

Evidentiary Surprises and Ethical Dilemmas

by Sara L. Shudofsky

Surprises can add spice to your life and your practice. But rarely will a surprise be welcome when you are poised to begin the trial, put your witness on the stand, or wrap up your client's case. Unexpected evidentiary challenges that feature an ethical dimension can be particularly vexing. Awareness of some of the ethical issues that may arise in developing evidence will help you anticipate, avoid, or handle these surprises down the road.

Few situations are more exasperating for civil trial lawyers than discovering during pretrial preparation or settlement negotiation that some aspect of the record developed in discovery might be inaccurate. On the verge of trial or poised to put the finishing touches on a settlement, lawyers take comfort in a universe of facts they have come to know intimately. If the facts are strongly in the client's favor, counsel looks forward to getting the case into the hands of the jury or taking advantage of the available leverage to force a desired settlement. If the client's hand is weaker, counsel can savor the challenge of putting on as compelling a case as possible or finding other creative ways to engineer a satisfying outcome. Either way, lawyers take it for granted at this stage of the proceedings that the factual universe is basically a closed one because the parties have been through intensive factual exploration and document gathering throughout a discovery phase that has finally ended.

Then the sands suddenly shift beneath your feet. A document that conflicts with key aspects of the client's testimony materializes from the private files of one of the witnesses you have been preparing for trial. Or perhaps your client informs you that he actually does remember fragments of a conversation about which he repeatedly testified "I don't recall" at his deposition. These last-minute surprises can happen to anyone, even the most careful, depending on the client, the wit-

nesses, and the particular circumstances of the case. Suddenly, your pretrial preparation has become more complicated, and you wish you could trade in these new headaches for the merely routine sleeplessness and late-night cramming that accompany the countdown to trial.

For late-discovered documents, analyzing the appropriate course of action will likely be a straightforward exercise. If the document should have been initially disclosed under Rule 26(a) of the Federal Rules of Civil Procedure, or was the subject of a document request under Rule 34, the client will likely be obligated by Rule 26(e) to supplement or correct its disclosure if the disclosure was incomplete or incorrect in a material way and if the additional or corrective information has not otherwise been made known to the other parties. Determining whether any conduct relating to the failure to produce the documents in the first instance could subject the client to sanctions might also be in the mix. What were the parameters of the discovery request at issue? Was there a court order in place governing the production of these particular documents? Is there any suggestion that the withholding of documents was intentional, or did the situation arise from an inadvertent error or reasonable misunderstanding? In the absence of sanctionable conduct, any consequences stemming from disclosure of the damaging document on the eve of trial will invariably be sorted out through cross-examination during the trial itself, and ultimately subject to credibility assessments by the judge or jury. If the new document is not discovered until the trial is underway, and it is a key document in the case, the court may order testimony reopened to address issues relating to the document and its late disclosure.

The issues become more complex when deposition testimony may require correction. Rule 30 does not impose a supplementation obligation parallel to that under Rule 26(e). Accordingly, if a witness's testimony is later discovered to have been incomplete or incorrect, the Rules of Civil Procedure

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do not themselves mandate correction. At trial, there will be many occasions when counsel will decide as a strategic matter that corrective testimony is best offered on direct examination, to minimize the negative impact of the disclosure if it is reasonably anticipated that the other side will probe into the subject. But where the topic is not likely to be explored on cross-examination, such as where the door was effectively shut during deposition on a collateral matter, the other side may be unlikely to explore it again. Where the rules do not require supplementation or correction, is there an ethical obligation that may nevertheless kick in, mandating a correction to the record developed in discovery?

That question is governed by Rule 3.3 of the Model Rules of Professional Conduct, covering a lawyer's obligation of "Candor Toward the Tribunal." Model Rule 3.3(a) provides that a lawyer shall not knowingly "offer evidence that the lawyer knows to be false. If a lawyer . . . has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures . . ." One threshold question is whether the rule is implicated by pretrial discovery. If so, case-by-case factual determinations have to be made as to whether the "knowledge" and "materiality" tests have been passed.

In Formal Opinion 93-376, titled "The Lawyer's Obligation Where a Client Lies in Response to Discovery Requests," the ABA Standing Committee on Ethics and Professional Responsibility ruled that Model Rule 3.3(a) governed the conduct of a lawyer whose client informed her after the fact that the client had lied in responding to interrogatories and deposition questions and had supplied a falsified document in response to a request for production. Although only pretrial discovery was at issue—the false deposition testimony and document would not become "evidence" until presented to the court or jury—the committee determined that their mere "potential as evidence and their impact on the judicial process trigger the lawyer's duty to take reasonable remedial measures" under Rule 3.3(a). ABA Standing Comm. on Ethics and Prof'l Responsibility, *Formal Op. 93-376*, at p. 3 (1993) (emphasis added). Under these circumstances, the committee found, the duty of candor toward the tribunal under Model Rule 3.3 might trump the lawyer's duty under Model Rule 1.6 to maintain the client's confidences.

Guided by the applicable rules of the relevant jurisdiction, counsel faced with misleading, incomplete, or untrue deposition testimony will therefore need to make case-by-case determinations regarding what obligations apply under the circumstances, and about how best to comply with these duties while also maintaining confidentiality and loyalty to the client. If the problematic deposition testimony does not go to any material issue in the case and could not undermine the witness's credibility (or even be introduced for that purpose given its collateral nature), you might reach a reasonable determination that no obligation to correct exists. But if the deposition testimony rises to the level of falsity, and if it goes to substantive issues in the case or to the witness's credibility in a material way, your duty as an officer of the court will likely come into play.

How to discharge that duty is another matter. You may have to correct the record, but that does not give you license to do so in a way that is more damaging to the client's interests than absolutely necessary. Indeed, counsel's duties of loyalty and confidentiality require you to assess remedial options short of

outright disclosure. Although the requirement to correct the record may in the extreme case trump your duty to keep the client's confidences, you must attempt to make the correction in a way that maintains confidentiality. Even in the case of perjury, "incomplete or incorrect answers to deposition questions may be capable of being supplemented or amended in such a way as to correct the record, rectify the perjury, and ensure a fair result without outright disclosure to the tribunal." *ABA Formal Op. 93-376*, at p. 3. Depending upon the circumstances, the correction need not be accompanied by bells and whistles and a ringing mea culpa. Skillful advocacy and zealous client representation must invariably guide you in determining how best to set things right. Lawyers should also be mindful that even where the law clearly does not require a correction, there are many cases where corrective action might still be the prudent choice given, among other considerations, the risk that the information may come to light and that failure to take corrective action could undercut counsel's credibility with the court. Under such circumstances, good advocacy may lead you to disclose even when no formal duty arises.

Determining whether a duty to correct the record has been triggered can be particularly challenging when pursuing settlement. If there has been no indication that opposing counsel is relying in any way on the problematic testimony in negotiating a settlement, must the record nevertheless be corrected prior to a resolution? Because a lawyer cannot rely on the client's false deposition testimony in negotiating the terms of a settlement, it is a fair question whether the lawyer is implicitly doing so by not correcting the record. Moreover, it is a reasonable assumption that in weighing his own client's settlement position and determining the best strategy for negotiation, opposing counsel has calculated the client's litigation risks, an assessment based in part on how he gauges the relative strengths and weaknesses of the evidence. It may therefore also be appropriate to assume that counsel's assessment has rested in some measure on the false deposition testimony, which goes to material facts in the case. Consistent with the latter two assumptions, some courts have found that a lawyer's obligation under Model Rule 3.3 to disclose material facts to the tribunal implies a duty to make a similar disclosure to opposing counsel in pretrial settlement negotiations. See *ABA Formal Op. 93-376*, at pp. 2-3 (citing *Kath v. Western Media, Inc.*, 684 P.2d 98, 100-02 (Wyo. 1984); *Virzi v. Grand Trunk Warehouse and Cold Storage Co.*, 571 F. Supp. 507, 512 (E.D. Mich. 1983)). Needless to say, given the seriousness of these choices and of the consequences that could potentially follow, you must carefully consider your precise obligations in the settlement context under the applicable ethical rules. Compounding the situation is the practical reality that clients will likely be more resistant to correcting the record in the posture of pretrial settlement when the urge to take (or pay) the money and run will be strong.

Assuming a duty to correct exists, the question of how best to effect the necessary correction arises in a particularly acute way during settlement because there is no seamless way to correct the testimony in the way there would be, for example, during a direct exam. If counsel determines she has an obligation to correct in this setting, she should make every attempt to transmit the correction discreetly without unduly disadvantaging the client. Providing an errata sheet is one approach. Depending on the relationship with opposing counsel and the

stage and tenor of the settlement discussions, an oral representation to counsel may also be effective in complying with Model Rule 3.3 while serving the client's ultimate goals for resolving the case. Counsel should certainly seek specific guidance on this point in materials addressing the applicable ethical rules in the relevant jurisdiction.

Another set of issues presents itself when a client comes into possession of documents outside the discovery process whose provenance is somehow problematic. If that should happen, among the fundamental questions to ask are: Did the client itself obtain the information innocently? Did it induce any wrongful conduct? Was the wrongfulness, from whatever source, so extreme that though the information was innocently obtained, it should nevertheless be excluded as a deterrent to future misconduct? What if the information was wrongfully obtained by the client but would clearly have been discoverable anyway?

Not surprisingly, the case law typically draws a distinction between evidence that came into the party's possession based on the party's own wrongful conduct, and evidence obtained wrongfully by another but which thereafter came innocently into the party's possession. In the former case, courts have exercised their inherent authority to exclude the evidence wrongfully obtained by the party. In the latter, numerous courts have allowed the party to use the evidence as long as the party played no role in inducing the misconduct and if the information would otherwise have been discoverable. *See, e.g., Shanahan v. Vallat*, No. 03 Civ. 3496 (PAC), 2006 WL 3317018, at *1-2 (S.D.N.Y. Nov. 15, 2006); *Madanes v. Madanes*, 186 F.R.D. 279, 292-93 (S.D.N.Y. 1999).

These principles guided the court, for example, in the case of an attorney who provided his client, the defendant, with documents the attorney had obtained from the plaintiff during prior litigation on behalf of another of the attorney's clients. In providing the documents to his client, the attorney was violating a settlement agreement in the prior case that required the destruction or return of the documents. Although the lawyer's conduct was improper, the court did not require the defendant to return the documents because there was no evidence it had induced the attorney to provide the information; the mere fact that the provider of the information acted improperly was not determinative. *See Schlaifer Nance & Co., Inc. v. Estate of Warhol*, 742 F. Supp. 165, 166-67 (S.D.N.Y. 1990). Of particular interest, the court ruled as it did in spite of "the temptation to extend the principle that a client should not benefit from the wrongdoing of his attorney." *Id.* at 167. The rationale underlying these decisions is that sanctioning the innocent receiver would not have a deterrent effect because "the punishment would fall on the blameless party" and not on the wrongdoer, "who may have no interest in the litigation." *See Madanes*, 186 F.R.D. at 292.

Courts also compare the parties' relative degrees of complicity in making determinations as to whether to permit use of the evidence. Thus, for example, where a plaintiff secretly removed information from a computer disk the defendant kept secure in a desk drawer—conduct that would have justified the preclusion of its use in the litigation—the court declined to impose that sanction because the defendant itself engaged in misconduct by subsequently destroying the disk, which would have been subject to disclosure in the normal course of discovery. *See Fayemi v. Hambrecht and Quist, Inc.*, 174 F.R.D. 319, 325-27 (S.D.N.Y. 1997). A fair reading

of these cases is that if the party is not complicit and the document would otherwise have been discoverable, the party will likely be free to use the information even if it was improperly obtained by someone else.

Although the outcomes of such cases may not be hard to predict, these situations can be sticky, and they can put counsel in some very uncomfortable positions with clients, opposing counsel, and the court. To be best positioned to deal immediately and effectively with them, counsel should track the provenance of documentation in the case, and red flags should fly early on with respect to documents that are questionable on their face. Above all, these situations underscore the primary importance of being well versed in the universe of relevant documents and of impressing upon clients the necessity of full disclosure to counsel.

Ethical issues can also sometimes surprise you in the course of preparing witnesses to testify at trial. One particularly thorny area involves preparing a witness who is mentally challenged, a situation that can add several shades of gray to the line between improper coaching and fair preparation. Take the example of a witness who was being prepared to give trial testimony to support an award of damages for emotional distress in a civil rights case. The defendant had discriminated against the witness by denying him housing services and repeatedly spewing graphically venomous rhetoric against people with physical disabilities. Present during the pretrial session were trial counsel, who did not represent this particular witness, and the witness's own counsel, there to participate in the preparation of his client for trial.

In the course of preparing the damages testimony, trial counsel put the following core question to the witness: "How did the defendant's conduct make you feel?" The witness responded, "I felt bad." Attempting to draw more detail from the witness in this important substantive area, trial counsel explained that it would be useful for the jury to hear a more expansive description of his emotional reaction to the defendant's conduct, if in fact he had experienced any additional emotions and was comfortable sharing them with the jury. When the same question was posed, however, the witness gave the same answer: "I felt bad." That second response prompted the witness's lawyer to launch into a speech, the primary theme of which was: "If you don't say more than 'I felt bad,' you're not going to get any money from the jury."

The line between a lawyer's appropriate attempt to draw out specific testimony and improper coaching is sometimes a fine one. It is not hard to recognize the classic species of over-the-top coaching; every practitioner has seen or read about such horror stories and the sanctions that follow. Here, however, the issue spotting was not so clear because the witness was probably just having difficulty comprehending what was being asked of him, in part due to a mental impairment. The communication problem, moreover, was exacerbated by the witness's severe hearing deficit—ironically, the very basis for the discrimination against him. With minimal hearing function and a limited facility to read lips, the witness was clearly not grasping every spoken word addressed to him, nor did he understand every word conveyed through written communication using a laptop. On the other hand, the witness was clear in describing the discriminatory incidents he had endured, and he had taken all the steps necessary to pursue his rights under the law.

Under these circumstances, it is certainly appropriate for a

lawyer preparing her client for trial to explain the importance of giving the jury the most complete account possible of his emotional distress. Further, it is entirely appropriate for the lawyer to explain the likely bases for the jury's assessment of an appropriate damage award. Given the comprehension barriers at issue here, achieving these goals could well have required lengthy, even painstaking, pretrial sessions.

What is not appropriate, however, is for a lawyer to approach the topic of damages in a way that suggests to her client that he had better come up with a more descriptive account of his emotional reaction if he wants to walk away from the trial with a significant damage award. By expressly linking the desired testimony and the monetary end result, with no mitigating discussion or explanation, the lawyer here risked crossing the line, implying what the client's testimony ought to be instead of ensuring that he provide a truthful account of what he actually experienced. While the border demarcating effective witness preparation from improper coaching can be hazy, especially in the somewhat amorphous context of emotional distress evidence, counsel in such contexts must make clear to the client that his obligation is to tell the truth, notwithstanding whatever award the truth might support.

In the end, the client in this case proved impervious to his lawyer's coaching suggestion. Lawsuit or no, the discrimina-

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tory conduct at issue had apparently not taken a significant emotional toll upon him. At trial, he testified as to all the details of the discrimination and about his efforts to right the wrong he fervently believed had been perpetrated against him. But when asked how the defendant's conduct, egregious as it was, made him feel, he responded simply: "I felt bad." The jury returned a verdict against the defendant but awarded the plaintiff just a few thousand dollars in damages for emotional distress, though the punitive damages award that followed came in much higher.

An even more fundamental question counsel may have to grapple with when putting on a witness with limited mental facility is the degree to which the witness might appear to have been coached based upon his difficulty in responding and maintaining his ground under rigorous cross-examination. In the trial discussed above, the witness was able to articulate the discrimination he faced on direct examination, sharing very specific recollections of who said what and when and thereby conveying a compelling tale of discriminatory animus. But he was painfully at a loss when it came to understanding and engaging on other topics that fell within the bounds of fair cross-examination. He could convey a simple narrative but was unable to comprehend the more nuanced layers of cross-examination. The witness in such a case might appear to have been improperly coached, when in fact he was simply operating within the narrower confines of his abilities.

Moreover, such a witness may innocently blurt out what his counsel said to him in anticipation of questions about the preparation itself, and he may characterize those remarks as what counsel "told" him to say, further suggesting improper coaching when none actually took place. Here, the tension between questioner and witness reached a critical point when defense counsel ultimately challenged the witness's very competence to testify. Asked if he understood the oath he had taken at the start of his testimony, the witness quickly answered affirmatively. But faced with the follow-up question, requiring him to state his understanding of the meaning of that oath, the witness hesitated, and precious seconds passed. He then reached for the keyboard in front of him and typed out his answer, projected simultaneously on a large screen to the jury: "To tell the truth . . . under God."

Witnesses are rarely found incompetent to testify, as there are no threshold mental capacity requirements under the Federal Rules of Evidence. Rule 601 provides that "Every person is competent to be a witness except as otherwise provided in these rules." And as the Advisory Committee's Note to Rule 601 states, a "witness wholly without capacity is difficult to imagine." Accordingly, lawyers will rarely have to face the core ethical question of whether there is an impediment to even offering the witness at trial. But related issues could certainly arise, especially if you have a disability rights practice. For these and other cases, be conscious of the vulnerabilities presented by witnesses with limited mental acuity. More specifically, be aware of the heightened potential for crossing the line into improper coaching and of the importance of assessing how the witness's ability to tell her story is likely to be perceived by the court or jury.

Moving from the serious to the ridiculous, sometimes a strategic blunder in a nonsubstantive area like witness logistics can create an awkward issue that skates close to triggering counsel's ethical obligations. For example, lawyers for the plaintiff in a civil jury trial kept their witnesses in the courthouse following their appearance during the plaintiff's case-in-chief, in the event the witnesses should prove necessary to a rebuttal case. The defendants—ten individuals who at the start of the trial were represented by counsel, but who opted mid-trial to shed their representation and proceed pro se—happened to see the witnesses in the building and then informed counsel that they might wish to recall the witnesses during the defense case. Having been so notified, were counsel for the plaintiff obligated to keep the witnesses in the courthouse, or could they have directed them to leave the premises?

The issue raised in this example is really not an ethical one, but in the heat of trial it can certainly feel that way. The witnesses here were not in the courthouse pursuant to a subpoena or other court order, or by any kind of stipulated agreement between the parties. Counsel could have sent the witnesses home and left it to the defendants to take the necessary steps to get them back. Had the witnesses returned to their workplaces or homes after their initial appearances, the court would probably not have permitted their recall given the inevitable delay it would have caused and the unduly duplicative nature of the testimony, particularly where a jury's time and convenience were at issue. Moreover, the defendants' lawyer had the opportunity to cross-examine the witnesses during the plaintiff's case and took advantage of that opportunity. Under these circumstances, plaintiff's counsel was certainly under no obligation to facilitate a second bite at the

apple for the defendants.

Practical considerations, however, sometimes dictate a different approach, and this was one such occasion. Given the unusual procedural posture of the case, raising the specter that the defendants might not have been served effectively by their former counsel, it was appropriate for plaintiff's counsel to take into consideration the likelihood that the court would be sympathetic to the pro se defendants' desire to cross-examine key witnesses themselves. Counsel could also anticipate that the court would likely be displeased with any gamesmanship associated with sending the witnesses home only upon learning of defendants' renewed interest in them, when the witnesses had been hanging around the courthouse for days in the event of a potential rebuttal.

In the end, plaintiff's counsel opted to instruct the witnesses to remain in the courthouse pending the pro se defendants' application to the court for permission to recall them. That approach proved well founded, as the court ultimately allowed the recall of both witnesses and specifically permitted them to be re-examined about the same subjects covered in their original appearances on the stand. Despite the strategic blunder, the plaintiff received a favorable verdict. But counsel also received a very practical reminder that, in the crazed world of trial preparation, where serious ethical issues can crop up unexpectedly, there is no sense in exacerbating matters with a miscue that may one day be fodder for an entertaining war story, but in the meantime could make for a really bad day at the office.

With these unpleasant scenarios in mind, counsel would be wise to consider the various preventive steps to minimize the likelihood of having to face them in the first place. Here are some guidelines that should be on the checklist:

Give clear directives to the client about sharing everything with counsel. Effective communication between counsel and client is critical to the effective presentation of the client's case and relevant to the avoidance of quagmires involving inaccurate deposition testimony or the last-minute discovery of documents. Taking the time to impress upon the client the need to be forthcoming about the facts and the available documentation seems like an obvious rule of thumb, but in the hectic pace of litigation it is a guiding principle that can, remarkably, be overlooked. The lawyer litigating a civil case should convey emphatically to the client that she needs to hear absolutely everything about the events giving rise to the litigation. Much of the burden will fall on the lawyer to ask the questions necessary to drill down into the facts. But while there is certainly a premium on thorough exploration of the issues by counsel, clients need to know that the burden is also affirmatively on them to be thorough and complete in disclosing the "bad" as well as "good" facts and ensuring the identification and availability of all relevant documents. Savvy consumers of litigation services who have been through past wars may be aware of the general maxim that witnesses should not do the work of lawyers—meaning that if the lawyers do not ask for the information, the witnesses should not volunteer it. Clients may apply a similar principle to their relationships with their own lawyers, whether benignly or with the calculated design of seeing whether they will be able to get away with suppressing certain information. Clients are people, too, and we are all uncomfortable admitting damaging or embarrassing facts. Or clients simply may not understand the importance

of certain facts to the story, or the likelihood that withholding the information will undercut their credibility regarding more critical matters. Whatever the client's psychology and however you grade her overall candor in providing information, you should be clear and direct about the need for full disclosure.

Participate directly in identifying the universe of documents. When hard copies of documents predominate, counsel must take a direct role in ensuring that all relevant pieces of paper are identified for production purposes. Mere reliance, for example, on in-house counsel or others at the client company will not ensure that discovery obligations are met and avert belated unearthing of relevant documents in the twilight of the litigation. Further, in today's electronic world, where document production is no longer about warehouses stacked with boxes of paper, you need to develop a working knowledge of your client's computer systems so that you are in a position to ask the right questions and fully understand the answers. This means, among other things, understanding the client's systems for storage and retention. Many volumes have been written on this subject, but for these purposes document production has to be personal and hands-on to guard against the messy consequences of discovering new sources of information at the eleventh hour.

Take the necessary time, even if the case is in a hurry. Litigation can sometimes take on a life of its own and move at a breakneck pace. Particularly when you have been retained by a client to seek a temporary restraining order or when your client is on the receiving end of such an application, events have a way of overtaking even the most experienced lawyer. Most pointedly for purposes of this discussion, when you are drafting a moving declaration in support of immediate injunctive relief or working to beat back the other side's application for such relief, a natural tendency is to run with the facts as they are being spoon-fed to you because the reality is that you lack the luxury of spending the hours needed to verify them. Even then, however, it is critical that you take the necessary time within the expedited framework. You can still ask the questions that must be asked, nail down the essential details, and satisfy yourself that you are getting all the critical facts. In short, take the time you need even when time is of the essence.

Be clear about the meaning of "I don't recall". Lawyers appropriately tell their clients in preparation for a deposition or trial not to speculate about matters not within their knowledge. That kind of instruction is obviously important because people have a natural tendency to want to satisfy the questioner with some kind of answer. And speculation may come very easily to the witness, who, after all, will have reasonable guesses as to what happened at that meeting or what the decision maker was thinking when he fired that employee. Given these pitfalls, it is appropriate for counsel to make a clear distinction between what the witness knows and can therefore give testimony about, and what the witness does not remember and therefore has no basis for attempting to discuss. "I don't recall" is often the most accurate answer.

At the same time, witnesses should understand that an incomplete or disjointed memory of an event or only a whiff of a memory still constitutes a "recollection." It is not fair game for a witness who has only a vague memory of an event that is the subject of questioning to answer that he does not recall that event. The party taking the deposition, or cross-

examining at trial, has the right to hear the witness articulate what precisely he does remember about the subject of the questioning, even if that recollection is hazy or fragmented.

Remember that, at some point, it becomes about you.

Lawyers are focused on the zealous representation of their clients, and hopefully ethical issues will seldom rear their heads. But as the preceding discussion makes clear, there may be times when your focus should shift in appropriate measure to your own ethical obligations. Do not be afraid to engage in those considerations, and do not wait until late in the day to do so.

Consult with wise colleagues early and often. It is so often true, and in no context more than this one: Do not grapple with these thorny issues or make a final determina-

tion about how to proceed alone. Consult with colleagues you trust and work through the issues with them. Chances are that someone with whom you practice has been through this before, and in any event you will invariably profit from a seasoned colleague's sound judgment and counsel. You might also want to think about developing a relationship with an outside ethics expert. Such a specialist can offer extremely valuable, on-the-spot guidance and insight regarding the various issues and give you the comfort you need to make the necessary choices.

Ultimately, your reputation may be on the line, and you will need to weigh very carefully how to fulfill your duties to your client while simultaneously meeting your own obligations as an officer of the court. □

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