

Maintenance and Continuance of Ethical Standards While Completing Forensic Vocational Evaluations

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Abstract. Forensic rehabilitation settings present multiple challenges for potential deviation from ethical standards. This article offers a framework for avoiding bias during completion of vocational evaluation and ultimately rendering an opinion. Particular emphasis is placed on specific ethical codes and canons.

This offers an opportunity for the forensic rehabilitation counselor to examine prospective ethics while completing vocational evaluations. Particular emphasis will be on specific canons and components of applicable ethical codes. A vocational counselor must initially consider the actual relationship with the client, as a component of the ethical process continuum.

Per the Commission on Rehabilitation Counselor Certification (CRCC) Code of Ethics, Section A.1.a – The Counseling Relationship: Welfare of Those Served by Rehabilitation Counselors - Primary Obligations:

The primary responsibility of rehabilitation counselors is to respect the dignity and to promote the welfare of clients. Clients are defined as individuals with, or directly affected by a disability, functional limitation(s), or medical condition and who receive services from rehabilitation counselors. At times, rehabilitation counseling services may be provided to individuals other than those with a disability. In all instances, the primary obligation of rehabilitation counselors is to promote the welfare of their clients. (Commission on Rehabilitation Counselor Certification, 2010, p. 3)

Per the CRCC Code of Ethics, Section F.1.a. Forensic and Indirect Services: Client or Evaluatee Rights – Primary Obligations:

Rehabilitation counselors produce unbiased, objective opinions and findings that can be substantiated by information and methodologies appropriate to the evaluation, which may include examination of individuals, research, and/or review of records. Rehabilitation counselors form opinions based on their professional knowledge and expertise that can be supported by the data gathered in evaluations. Rehabilitation counselors define the limits of their opinions or testimony, especially when an examination of individuals

has not been conducted. Rehabilitation counselors acting as expert witnesses generate written documentation, either in the form of case notes or a report, as to their involvement and/or conclusions. (Commission on Rehabilitation Counselor Certification, 2010, p. 15)

Per the International Association of Rehabilitation Professionals (IARP) Code of Ethics, Standards of Practice and Competencies: Forensic Code: General Definitions: Client:

Clients are defined as individuals with or without disabilities who are the subject of the litigation. The primary obligation and responsibility of Forensic Rehabilitation Experts/Consultants is to the client. Regardless of whether direct client contact occurs or whether indirect services are provided, the primary obligation remains to the client. (International Association of Rehabilitation Professionals, 2007, p. 4)

“Experts, for the purpose of trial testimony, are witnesses in possession of knowledge that is beyond the ken or understanding of the average lay person and which the trial court deems helpful to a jury. Experts are persons duly and regularly *engaged* in the practice of a profession who hold professional degrees from a university of college and have had special professional training and experience or those possessed of special knowledge or skill regarding the subject upon which their testimony is based” (Bourgeois, Decoteau & King, 2011, p. 49-50). Bourgeois et al. detail that you cannot be an expert unless you have experienced the very thing you are presumably have expertise. Therefore, you cannot practice ethical behavior in one setting, but not the other.

I believe that the first sentence of the CRCC Code of Ethics - *The primary responsibility of rehabilitation*

counselors is to respect the dignity and to promote the welfare of clients. (Commission on Rehabilitation Counselor Certification, 2010, p.3) should be the guide, filter, litmus test etc. that guides the CRC in whatever capacity (active rehabilitation counseling or as an expert) they are fulfilling with the person they are working.

As a Certified Rehabilitation Counselor (CRC) and front line vocational rehabilitation counselor working within RCW 51.32.095 in Washington State, I can be in direct violation of my CRCC Code of Ethics (Commission on Rehabilitation Counselor Certification, 2010) on several levels unless I follow a few simple but crucial steps.

In my initial letter to the evaluatee, I must include the following documents:

- Business Card
- Professional Disclosure Statement
- Vocational Questionnaire
- Professional Consent for Release of Information
- WAC 296-19A-030 (What are the responsibilities of the parties?)
- WAC 296-14-410 (Reduction, suspension, or denial of compensation as a result of noncooperation.)
- RCW 51.32.095 (Return to Work Priorities)
- WAC 296-19A-070 (What is Ability to Work Assessment?)

These items are included with the introductory letter to establish a clear understanding of my role as a VRC and what our “counseling” relationship will be in a professional framework. Professionalism and responsibility calls for the VRC and the Forensic Vocational Expert to understand, establish, and enforce professional boundaries with all parties in the case – evaluatee, referral source, payers, or secondary parties (Robinson, 2014). As stated, along with making sure the evaluatee knows my role as a VRC, the employer, defense attorney or other payer for my assessment time must be clearly informed that they are not buying a certain opinion. They are purchasing my time and I will arrive at my opinion after I have completed my methodology for arriving at a vocational and employability opinion. Unlike active vocational counseling and case management where the worker being evaluated is considered my client, in a forensic setting the person is considered an evaluatee. To enable a CRC to adhere to Section A.1.a of the Code of Ethics even in a forensic setting, the CRC needs to clearly define and explain the role they are taking with the evaluatee.

By establishing a clear understanding of what role the CRC is going to complete, we as CRC's adhere to Section A.1.a in the following manner: the CRC respects the individual and evaluatee by not insulting their intelligence when they explain their role and what the

steps are knowing it may be difficult for some people to understand when they are presented with the information for the first time but realizing they need to understand the process they are going through more than ANY party in the process, and the CRC promotes the welfare of the client/evaluatee by performing an objective, thorough assessment within the regulations and laws of a given system so they can move through the system and get on with their lives. Closure, done correctly, of a portion of a person's life experiences, allows them to move through to the next stage of their life journey. Realizing early, that as VRCs and CRCs, we will always effect our clients and evaluatees on a positive or negative depending upon our actions (or, quite frankly lack thereof) is crucial. In active practice or in a forensic setting rehabilitation professionals are involved in an inherently moral practice. “Their judgments are influenced by their beliefs of what ought to be. However, their actions can be greatly controlled by their beliefs about what can be and what is cost-beneficial. Thus, it is crucial for (VRCs) to achieve self-awareness that can potentially shape their beliefs and thereby influence their decisions and actions [sic]” (Ruben et al., 1995, p. 174).

“It can be argued that the ethical principles of beneficence (helping others fulfill their basic needs), autonomy (respecting the choices of others), and justice (making fair decisions regarding distribution of scarce resources) greatly help define ethical behavior by (VRCs)” (Ruben et al., 1995, p. 173) in active rehabilitation settings. However, I believe it can also be argued that beneficence (providing an accurate, objective assessment), autonomy (respecting others) and justice (being true and honest in one's approach to the evaluation of the case, opinions, and presentation of findings) define the forensic assessment as well. Just because the CRC/VRC is removed from active rehabilitation services in a forensic evaluation setting, does not mean that their opinions and recommendations will not have the same powerful impact on the person they are evaluating. Even if the forensic evaluation FEELS removed and or cold in its application (if the Forensic Examination does not physically meet with the individual during the assessment) the CRC or VRC need not forget they are making recommendations about a person's life and not a file.

Per Field (2014) an example of unethical and then ethical behavior illustrates how CRCs and VRCs impact the court room in a forensic/legal setting: In *Fashauer v. New Jersey Transit Rail Operations*, a vocational expert, during trial testimony, offered a single job recommendation which he found in the newspaper the day before the trial. The expert was dismissed when the court ruled that the VE's testimony was so ludicrous; laughably ludicrous that it did not require rebuttal. Conversely, Field (2014) points out that an expert who does their homework, and can present their opinions with a degree of passion and practicality and

speaks well, the receiver (judge / jury) of their information is able to benefit from said presentation as they are allowed to build upon the information that adds to their own opinion rather than trying to slog through confusing opinions that were given to divert logical thinking. “The FE must proceed on the presumption the case will go to trial and methods used to calculate losses will have to potentially (be) explained to a jury and defended under cross-examination. It is important the FE be a good ‘teacher’ given he/she must be prepared to present and explain all aspects of the report to juries, judges and attorneys that may be unfamiliar with (vocational) economic concepts” (Austin, 2014, p. 172). An ethical approach to explaining data generated during an assessment and respecting the dignity and promoting the welfare of clients or evaluatees starts with a sound methodology that is reliable and valid.

As a front line vocational counselor guided by the WA State L & I assessment “boxes” (WAC 296-19A, RCW 51.32.095 & WAC 296-19A-130) my methodology when arriving at an employability recommendation does not waiver. The same methodology (to the extent that I can have direct contact with the evaluatee) remains the same in the forensic or legal setting as it does in an active file. I adhere to my methodology as strictly as possible in either setting as it allows all parties involved the opportunity to see and understand first-hand how I arrived at my opinion. There are no smoke and mirrors with which to hide behind in my assessments. And if one of the parties involved has an issue with my opinion, they can see what data I generated or used for my opinion and refute it as they deem necessary. Such a methodology also continues to assist me in staying within my expertise and not straying outside of it to give an opinion based on what I think I know rather than what I know. “. . . ethical statements (CRC, IARP, etc.) should be read and understood and serve as a daily guideline for the work of the rehabilitation consultant. As a general rule, the rehabilitation consultant (CRC/VRC) should not go outside the consultant’s area of expertise and should clearly attempt to achieve a level of competency within his /her particular area of specialty. In the final analysis, the ultimate test of the rehabilitation consultant’s competence is the consultant’s presentation in settings of adjudication. In a very real sense, the judicial setting is where all the world watches with respect to the performance of the rehabilitation consultant” (Field, 1999, p. 84).

A question I welcome in active practice or the forensic setting is the following: “How did you arrive at your opinion?” I enjoy this question as my answer is the same and it gives me the opportunity for a teaching moment. My assessment begins with usually answering the following question, “I would like to make a referral to you for an assessment. What part of the file would you like me to send?” To that I answer, “All of it

please.” I always request the entire file (and any documents that come in after I begin my assessment) as I do not want to feel that I arrived at my opinion based on partial/incomplete information given to me by someone who has a vested interest in my opinion going one way or the other. I can then ethically/morally believe that I can state the following when I am submitting my overall opinion, “Based upon all available medical and vocational information for review my opinion is”

Once I have received the file, a file review of the documents received is completed and a File Review Summary Report generated. This is not a report wherein I arrive at an opinion; it is simply a summary of what I have received. It is a form that has places for data such as name, birth date, type of injury, date of injury etc. The form allows me to capture data into a user friendly format to see how the claim started, what the issues are and what I maybe missing that I need to generate before I can arrive at my opinion.

I will then send a letter of introduction with the items listed above in page 3, including a Professional Consent for Release of Information. (If the evaluation is for the Department, I will also include WAC 296-19A-130 – What are the requirements for a forensic evaluation?) The professional consent reads:

*I authorize **Craig Bock, M.A., CRC or a representative of Bock Consulting** to be permitted to obtain and review copies of all vocational, hospital, medical, employment, school, military, union and other records, and to discuss relevant information with professionals involved in my vocational assessment. I give my permission to share the information obtained with any organization that, through an insurance program or otherwise, is paying all or part of the cost of my vocational assessment. I agree that a copy of this authorization be accepted if necessary.*

All of these items are sent to the client / evaluatee in an effort to communicate what the process will entail and what expectations the system they are in have of them. “In terms of ethical obligation, an individual has a right to know what to expect when working with a rehabilitation counselor, with clearly defined expectations at the beginning and throughout the process” (Carlisle & Neulicht, 2010, p. 75).

I will then meet with the client/evaluatee to review the information I was given and to go over the vocational questionnaire. If I cannot meet in person with the evaluatee in a forensic setting, I will ask the attorney to obtain any information I do not have or clarifications of information I do have directly from the person. I will review with the client why I have been asked to evaluate them, what information I need from them (vocational, educational, medical) and what possible recommendations I could arrive at. Under RCW51.32.095, I could arrive at any one of these rec-

ommendations as well as that the worker is a straight pension or a second injury pension:

- (a) *Return to the previous job with the same employer;*
- (b) *Modification of the previous job with the same employer including transitional return to work;*
- (c) *A new job with the same employer in keeping with any limitations or restrictions;*
- (d) *Modification of a new job with the same employer including transitional return to work;*
- (e) *Modification of the previous job with a new employer;*
- (f) *A new job with a new employer or self-employment based upon transferable skills;*
- (g) *Modification of a new job with a new employer;*
- (h) *A new job with a new employer or self-employment involving on-the-job training;*
- (i) *Short-term retraining and job placement.*

Forensically, customarily, I will arrive at an employment recommendation similar to RCW 51.32.095, but will take into account loss of earning capacity. I would be doing the client/evaluee undue harm if I did not explain to the best of my ability (and also directly ask them if they understand the information I have presented) what the assessment will entail and what my overall vocational opinion could mean to them. Dispelling myths (such as . . . you do not receive millions of dollars in this particular kind of system) is also my ethical duty as many clients I work with have a misconception of what the system will bear for them if they are found not employable on any level.

During my interview with the client or evaluatee, I might test them (aptitudes, interest, personality, IQ) as well. I let them know that there are no pass/fail grades in such assessments. It is simply data that allows me to comment on their overall employability. Here again, if I did not let the client/evaluee know the reason for the testing, the process generates undue stress and anxiety.

I will then complete a transferable skills analysis (Weed & Field, 2001) in an effort to break down the client's background into data that I can analyze for cross employment applicability. I will generate my own job analyses for the assessment by going onsite and generating data or utilize job analyses that I have done in the past as a starting point to move to the next step – medical review of possible return to work options.

I will then either meet in person with the medical professionals associated with the file or send to them data (job analyses) for their review and commentary. I do not try to make assumptions of what a person can or cannot perform vocationally from historical data that doctors have generated on the file. In my assessments, I need medical opinions directly related to data that I

can speak to regarding how it was generated. It would be unethical to utilize someone else's work product (vocational histories, job analyses, labor market surveys), have a medical professional review and state their opinion as to whether the person can or cannot perform the job and then arrive at an employability recommendation. It is imperative to arrive at recommendations based on data that you know how it was generated.

Once I have medical releases, I then will complete labor market surveys to generate real world employment data. National data can be helpful to start with, but unless the applicable counselor contacts businesses in the client's geographically relevant labor market, you will not be able to ethically comment on the client's employability (exists if a person possesses skills, abilities and traits necessary to perform a job; the kinds and types of job which a person with a disability might be able to perform) nor their placeability (economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job) (Field, 1999).

Once I have generated the aforementioned data I can then arrive at an employability recommendation that can include whether or not a loss of earning capacity has happened due to the injury or condition. A report is generated and sent to the client/evaluee directly or indirectly through their counsel.

The CRC/FE has a primary obligation to the client/evaluee when completing employability assessments . . . *to respect the dignity and to promote the welfare of clients.* To do this the counselor needs a crystal clear understanding of the system the counselor is a part of when asked to arrive at their opinions, applicable education/life experience to use as their paradigm filter and a repeatable/objective assessment methodology. Anything less removes the counselor's ability to adhere to their applicable Code of Ethics.

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- Washington Administrative Code 296-19A-010
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- Washington Administrative Code 296-19A-140

Endnotes

¹ Revised Code of Washington 51.16.120: *Whenever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and shall suffer a further disability from injury or occupational disease in employment covered by this title and become totally and permanently disabled from the combined effects thereof or die when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of the further injury or disease shall be charged and a self-insured employer shall pay directly into the reserve fund only the accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts.*