



CONSTRUCTION **SUPER**CONFERENCE

2025

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Behind the Curtain:

Ethics, Experts and Internal Strategy
in Complex Construction Claims



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KAYSIE D. GARCIA - Moderator
Partner, BBG Construction Law

Kaysie is a partner at Beltzer Bangert & Gunnell LLP, where she generally represents and provides legal guidance to general contractors in complex construction and government contract disputes. For more than 15 years, Kaysie has focused her practice on resolving high-stakes claims involving project delays, design coordination issues, differing site conditions, and payment disputes on public and private works.

Before joining BBG, Kaysie practiced construction law at two renowned construction law firms and served as Assistant General Counsel for an ENR Top 10-ranked water infrastructure contractor. This blend of outside and in-house experience gives her a practical, business-oriented perspective on risk allocation, claims strategy, and project execution.

Kaysie is active in several industry organizations, including AGC, NAWIC, and CFMA, and is passionate about advancing collaboration between lawyers and builders to drive more efficient and equitable project outcomes.



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HANNAH SCHATIGER - Panelist
Assistant General Counsel, Kiewit Corporation

Hannah Schartiger brings over 20 years of legal and engineering experience to her role as Assistant General Counsel at Kiewit Corporation, one of North America's largest and most respected construction and engineering organizations. With a unique blend of legal acumen and technical expertise, Hannah supports the successful execution of complex infrastructure and construction projects from initial contract negotiations through project completion, including the strategic resolution of disputes.

Prior to joining Kiewit in 2019, Hannah spent nine years in private practice, where she advised clients across a broad spectrum of construction and commercial matters. Her transition to in-house counsel at Kiewit allowed her to play a more integrated role in project development and risk management.

Hannah holds both a Bachelor of Science and a Master of Science in Civil Engineering from Virginia Tech, providing her with a deep understanding of the technical and logistical challenges inherent to major construction projects. She earned her Juris Doctor from the University of San Diego School of Law while simultaneously working as a scheduling engineer for the U.S. Navy in San Diego—a testament to her dedication, discipline, and passion for the construction industry.

Today, Hannah leverages her dual background in law and engineering to navigate the intersection of legal strategy and project execution, making her a trusted advisor and problem-solver within Kiewit and across the industry.



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ALEX DOCKERY - Panelist

Senior Counsel, Litigation & Construction, WS Development

Alex Worgaftik Dockery, Esq. is a seasoned attorney based in Boston, Massachusetts, specializing in construction law and commercial litigation. She currently serves as Senior Counsel, Litigation & Construction at WS Development, a vertically-integrated property developer with over 100 properties comprising 22+ million square feet across 14 states, making the company one of the largest retail-led, mixed-use developers in the country.

Alex previously served as in-house attorney at Shawmut Design and Construction, a leading construction management firm renowned for its work on academic, healthcare, and cultural projects. Prior to joining Shawmut, Ms. Dockery honed her skills at several prestigious law firms focusing on construction law, including Goulston & Storrs, Hinckley Allen, and Varela, Lee, Metz & Guarino LLP. Ms. Dockery earned her Juris Doctor from the University of California, Hastings College of the Law (now University of California College of the Law, San Francisco), and her Bachelor of Arts from The George Washington University. She is an active member of the State Bars of California and Massachusetts.



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THANH DO - Panelist

PhD, PE, BRG, Director, Global Construction Practice

Dr. Thanh Do is an experienced structural engineer, failure analyst, technical expert, and visual storyteller. He supports attorneys, insurance professionals, contractors, and design teams in resolving construction disputes—from early pre-claim consulting through trial.

Dr. Do specializes in Design-Build delivery, collapse investigations, standard of care evaluations, and complex construction and design defect analysis. He uses advanced analytical methods and simulations to investigate root causes and develop clear, defensible expert opinions. He also leads a forensic visualization practice that produces trial graphics and physics-based animations to help legal audiences understand technical issues. In addition to his forensic work, Dr. Do has experience in the design of new buildings and the retrofit of existing structures.

Before entering industry, Dr. Do taught structural engineering at UC Berkeley, where he developed a strong foundation in both research and instruction. His academic background continues to inform his technical work and communication style. A frequent speaker and author, Dr. Do regularly presents on topics related to construction law, dispute resolution, risk mitigation, failure modeling, and effective storytelling through visuals.

Learning Objectives



Address ethical challenges in early expert engagement

Clarify limits of privilege and work product protections

Navigate conflicting expert opinions and evolving narratives

Develop best practices for cross-functional and multi-party communication

Ethical Framework For Discussion

Relevant Rules of Professional Conduct

Relevant ABA Model Rules

- ABA Model Rule 1.1: Competence
- ABA Model Rule 1.6: Confidentiality
- ABA Model Rule 3.3: Candor Toward the Tribunal
- ABA Model Rule 3.4: Fairness to Opposing Party
- ABA Model Rule 4.1: Truthfulness in Statements to Others
- Interesting State Specific Rules Worth Referencing

Scan QR Code to Answer:



A newly licensed attorney is asked to represent a subcontractor in a complex construction-delay claim but has no prior experience with critical-path analysis or construction scheduling. Which of the following actions would best cure the lack of competence?

- A. Decline the case entirely because the lawyer lacks prior experience in construction law.
- B. Proceed immediately without assistance to avoid losing the client's business
- C. Associate with an experienced construction attorney or expert and study the relevant law before proceeding.
- D. File the claim and learn the subject matter during litigation.

ABA Model Rule 1.1: Competence

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

ABA Model Rule 1.6: Confidentiality

“(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)....”

“(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

ABA Model Rule 3.3: Candor



ABA Model Rule 3.3: Candor

“(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; . . .

(3) offer evidence that the lawyer knows to be false. . . .”

Scan QR Code to Answer:



A lawyer in a construction defect trial learns after submitting a concrete test report that the client altered a page to hide a failed result. The lawyer stays silent to protect the case. Which of the following describes the issue under Rule 3.3?

- A. The attorney violated Rule 3.3 by failing to take reasonable remedial measures after learning false evidence was submitted to the court.
- B. The attorney complied with Rule 3.3 because confidentiality under Rule 1.6 prevents disclosure of client admissions.
- C. The attorney did not violate Rule 3.3 because the false report was submitted by the client, not the attorney.
- D. The attorney complied with Rule 3.3 because the opposing party could have discovered the falsification through diligence.

ABA Model Rule 3.4: Fairness

“A lawyer shall not:

(a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having evidentiary value. . .

(b) falsify evidence, counsel or assist a witness to testify falsely

. . .

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party”

ABA Model Rule 4.1: Truthfulness

“In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.”

Scan QR Code to Answer:

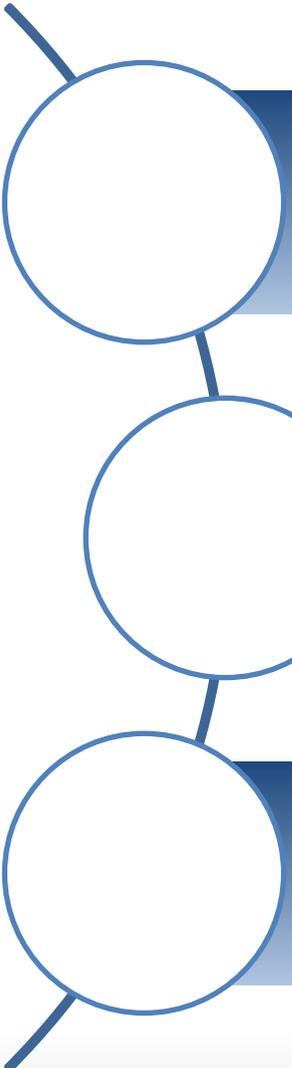


Of all the Model Rules discussed, which rule comes up the most in your everyday practice?

- A. ABA Model Rule 1.1: Competence
- B. ABA Model Rule 1.6: Confidentiality
- C. ABA Model Rule 3.3: Duty of Candor
- D. ABA Model Rule 3.4: Fairness
- E. ABA Model Rule 4.1: Truthfulness

State Specific Ethics Rules Worth Mentioning

Expert's Perspective



Duty to public safety overrides strategic silence

Ethical framework: work from evidence up, not narrative down

References – Code of Ethics and engineering board rules

Early Expert Engagement & Ethical Boundaries

Types of Experts

Consulting Experts

1. FRCP Rule 26(b)(4)
2. Retained for strategy
3. ABA Formal Opinion 97-407

Types of Experts

Testifying Experts

1. FRCP Rule 26(a)(2)
2. Subject to discovery and cross-examination
3. *Shadow Traffic Network v. Superior Court*, 24 Cal.App.4th 1067 (1994)

Best Practices on Documenting Role/Scope of Engagement

- Clearly define expert's role (testifying v. consulting) and scope
- State basis of compensation (no relationship to success of claim)
- Reference applicable ethical codes or industry guidelines
- Discuss process for documenting revised scope if project evolves
- Address communications and handling of draft reports/data

Internal Strategy and Expert Coordination

Best Practices on When and How to Engage Experts

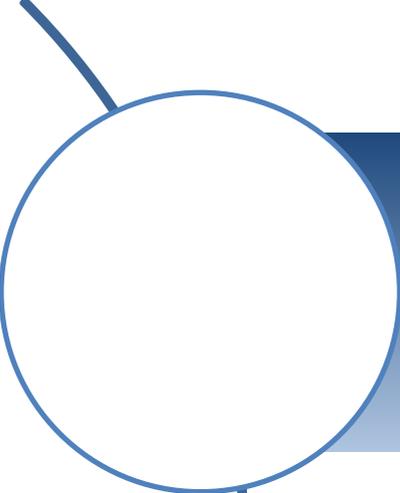
EARLY

- Play a role in shaping prelitigation messaging and influencing business decisions

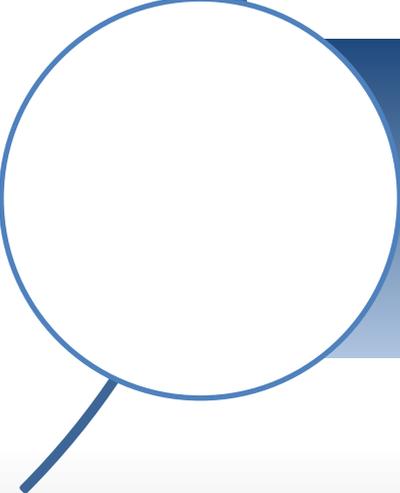
THROUGH COUNSEL

- Maintain privilege/protection where possible

Expert's Perspective



Pros and Cons of Early Involvement



Appointment By One Party Versus Jointly

Ethical Traps/Pitfalls to Avoid

Blurring lines between fact and expert witness

Redesignated consulting expert as testifying

Omitting or coloring evidence available to the expert
(*easy point of attack for the other side)

Modification of expert reports

Expert's Perspective



How do you handle evolving scope?

How do you handle incomplete/flawed data?

How do you handle conflicting narratives?

How do handle influence from others?

Expert's Perspective



Limits of Work Product and Attorney-Client Privilege

What Qualifies as Privileged/Protected?

Specific State/Federal Rules Control

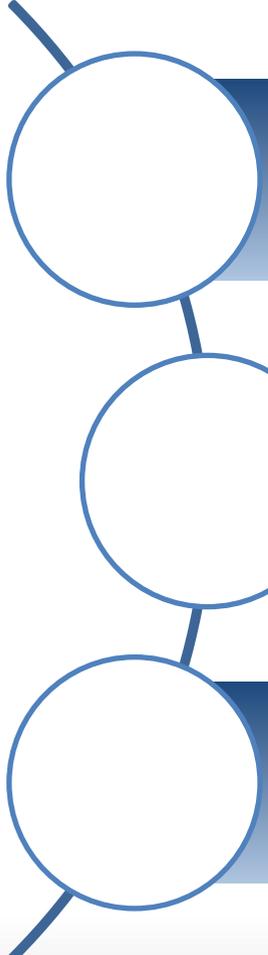


FRCP 26(a)(2)(B)(ii)



Specific State Rules

How to Ethically Avoid Inclusion of Privileged Materials in Expert Files?



Privileged materials can be discussed during a phone call

Privileged materials can be shared during in-person meetings

Keep written communications between counsel and expert

Privilege Waiver Pitfalls

Sara Lee Corp., 273 FRD 416, 419-20 (N.D. Ill 2011)

Yeda Research & Dev., 292 F.R.D. 97 (D.D.C. 2013)

Warrington v. Patel, Case No. 2:22-CV-77-JES-KCD, M.D. Fl. Order dated 2/26/2024

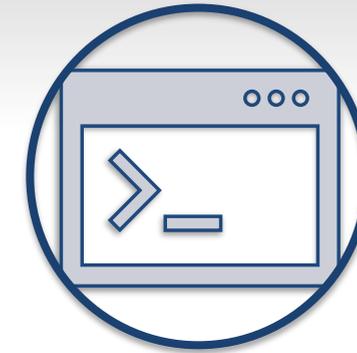
Best Practices from Expert's Perspective



Field notes,
sketches, informal
communications



File sharing with
counsel vs.
project team



Version Control



Challenges for Maintaining Privilege Across Business Units

Experts in Certain Arbitration Settings

International arbitration rules contemplate expert appointment and direction by panel

- UNCITRAL Art. 26
- ICDR Art. 25
- JAMS International Rules, Art. 27.7
- ICC Arb. Rules Art. 25
- IBA Rules on Taking Evidence Arts. 5-6

Ethics and Experts in International Arbitration



1993 Ikarian Reefer case

Tribunal has broad discretion in determining how privilege issues are handled

Reach party agreement at outset of arbitration to avoid grey areas

IBA Recommendations

Conflicting and Changing Expert Opinions/Conclusions

How do you handle?



Key Take Aways

What happens behind the curtain may become center stage in litigation

Know what rules apply to your case

Use experts at the right time to aid in key decision-making

Be careful what you withhold from your experts

Scan QR Code to Answer:



In a few words or less, describe your biggest takeaway from this presentation.

THANK YOU!

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