



## Ethical Issues and Forensic Consulting: Multiple Relationships – Questions in Search of Definitive Answers

Robert A. Simon, PhD

**F**orensic consultation is distinct from the direct provision of forensic assessment services. Consultation services are provided to and/or through attorneys rather than to litigants or individuals with legal involvement. Forensic consultation makes an important contribution to the checks and balances that help to assure that the impact of forensic assessment, and adjudication based upon such assessment, is as accurate and helpful as possible. Psychologists who offer forensic consulting services are typically asked to give an opinion about how good or poor a job another forensic psychologist did and/or to help the attorney develop a strategy for winning the case. Can one consultant provide both of these services or do our ethics suggest that one role only is proper? To what extent does the issue of multiple relationships, as defined in the ethics code, inform this?

The issue of multiple relationships is well-known to psychologists and is prominently featured in the ethics code (American Psychology Code, 2010). Standard 3.05 defines multiple relationships and advises, in part, that “multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.”

The review consultant’s job is to inspect the forensic report and the underlying record of the forensic evaluator for thoroughness, adherence to standards of practice and ethical codes, and signs of bias and to offer an opinion with regards to the validity and helpfulness of the work product. The review consultant’s job is to accurately and fairly detail both the strengths and weaknesses of the work product and to so advise the retaining attorney. If asked, the review consultant will offer testimony as to whether the work product is of sufficient quality that the judge should be guided by it. When testifying, the review consultant’s job is to educate the Court. Expert witnesses do not advocate for a litigation position. The testimonial expert’s duty is to be honest, fair, and balanced and to tell the truth even if doing so may harm the retaining attorney’s case. The strategic/litigation support consultant’s work is distinct in that it is not anticipated that this consultant will testify. This consultant’s job is to assist the retaining attorney as part of the litigation team.

Do ethics demand that these roles be mutually exclusive? It has been argued that the case for a dual role distinction is unclear and that, in some situations, it may be ethical and desirable for a consultant to play more than one role in a case (Lee & Nachlis, 2011). Others argue for the separation of these roles (Gould & Martindale, 2008; Zervopoulos, 2008). While review and strategic consulting may comprise different roles and duties, the most recent revision of the ethics code allows

for multiple relationships (roles) so long as they are not reasonably expected to cause impairment or risk exploitation or harm.

The purely strategic consultant is not going to testify, and therefore everything he or she does is protected by the attorney/client privilege and is not subject to discovery. However, if he or she moves into the expert witness role, that is, addresses the Court through testimony or a written report, all the preceding communications with the retaining attorney are available to the other side. If a review consultant engages in discussions with the retaining attorney that have to do with case strategy, having the contents of these discussions revealed may chagrin the retaining attorney and his or her client, the litigant. It could adversely impact the expert’s credibility as a witness. Does this constitute harm and to whom? Would the psychologist’s ethical duty to avoid multiple relationships that could result in harm be fulfilled if the psychologist clearly and overtly disclosed to the retaining attorney the potential harm that could be done, allowing the attorney to decide whether to take on this risk? Or, is this unethical for the psychologist in view of the psychologist having reasonable ability to foresee harm.

The answers to such questions lack consensus. Until then, it is up to each practitioner to develop and deploy rules of engagement that are felt to be ethically consistent. The conservative practitioner will proceed by keeping a clear distinction between the two roles and will refuse to participate in any given case in more than one capacity. The less conservative practitioner, will consider the role distinction on a case-by-case basis, hopefully in consultation with colleagues. This is a brave new world so let’s keep the conversation open and vibrant. 

### References

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*Robert A. Simon, PhD, is a forensic psychology consultant, based in Del Mar, CA. Dr. Simon’s practice focuses on family law issues and child custody disputes. Dr. Simon, who consults on cases throughout California, is currently finishing a book on forensic consulting and expert witness testimony.*