trapped in such a situation," to be "unable to say no" because of their fear of consequences, including loss of their jobs if they declined the sexual advances.

The Defendant's Medical Expert

The expert retained by the defense conducted psychological testing, which included four general standardized tests: MMPI-2, MCMI-III (a test for Axis II), Rorschach (administered and scored according to the scientifically-validated Comprehensive System

of John Exner), and the Structured Interview of Reported Symptoms (a test for feigning or malingering of psychological symptoms).

A comprehensive psychiatric interview obtained the following history. She had been a cheerleader and Prom Queen in high school. In the college, she had joined a sorority and began a pattern of heavy alcohol usage at parties and football games. Occasionally she enjoyed marijuana and had used cocaine while in college. She described a pattern of engaging in many sexual relationships but discontinuing them after a brief time when they failed to pay sufficient attention to her “needs.” She added that she was looking for the right man “to take care of me.”

During the two years leave of absence, Bitsy had become involved romantically with several men, moved in with them, and traveled with them to different foreign countries. She worked out every day and pursued a number of hobbies and interests, including gardening, boating, and roller blading. She socialized with her social network of female and male friends and continued her former pattern of heavy daily alcohol usage. She had made no efforts to get another job, instead hoping to marry her current boyfriend, who was a successful investment banker, who “took care of” her and gave her “whatever [she] wanted.” When discussing the reported events leading to her legal complaint, she exhibited rage, cried, and said that she had deserved the promotion and wanted Tom to “pay” for denying it to her, particularly after he had “had his fun.” She expressed further rage toward the company for “protecting him not me” and vowed to “make a difference in how big companies treat women.” She added that her goal was “justice” and that “no amount of money in the world could make up for what they did to me.” She was proud of the extensive media coverage and added that “CNN wants to do a segment on my case.” She said that thinking about the situation had ruined her career, disrupted her life, and left her with severe physical symptoms. She felt “too violated” to “think about work.”

Bitsy’s MMPI-2 showed elevations on the L and F scales, suggesting an unrealistic view of herself as highly virtuous and clinical scale elevations more exaggerated than those seen in psychiatric inpatients. She produced clinical scale elevations on Scales 1 and 3 (Conversion V pattern) and 4 (Psychopathic Deviate), a pattern often seen in histrionic or Cluster B personalities, who translate psychological conflict into physical symptoms. A substance abuse problem was suggested by her responses. The clinical scales measuring depression and anxiety were not elevated. The result was consistent with somatization in a histrionic/Cluster B individual with limited insight and tendencies to act out, especially involving alcohol. The MCMI-III was consistent with a Narcissistic/ Histrionic personality disorder.

The Rorschach, owing to the work of John Exner, Ph.D., is now a scientific test widely accepted by the Courts and psychological community. Unlike other instruments, it is difficult to malingering and is important, as it is arguably the best psychological test for reality testing and perceptual distortion – both problems of a developmental, rather than situational, basis. Along with variables measuring enduring personality characteristics, it also contains variables related to situational stress and affects that are temporary, rather

than enduring. The results of the Rorschach should be examined for consistency with behavior as described in the history.

Bitsy's Rorschach revealed the following well-entrenched, enduring personality problems, which are of a developmental basis: This is an unconventional, character-disordered woman with considerable hostility and difficulties maintaining emotional control, particularly when stressed. She has an unusually high Aspirational Ratio, suggesting that her ambitions exceed her emotional resources to cope. Repeated disappointments are likely when her aspirations fail. She tends to scan situations hastily and to make decisions based on limited information. She indicated some additional situational stress that is exceeding her capacities for control, resulting in possible lapses and acting out especially when she is angry. Problems with distortion of reality are evident, notably over issues evoking her anger. Such distortion is usually associated with impulsive decisions based on poor judgment. Her understanding of others is likely to be poor, and her relationships are more fantasy than reality based. She does not anticipate cooperative relations with others.

Examining the Rorschach variables related to emotions often seen in individuals with PTSD, she is currently constraining negative affect (anger) but is not exhibiting evidence of painful introspection, guilt, depression, hypervigilance, or self-recrimination. There is no evidence of stress from intrusive ideation often seen in individuals with PTSD. The Rorschach results were found to be consistent with Bitsy's behavior as described in her history.

The Mental Status Examination was negative with the exception of complaints of litigation-related insomnia and somatic symptoms (nausea, stomach upset, headaches, etc). Her symptoms did not interfere with her ability to travel, do hobbies, and engage in social activities.

The defense expert diagnosed an Adjustment Disorder, Unspecified, with Somatoform symptoms, Episodic Alcohol Abuse, and an Axis II Narcissistic and Histrionic Personality Disorder. The Adjustment Disorder was caused by the stress of litigation. The alcohol and personality problems represented pre-existing problems that were unchanged by the disputed events and were ongoing. Her complaints of reported disability due to severe psychological injury were inconsistent with her own report of good functioning in all areas of life and absence of symptoms except as evoked by the stress of litigation. The case settled out of court.

Lessons Learned

Among the many issues raised by his case, the following will be highlighted:

1. Alcohol usually results in significant impairment in judgment, both by employees and their managers. When alcohol is involved, it is difficult later to determine the truth of what occurred when workers are together under the influence in ambiguous social settings.

2. Those in positions of authority risk their jobs as well as legal action when they engage in sexual activity with subordinates. This case illustrates such a high risk situation, but risk is present, even if consenting adults advise HR and keep their relationship professional at work. The repercussions on the workplace, which is a highly interpersonally connected and emotionally sensitive place, are usually significant, since traditional roles and the expectations surrounding those roles change when a superior is involved with a subordinate.

3. Companies are well-advised to have training about boundaries between superiors and subordinates and the potential hazards involved in socializing with coworkers and using alcohol in settings that blend work and social objectives.

4. When significant problems are discovered, a psychiatric workplace consultation may help to defuse the situation and make referrals if further mental health treatment is indicated. Involvement with such a neutral third party professional may be a useful step for HR to take prior to referral to EAP counselors. Such counselors can be useful in treating employees but usually lack the necessary training, education, and experience, to diagnose significant clinical and personality disorders. Further, if asked to testify as expert for their client/ plaintiff, they may find themselves in an ethical bind, not only because they may be called upon to testify against the company that made the referral, but also because of the risk of conflict of interest posed by assuming dual roles.

5. If there is a significant claim for mental distress and/or disability, it is useful for attorneys for both plaintiff and defense to obtain an Independent Medical (Psychiatric) Examination (IME). Such an examination is most effective when it involves three parts: (A) Review of legal, medical, mental health, work, and other pertinent records that permit a longitudinal view of the claimant's functioning in a variety of settings; (B) Psychological testing using standardized instruments that measure general psychological symptoms, personality, and possibly malingering. This is preferable to tests designed to validate restricted diagnoses that may produce false positives and subjective instruments that feature close-ended questions that risk evoking "yea-saying," i.e. affirmative responses. (C) Comprehensive psychiatric clinical interview and Mental Status Examination. Following this procedure, opinions obtained to a reasonable degree of medical certainty, about diagnosis and causality can be offered and properly defended in deposition or trial. Consideration of issues of secondary gain and malingering are part of the IME.

6. The expert should not simultaneously function as the claimant's treater due to the high risk of conflict of interest.