

# **FORENSIC MENTAL HEALTH EXPERTS:**

Understanding Yours  
and Undercutting Theirs

# Introductions and Overview

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# Understanding Your Mental Health Expert

## When and why do you need a mental health expert?

- More than “garden variety” damages
- Constructive discharge situations to explain why an employee could not remain in a work environment
- To explain alleged “unusual” behavior (no immediate complaint, acquiescence to harassing behavior) based on research (i.e. combat SH myths)
- Defense IME
- Cost vs. Benefit – does the value of the case warrant a mental health expert and/or how to address the cost of the expert

# Understanding Your Mental Health Expert

## Finding your mental health expert

- Word of mouth/list-servs
- Professional Associations
- Other

# Understanding Your Mental Health Expert

What is a “good” expert?

Hint: It's more than just credentials!

- Knowledgeable about sexual harassment and women's reactions
- Excellent technical skills
- Teacher vs. lecturer – having an expert that connects with and communicates with the jury rather than talk down to the jury
- Treating therapist v. outside expert

# Understanding Your Mental Health Expert

## What should your expert be able to do for you?

- Reliably identify plaintiff's psychological condition
- Reliably identify probable cause
- Reliably rule out alternative causes
- Explain pre-existing conditions/traumas are risk factors for damages, not reasons for them (egg shell plaintiff)
- Reliably critique opposing expert's methods and conclusions

# Undercutting the Defendant's Mental Health Expert

## Deposition/Trial Examination Techniques

- The things you have to cover (cost, credentials, etc.)
- Using their publications (or lack thereof)
- Number of times the expert consulted with defense counsel and other defense experts about the case (how much time, total, has the witness spent on the case, and how exactly was the time spent)
- What materials has the expert received/requested from defendant?

# Undercutting the Defendant's Mental Health Expert

## Deposition/Trial Examination Techniques

- Ask if the expert assisted defense counsel in preparing for other depositions/written discovery. If so, how?
- Cross examination regarding the MMPI or other examination methods
- Having their expert bolster the credibility of yours
- Trial presentation- when to call the expert witness, live or transcript/video, do you want to request that the court have the experts testify back-to-back, etc.?



# Undercutting the Defendant's Mental Health Expert

Using your expert to undercut theirs

- Paper discovery
- Deposition/examination preparation

# Questions