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Characteristics of Effective Expert Witnesses in Rehabilitation Counseling

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**CHARACTERISTICS OF EFFECTIVE EXPERT WITNESSES
IN REHABILITATION COUNSELING**

A Dissertation

Submitted to the Graduate Faculty of the
University of New Orleans
in partial fulfillment of the
requirements for the degree of

Doctor of Philosophy
in
The Counselor Education Program

by

Crystal D. Younger

B.S., Louisiana State University, 1987
M.S., Georgia State University, 1991

May, 2005

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DEDICATION

To my husband, best friend and journey mate, Philip Roy Younger.
You have been a beacon of support and strength along this journey. Without your prodding and pushing it would not have been possible. I will forever be grateful. You are truly the wind beneath my wings.

ACKNOWLEDGEMENTS

To Jesus

I will use whatever skills and abilities I have picked up on this journey for Your glory.
In Jesus' Name!

To my children, Alexa, Jade, and John-Clark Younger

You bring meaning to my life! Thank you for being there for me, and understanding all the time it took to achieve this goal. I love each of you very much!

To my mother Joyce Pierce

You told me I could do anything and I actually believed you! Thanks for being the voice in my head that pushes me to achieve. I love you!

To my Dad, Henry DeFraités III

You were here when I began this journey but did not get to see me finish. I wish you were here to see this. You are always on my mind.

To My Committee Members

Dr. Remley, Dr. Paradise, Dr. Hulse-Killacky & Dr. Herlihy

The support and encouragement you provided through the years is immeasurable. You have led by example and have left a lasting impression on me. You have made an imprint on my soul.

Thank You!

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ABSTRACT

Vocational expert witnesses are retained to perform vocational assessments and provide vocational rehabilitation counseling services to disabled individuals. They are often required to testify as expert witnesses at trials on cases in which they have evaluated disabled individuals or provided rehabilitation counseling services to disabled clients. The purpose of this study was to identify characteristics of effective vocational expert witnesses. Certified Rehabilitation Counselors (CRCs) who were members of the International Association of Rehabilitation Professionals (IARP) were asked to complete the Rehabilitation Counselor Questionnaire and Survey and nominate effective vocational expert witnesses for this study. A total of 346 certified rehabilitation counselors participated. Ninety five of the 346 respondents were nominated by their peers as effective vocational expert witnesses. Results of this study determined that rehabilitation counselors who were nominated by their peers as effective expert witnesses were more effective than rehabilitation counselors who were not nominated as effective expert witnesses in a number of areas: Rehabilitation counselors who were nominated as effective expert witnesses have more self-confidence, enjoy debating more, enjoy conducting research more, enjoy administering tests more, utilize subjective sources more often in forming opinions, are more comfortable speaking generally or before a judge or jury, more often identify providing expert testimony as one of their favorite tasks, and get anxious less often before they testify. Rehabilitation counselors nominated as effective expert witnesses are significantly different from rehabilitation counselors who were not nominated by their peers as effective expert witnesses in that nominated counselors have a high number of court appearances annually, hold a state license as a counselor more often, and have been a rehabilitation counselor for a long time.

CHAPTER 1 INTRODUCTION

Rehabilitation is defined as the treatment of “individuals who deviate negatively from the majority of society in regard to one or more of the following: physical appearance, physical functioning, intellectual functioning, and behavior” (Rubin & Roessler, 2001, p. 1). According to Weed and Field (1990), rehabilitation counseling can be described in the following manner: “A process in which a counselor and a client are involved which will help the client understand his problems and potential and to help the client make effective utilization of personal and environmental resources for the best possible vocational, personal and social adjustment (p. 7).”

Rehabilitation counselors receive education as counselors and specialized training that allows them to provide counseling to individuals with disabilities. Because rehabilitation counselors work with injured and disabled individuals, litigation may occur and rehabilitation counselors may be requested or required to testify in a court of law. Rehabilitation counselors can be called as fact witnesses, which means that they are expected to testify only to events or things said in a conversation or relationship. As fact witnesses, rehabilitation counselors’ technical mastery of certain areas is not the central feature of testimony (Smith & Bace, 2003). Rehabilitation counselors may also be asked or requested to testify as expert witnesses. An expert witness is any person who has the special knowledge, skills, experience, training, or education necessary to become an expert in the field (Crawford, 2001). Weed and Field (1990) stated that vocational expert witnesses “provide assistance to courts and attorneys in identifying the effect of injury on an individual’s capacity to perform work and earn money” (p. 15).

Vocational expert witnesses are often required to testify at trials on cases in which they have provided rehabilitation counseling services to disabled clients. Involvement in litigation may require a rehabilitation counselor to testify in a trial as a vocational expert witness. The litigation process differentiates rehabilitation practice in the heavily litigated private sector from the traditional non-litigated public rehabilitation programs and services arena (Cottone, 1982). The nature of the litigation process inherently involves the rehabilitation counselor, the plaintiff, the defendant, attorneys for the plaintiff, and the insurance carrier representative. The presence of third parties can complicate the traditionally confidential dyadic counseling relationship. Everything the plaintiff or defendant who is involved in litigation discloses to a rehabilitation counselor will be, in most instances, relayed back to others, such as the attorneys for the plaintiff or defense, or insurance carrier representatives.

Rehabilitation counselors could benefit by learning skills to provide effective vocational expert witness testimony. According to Weikel and Hughes (1993), rehabilitation counselors can realize a significant income supplementation to their practice or other wages by testifying as vocational expert witnesses. Rehabilitation counselors who provide vocational expert testimony can become more visible in the community. Vocational expert witnesses come into contact with many individuals who are involved in the litigation process and counselors can receive referrals through these relationships.

The population served by vocational expert witnesses is customarily broader than that of traditional rehabilitation counselors. As expert witnesses, vocational experts have the opportunity to work with a variety of clients not typically seen in routine practice (Blackwell, 1992). Vocational expert witnesses may be asked to testify on a case that is outside of their normal client population. For example, rehabilitation counselors may provide professional services to

injured workers and may also provide testimony as vocational expert witnesses in cases that involve individuals who have been injured outside of their place of employment.

Numerous books, professional journal articles, and trade magazine articles define and explain the functions of expert witnesses based on the professional experiences of the authors. However, no empirical research has been located that has identified and studied the characteristics of effective vocational expert witnesses.

Rehabilitation counselors are not immune to the increasing litigation aspects of practicing as an expert witness. Rehabilitation counselors may enter into hostile litigated situations, such as testifying at a deposition or in a courtroom, unprepared to navigate the legal arena. Having a training model to educate and train rehabilitation counselors may make them more credible as vocational expert witnesses.

Being aware of the court system and their role in this system could enhance performance and reduce nervousness since the vocational expert witness would be aware of their role in the litigation process. Their ability to become more persuasive in their testimony might be enhanced if they have the skills and knowledge to perform as vocational expert witnesses. Obtaining education and training as effective expert witnesses probably would enhance the confidence level of the rehabilitation counselor who has to provide expert witness testimony.

Additionally, self-efficacy as a vocational expert witness could be improved through learning characteristics of effective vocational expert witnesses in the area of rehabilitation counseling. Furthermore, through training and education, rehabilitation counselors would be able to learn about the private rehabilitation industry and the aspects of litigation that can be involved, and could choose to self-select out of the industry before getting into something that could be a negative experience. If the rehabilitation counselor decides not to participate in expert witness

testimony, it is better to know this before a case is accepted rather than in the midst of providing the service requested.

Overall, this study was designed to identify traits associated with effective vocational expert witnesses in rehabilitation counseling. Based on these characteristics a training model could be developed to teach these skills to other rehabilitation counselors who desire education and training in this area. Rehabilitation counselors who choose to provide expert witness testimony might benefit from learning these skills. Rehabilitation counselors who are subpoenaed to be expert or fact witnesses could also benefit from learning the characteristics associated with effective vocational expert witnesses in rehabilitation counseling.

History of Rehabilitation

The development of the rehabilitation counseling profession was in direct response to the personal and vocational needs of individuals with disabilities in the United States. The first groups to receive rehabilitation counseling services were World War I veterans who were injured while serving in the military (Bitter, 1979). The Soldiers Rehabilitation Act was passed in 1918 and provided assistance for soldiers returning from the war. In 1920, the Civilian Rehabilitation Act was passed, allowing for rehabilitation services to be provided to all disabled populations in our country (Rubin & Roessler, 2001). This was the beginning of public sector vocational rehabilitation.

In the 1960s, public rehabilitation counselors were retained to testify at Social Security trials where they made an impact on the outcome of the cases being heard. Others took notice of the influence rehabilitation counselors had in these determination hearings and began utilizing rehabilitation counselors in other areas, such as workers' compensation hearings and similar hearings where employment and disability were at issue, such as divorce cases (Anderson, 1979).

In the 1970s, private for-profit rehabilitation counseling companies began to appear throughout the country. Insurance companies and private industry were requesting the services of private for-profit rehabilitation counselors.

Rehabilitation Counseling

Over the past three decades the work of the rehabilitation counselor has evolved from working in public agencies serving primarily individuals disabled from birth or by accident to working in the private for-profit sector. Today, private for-profit rehabilitation counselors are seeing more individuals who are claiming an injury and are also involved in litigation.

Rehabilitation counselors in the private for-profit sector often are retained to provide expert testimony related to a particular client or case. These rehabilitation counselors become known as vocational expert witnesses.

Rehabilitation counselors can be called upon to testify on cases where evaluation and opinion are requested. They also may be called upon to testify as vocational expert witnesses on cases in which they have provided counseling services to assist the individual to return to work, as occurs in some states that require vocational rehabilitation for their injured workers. In these cases, rehabilitation counselors can be asked questions about the relationship and the effort put forth by the injured individual to participate in the rehabilitation process.

Definitions of Expert Witness and Vocational Expert Witness

Blackwell (1992), Matson (1999), Perry and Vogel (1993), Poynter (1997), and Satinder (1993) have defined an expert witness as an individual who, by reason of education or special training, possesses knowledge of some particular subject area in greater depth than the public at large. Black's Law Dictionary has defined an expert witness as an individual "who by reason of education or specialized experience possesses superior knowledge respecting a subject about

which persons having no particular training are incapable of forming an accurate opinion or deducing correct opinions” (Copeland, 1993, p. 1007). Blackwell (1992) defined vocational expert witness as one who “provides assistance to courts and attorneys in identifying the effect of injury on a person’s capacity to work, earn money, and/or maintain a quality of life” (p. 9).

Standards for Admissibility of Expert Witness Testimony

Prior to 1993, the majority of Federal courts relied on a 1923 case entitled *Frye v. United States* (1923) to set the standard for expert testimony. Poynter (1997) reported that the *Frye* case ruling held that proposed scientific testimony must be generally accepted by others in the field—specifically must be peer-reviewed. In 1993, a ruling in the case of *Daubert v. Merrell Dow* (*Daubert*) led to an acceptance of any expert who might help the trier of fact. The trier of fact is the judge or jury in a case involved in litigation.

In the 1999 case, *Kumho Tire Company v. Carmichael*, the Supreme Court ruled that a trial judge is obliged to decide whether to allow or disallow expert testimony. Such decisions by judges are applicable to testimony based on technical and other specialized knowledge (Saks & Wissler, 1984).

The “statutes and rules governing expert witnesses are different from court to court. There are state rules and federal rules; there are rules of evidence and rules of civil procedure.” (Poynter, 1997, p. 225). Expert witness rules are contained in Federal Rules of Procedure 702, 703, 704, 705, 706 and 803(18).

Traits Associated with Effective Expert Witnesses

The professional literature has identified traits that are associated with effective expert witnesses. Basic commonalties pertaining to expert witness effectiveness have been suggested by scholars. The traits associated with effective expert witnesses that have been identified in the

literature (Berry, 1990; Bronstein, 1999; Deutsch & Sawyer, 1990; Faherty, 1995; Feder, 1991; Iyer, 1993; Matkin, 1983; Matson, 1999; Miller & Bolster, 1977; Poynter, 1997; Quigley, 1991; Ruppel & Kaul, 1982; Sleister, 2000; Strong, 1968; Swenson, 1993; Weikel & Hughes, 1993; Wilkerson, 1997) are as follows:

- Knowledge, education, and training;
- Experience;
- Investigative abilities;
- Ability to render an objective opinion;
- Credibility;
- Ability to provide consistent testimony;
- Education, certifications, and licensure;
- Continuing education;
- Practical work experience;
- Communication skills;
- Professional credibility;
- Ability to conduct a vocational evaluation
- Ability to provide case management
- Knowledge of the psychosocial aspects of disability
- Provide job development and job placement, vocational and therapeutic counseling, and consultation
- Knowledge of the Dictionary of Occupational Titles (1991) and its supplements, with particular emphasis on job requirements, job duties, occupational skills, physical demands, working conditions, and occupationally significant characteristics;

- Knowledge of transferability of skills and worker traits and functions;
- Ability to observe and evaluate personal characteristics, educational level, and past relevant work;
- Current knowledge of industrial and occupational trends and local labor market conditions and experience in these areas; and
- Ability to present client information and conclusions in written and oral form so that various parties can obtain a clear understanding of the client's vocational status.

Employment of Vocational Expert Witnesses

There are three traditional work settings for rehabilitation counselors: public (e.g., state and federal programs); private non-profit (e.g., rehabilitation centers); and private for-profit (e.g., workers' compensation, insurance rehabilitation facilities). Vocational expert witnesses are primarily rehabilitation counselors who work in the private for-profit sector. Vocational expert witnesses are typically used when an injury has had a significant negative impact on the individual's earning potential (Pinder, 1996).

The selection of vocational expert witnesses is generally based on the following criteria:

- Education, certifications and licensure;
- Continuing education;
- Practical work experience;
- Communication skills; and
- Professional credibility.

In the private, for-profit sector, vocational expert witnesses perform work in the following areas (Weed & Field, 2000):

- Social Security Administration hearings;

- Personal injury and product liability litigation;
- Worker's compensation, and;
- Divorce.

Vocational expert witnesses customarily testify regarding the normal physical requirements, work conditions, and occupationally significant characteristics of jobs that the claimant has previously performed. Carter and Saxon (1977) indicated that there are three broad areas encompassing vocational expert witness testimony: "(1) compilation of existent jobs in the national economy; (2) construction of an occupationally significant transferable skills profile; and, (3) synthetical analysis of each specific case" (p. 248).

Information gathered from vocational testing, work evaluation, vocational counseling, work adjustment, and a review of labor market trends is combined to formulate an opinion regarding the client's vocational strengths and weaknesses (Carter & Saxon, 1977; Matkin, 1980; Vallario & Emener, 1991).

Preparation of Expert Witnesses

Blackwell (1992) indicated that preparation is the most important part of presenting effective and persuasive testimony at trial. Matkin (1983) recommended that expert witnesses should determine the expectations of the person requesting their services and determine if these expectations can be fulfilled when preparing for trial. Vocational expert witnesses should prepare the rationale that led to the opinion expressed (Matson, 1999). Vocational expert witnesses should reflect and synthesize their opinions.

The professional literature has cited areas of preparation for expert witnesses (Faherty, 1995; Matkin, 1983; Matson, 1999; Neff, 1982; Paradise, Zweig, & Conway, 1986; Weikel &

Hughes, 1993). Areas of preparation needed for vocational expert witnesses include the following:

- Become familiar with all materials related to the case;
- Have conferences with attorneys;
- Prepare resumes with all current information;
- Have appropriate wardrobe for the court appearance;
- Prepare for the hearing or trial; and
- Maintain a positive attitude.

Conceptual Framework

Social influence is the science of influence, persuasion, and compliance. Social influence scientists believe that knowledge of social influence can help when an individual needs to move someone to adopt a new attitude, belief, or action.

Social influence implies that an individual or collection of individuals affect another individual or collection of individuals in some manner (King, 1975). The influence is said to have occurred whenever an individual's behavior deviates from that predicted to occur based on a prior set of conditions. According to King (1975), the social influence concept includes instances in which the behavior of one person encourages change in the behavior of another person.

Social influence theory has its roots in social psychology (Allport, 1967). In the 1920s, psychologists became interested in the basic psychological processes underlying attitudes and their modification. In the early 1920s and 1930s, studies of attitude change were conducted (Cohen, 1964). Social psychology was born from this movement (Allport, 1967).

In 1955, Deutsch and Gerard attempted to differentiate the multidimensional process of social influence (King, 1975). They identified two types of social influence: informational and normative. Informational social influence was described as an influence to accept information obtained from another as evidence about reality. Informational social influence occurs when the recipient uses the behavior of others to assist him or her in arriving at a decision. The behavior is usually intended (King).

Normative social influence occurs when there is an influence to conform to the positive expectations of another (King). Normative social influence results because of a desire by the receiver to achieve something beyond being correct. Change is seen as a means to a desired goal such as being liked, or getting a promotion and making more money (King). Normative influence occurs when the receiver accepts influence in order to gain some desired goal.

Cohen (1964) indicated that it is possible to say things that one disbelieves to be in compliance with the beliefs of others. It is also possible to accept someone else's belief as evidence of reality even though one does not have a specific motivation to conform to the expectations.

In litigation of a criminal case during a trial, jurors who have different opinions regarding the guilt of a defendant may fall into the category of normative social influence if they change their opinion to conform to the group. The change of opinion may be motivated by a desire to end the deliberation process, or may have occurred because they did not want to be sequestered and wanted to return home. Basically, going against their basic feelings of truth to achieve a desired outcome, an outcome that the majority of the group desired.

In certain cases of mental health law, outcomes of cases may be based on the persuasiveness of the mental health expert (Bank & Poythress, 1982). Expert witnesses in the mental health field can be a persuasive and effective force in the courtroom (Bank & Poythress).

Many factors contribute to an individual being influenced (King, 1975). There are two major areas of social influence and persuasion when discussing expert testimony. One such area is logical appeal (Bank & Poythress, 1982). With logical appeal, the expert presents a series of inductive or deductive arguments that invite reasoning toward the conclusion of the expert (Bank & Poythress). Effective expert witness characteristics such as knowledge, training, experience, and congruency of role are all in the logical appeal area of social influence. These characteristics are logical in nature because they invite reasoning toward the conclusion of the expert. If expert witnesses have knowledge in a particular area, they present logical information that influences the listener. When individuals have training in a specialized area, they have logical factual experience that can give them an edge over individuals who do not have this specialized training. It is logical to trust persons who have specialized training. Logical area of appeal is factual information that can influence listeners.

The second area of social influence and persuasion is emotional appeal (Bank & Poythress, 1982). Emotional appeal utilizes affectively-laden language and innuendo with the goal of arousing certain emotional states in jurors or judges that will facilitate reaching the desired conclusion from the testimony (Bank & Poythress). For example, relatively subtle variations in courtroom speaking styles can influence jurors' reactions and deliberations (Conley, O'Barr, & Lind, 1978). Effective expert characteristics of speaking styles, consistent testimony, and physical attractiveness are all in the emotional appeal area of social influence. These areas are deemed emotional appeal because they are not as factual and logical as the logical appeal

area. They go about influencing in a less obvious way. For example, if two individuals with the same education and training provide testimony, but one has a strong Southern drawl which may distract from testimony, the individual's accent can negatively influence listeners. It is not a logical area of influence but an emotional area of influence. To take this one step further, if the trial is in the North and one of the experts is obviously from the South with the Southern drawl, the jurors or triers of fact may think that the expert does not know or understand the area and the people, which could emotionally influence their decision.

Importance of the Study

Rehabilitation counselors have experienced an increase in litigation in their case work. Rehabilitation counselors are often retained as vocational expert witnesses to present testimony on cases involving personal injury and work-related issues. If particular characteristics of effective vocational expert witnesses are defined, these characteristics can be identified and shared with others in the profession. This study could help individuals who are called upon to provide expert testimony in a court of law to learn which specific skills are deemed important for expert witnesses.

Purpose of the Study

The purpose of this descriptive study was to provide information relative to characteristics of effective vocational expert witnesses. The literature suggests a number of characteristics that may be associated with effective expert witnesses such as gender, age, teaching ability, specialized knowledge, education, credentials, experience, honesty, credibility, objectivity, and dress (Blackwell, 1992; Brodsky, 1999; Isaac & Sognaes, 1983; Poynter, 1997; Warren, 1997). However, empirical evidence is needed to confirm or challenge these suggestions. Additionally, there is a need for research that will summarize perceptions of

characteristics of effective vocational expert witnesses and develop a profile of effective vocational expert witnesses. Such information can be used as an educational tool.

Rehabilitation counselors are called to testify as expert witnesses in workers' compensation and liability trials. Learning the characteristics that effective vocational expert witnesses possess would be advantageous to rehabilitation counseling professionals who are called upon to testify in the area of personal injury litigation. Once the perceived and actual characteristics of effective vocational expert witnesses are identified, it may be possible for rehabilitation counselors to develop such characteristics through education, training, and experience.

Research Question

Are Certified Rehabilitation Counselors who have been nominated by their peers as effective vocational expert witnesses different from non-nominated Certified Rehabilitation Counselors?

Sample

The participants in this study were Certified Rehabilitation Counselors (CRCs) who were members of the International Association of Rehabilitation Professionals Private Sector (IARP). Three hundred forty six (n=346) Certified Rehabilitation Counselors who were members of IARP participated in the study. IARP unites rehabilitation professionals across North America and beyond to promote the availability of effective, interdisciplinary services for persons with disabilities. IARP serves a diverse membership practicing in the fields of long-term disability and disability management consulting, case management and managed care, forensics and expert testimony, life care planning, and Americans with Disabilities Act (ADA) consulting. IARP has 2,800 members in its organization.

There were two response groups in this study:

- A. Participants who were Certified Rehabilitation Counselors and members of IARP.
- B. Participants who were Certified Rehabilitation Counselors and members of IARP and were nominated by their peers as effective expert witnesses.

The responses from groups A and B were compared to determine if there was a difference in the results of individuals who were nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses. The responses from Group B would be expected to reflect traits associated with effective expert witnesses as indicated in the literature more than the responses from Group A.

Delimitations

Pyrczak and Bruce (2000) stated that a delimitation is a deliberate boundary to which a study is confined. The primary delimitation of this study was that the participants in this study, Certified Rehabilitation Counselors, represent a specific population of people. The Rehabilitation Counselor Questionnaire and Rehabilitation Counselor Survey was sent only to Certified Rehabilitation Counselors who were members of the International Association of Rehabilitation Professionals, Private Sector (IARP). The study was confined to this population.

Assumptions of the Study

The following assumptions were made concerning this research study:

- Certified Rehabilitation Counselors who were nominated as expert witnesses by their rehabilitation counseling peers participated in this study.
- Certified Rehabilitation Counselors who have experience as vocational expert witnesses possess specific skills that can be identified.

- The participants provided honest and accurate answers to the instruments and the questionnaire.
- Extraneous variables that might have affected the results of the study were adequately controlled.

Definition of Terms

Administrative Law Judge (ALJ): Judges who preside at administrative hearings of disability cases within the Office of Hearings and Appeals of the Social Security Administration. These judges may confirm prior denials of disability benefits or award benefits. Although ALJ's are employees of the Social Security Administration, they have autonomy in their decision-making. Administrative Law Judges are the individuals who decide whether or not to utilize a rehabilitation expert witness in a particular disability hearing. The judge, and not the rehabilitation expert witness, determines eligibility for disability benefits (Rogers, 2001).

Appeals Council: A division of the Social Security Administration which reviews decisions made by Administrative Law Judges to determine if the basis for the decision is sound, if errors were made in the decisions, and if the cases should be remanded (i.e., returned, to the Office of Hearings and Appeals for further consideration; Blackwell, Field, & Field, 1992).

Disability: Any physical, mental, or emotional condition that is chronic or long lasting, not acute or temporary, which is severe enough to limit the individual's functioning, and which results in or threatens to be a handicap to productive activity (Stokes, 1998).

Defendant: The individual being sued, who is responding to the plaintiff's complaint. The individual from whom the plaintiff seeks relief or recovery (Havranek, 1997).

Expert witness: A person with specialized education, training, or experience who is able to provide information beyond the knowledge of the average person (Havranek, 1997).

Handicap: The effect of a disability on the ability to perform gainful work (Weed & Field, 2000).

Injured worker: A worker who is injured, whether on the job or off the job, and his or her ability to perform his or her usual occupation is impaired (Stokes, 1998).

Jury: A group of citizens who decide the issues or questions of fact at a trial (Weed & Field, 2000).

Liability: All character of debts and obligations; condition of being responsible for a possible or actual loss, penalty, evil, expense, or burden (Weed & Field, 2000).

Litigation: The act of bringing a civil action into court (Stokes, 1998).

Loss of earning: An individual's expected loss of earnings that result from an injury (Weed & Field, 2000).

Office of Hearings and Appeals (OHA): The division of the Social Security Administration which is responsible for hearing disability eligibility cases which have been denied at the initial application level of OHA. This office may also hear cases involving overpayment of benefits or other matters related to disability programs (Blackwell, Field & Field, 1992).

Personal injury: A physical or emotional injury (Stokes, 1998).

Plaintiff: The individual who alleges that he or she has been harmed and brings a lawsuit to seek a remedy for his or her injury (Havranek, 1997).

Private vocational rehabilitation: A private for-profit vocational rehabilitation firm that works with individuals who have been injured or disabled (Weed & Field, 1990).

Rehabilitation: The treatment of individuals who deviate negatively from the majority of society in regard to one or more of the following: physical appearance, physical functioning, intellectual functioning, and behavior (Rubin & Roessler, 2001).

Rehabilitation counselor: A counselor who specializes in working primarily with individuals who are psychologically, mentally, or physically impaired, by helping them to make vocational adjustments. This includes adjustment counseling, career counseling, and rehabilitation planning (Weed & Field, 2000).

Return to work: Being re-employed following an injury or accident. Re-employment can occur in the job prior to injury or a new job (Stokes, 1998).

Social Security Administration (SSA): The federal agency which is responsible for administering a social welfare program entitled Old Age, Survivors, Disability and Health Insurance Program (OASDHI). One of the benefits of this program is disability insurance (Blackwell, Field, & Field 1992).

Social Security Disability Insurance (SSDI): The disability benefits available under the Social Security Disability Insurance program, administered by the Social Security Administration. This program covers workers who have paid into the program.

Testify: The act of providing evidence through testimony given by a competent witness, under oath, as distinguished from evidence derived from writing and other sources (Stokes, 1998).

Transferability of skills: The application of a person's demonstrated work skills from vocationally relevant past jobs to meet the requirements of other skilled or semiskilled jobs for which an individual is not precluded by his or her physical or mental limitations (Skill Requirements, 20 C.F.R. Section 404.1568, 1996). Skill level is a work classification whereby work is defined as unskilled, semiskilled, or skilled according to the skill requirements of the occupation.

Trial: The offering of testimony before a competent trier of fact according to established procedures (Weed & Field, 2000).

Trier of fact: The jury in a jury trial, or the judge in a court trial (Havranek, 1997).

Undue hardship: Defined by the ADA as any action requiring “significant difficulty or expense” when considered in light of factors such as an employer's size, financial resources, and the nature and structure of the employer’s operation (Rubin & Roessler, 2001, p. 105).

Vocational expert witness: One “who provides assistance to courts and attorneys in identifying the effect of injury on a person’s capacity to work, earn money, and/or maintain a quality of life” (Blackwell, 1992, p. 9).

Vocational rehabilitation: The provision of any rehabilitation service, including medical, educational, and social, to a vocationally handicapped person for the purpose of occupational readjustment in work (Weed & Field, 2000).

Workers compensation: A legislative insurance whereby an employee will receive compensation for wages, medical and other costs for an injury without having to prove the employer was negligent (Weed & Field, 2000).

CHAPTER TWO

REVIEW OF THE LITERATURE

Introduction

The purpose of this investigation was to study characteristics associated with effective vocational expert witnesses. This literature review supported the relevance of the study in terms of the current body of knowledge in this area. A review of the literature pertinent to the study is presented in this chapter. The history of rehabilitation counseling is discussed (Bitter, 1979; Gandy, Martin & Hardy, 1999; Leahy & Szymanski, 1995; Lenihan, 1977; Rubin & Roessler, 2001; Weed & Field, 2000; Wright, 1980). A discussion of rehabilitation counseling and types of employment settings for rehabilitation counselors is also presented (Leahy & Szymanski, 1995; Rubin & Roessler, 2001).

The definitions of expert witness and vocational expert witness are presented in this chapter (Blackwell, 1992; Chick, 1972; Copeland, 1993; Matson, 1999; Merenbach & Stephens, 1993; McWilliams, 1990; Perry & Vogel, 1993; Poynter, 1997; Satinder, 1993). This chapter also discusses findings in the literature on traits associated with effective expert witness testimony (Berry, 1990; Bronstein, 1999; Deutsch & Sawyer, 1990; Faherty, 1995; Feder, 1991; Iyer, 1993; Matkin, 1983; Matson, 1999; Miller & Bolster, 1977; Miller & Kaplan, 1996; Murphy, 1993; Neff, 1982; Poynter, 1997; Quigley, 1991; Rubin & Roessler, 1978; Rubin & Roessler, 2001; Ruppel & Kaul, 1982; Saks & Wissler, 1984; Scully, 1982; Sleister, 2000; Strong, 1968; Vogelsang, 2001; Weed & Field, 2000; Weikel & Hughes, 1993; Wilkerson, 1997). Standards for admissibility of expert witness testimony are presented in Chapter Two (Daubert, 1993; Field, 2000; Frye, 1923; Kumho, 1999; Matkin, 1980; Poynter, 1997; Saks & Wissler, 1984; Sleister, 2000). Employment of vocational expert witnesses is discussed (Carter

and Saxon, 1977; Pinder, 1996). Preparation of expert witnesses is also reviewed (Bank, 2001; Blackwell 1992; Carter & Saxon, 1977; Faherty, 1995; Feder, 1991; Matkin, 1980; Matkin, 1983; Matson, 1999; Neff, 1982; Paradise, Conway & Zweig, 1986; Scully, 1982; Vallario & Emener, 1991; Weikel & Hughes, 1993).

Social influence and its relation to rehabilitation counseling and expert witnesses is discussed at the end of this chapter (Allport, 1967; Cohen, 1964; Deutsch & Gerard, 1955; King, 1975; Lambert & Lambert, 1964). Two types of social influence are explained. Two major areas of social influence and persuasion when discussing expert testimony are reviewed (Bank & Poythress, 1982).

History of Rehabilitation Counseling

Wright (1980) reported that rehabilitation counseling emerged as a full-time profession in the early 1900s. According to Leahy and Szymanski (1995), the historical development and trend of rehabilitation counseling practice has been ever expanding. Rehabilitation counseling is a profession in which specialized counselors provide vocational rehabilitation services to individuals who have a disability which causes them to deviate negatively from the majority of society (Rubin & Roessler, 2001). The first efforts at rehabilitation counseling in America were directly related to the passage of the War Risk Insurance Act of 1914 (Weed & Field, 2000). The War Risk Insurance Act created the Federal Board of Vocational Education that later administered the rehabilitation program for World War I veterans and the state-federal program in rehabilitation (Gandy, Martin, & Hardy, 1999). Veterans who were injured while serving in the military were provided rehabilitation services and vocational training (Bitter, 1979). From 1914 until 1991, various laws were passed that

created funds to allow disabled individuals to receive rehabilitation counseling services and reduce discrimination in the workforce based on disability (Rubin & Roessler).

One significant event that occurred that affected the rehabilitation counseling community was the passage of the Social Security Act of 1935, which made rehabilitation counseling a permanent service to be offered to disabled individuals in America (Lenihan, 1977). The Social Security amendments of 1965 ushered in the birth of vocational expert testimony as a function of rehabilitation counselors. These amendments connected Social Security directly to rehabilitation counselors by requiring vocational expert testimony from rehabilitation counselors at Social Security hearings (Rubin & Roessler, 2001). This was the start of rehabilitation counselors being asked to provide vocational expert testimony in a court of law (Rubin & Roessler). Since 1965, rehabilitation counselors have been increasingly called upon to provide vocational expert testimony to courts to help determine the effects of injury or an illness on an individual's capacity to perform work and earn money.

Rehabilitation Counseling

Rubin and Roessler (2001) stated that the goals of rehabilitation counselors are to maximize the person's human potential and to help the person obtain and maintain employment. Although the overall goals of rehabilitation counselors are consistent across employment settings, the specific tasks and amount of activity performed to achieve these goals vary significantly based on the employment setting in which rehabilitation counselors are engaged (Rubin & Roessler).

Leahy and Szymanski (1995) have postulated that employment settings where the practice of rehabilitation counseling takes place and the types of populations with whom rehabilitation counselors work in the rehabilitation process continue to evolve. Rehabilitation

counselors primarily work in the following areas of rehabilitation: public sector, private non-profit sector, and private for-profit sector.

Public Sector

Public sector rehabilitation counselors are employed primarily by federal and state government and provide rehabilitation counseling services to disabled individuals (Rubin & Roessler, 2001). These services may include involvement in education and vocational training programs (Rubin & Roessler).

Private Non-Profit Sector

Rehabilitation counselors in the private non-profit sector may work for private non-profit facilities; for example, a work release program or an independent living facility, such as a group home. They may also work in schools for disabled persons, jails, prisons, and halfway house facilities (Rubin & Roessler, 2001).

Private For-Profit Sector

Insurance System

Rubin and Roessler (2001) stated that rehabilitation counselors working within the insurance system provide services that “return the injured employee to gainful employment in the most expeditious way possible” (p. 479). Rehabilitation counselors work primarily with individuals who have been previously employed and now have an injury that has impaired their ability to work (Rubin & Roessler).

The insurance sector of rehabilitation counseling has been a viable part of the rehabilitation counseling profession since the 1970s. Insurance related rehabilitation counselors work either for private for-profit rehabilitation companies or insurance companies, such as third party insurance administrators.

Private Practice

Rehabilitation counselors may work in private practice providing rehabilitation and related services to insurance companies and insurance related companies, federal and state government programs, and private individuals (Rubin & Roessler, 2001). Rehabilitation counselors in the private practice arena may also provide consultation to industry, business, and government in disability and medical case management (Rubin & Roessler). Rehabilitation counseling services occur in both the insurance and private practice areas of employment. Due to the nature of litigation surrounding an injury and inability to work, rehabilitation counselors working in the private for-profit sector may be asked or required to testify as vocational expert witnesses in a court of law.

Definitions of Expert Witness and Vocational Expert Witness

Expert Witness

Blackwell (1992), Matson (1999), Perry and Vogel (1993), Poynter (1997), and Satinder (1993) have defined an expert witness as an individual who, by reason of education or special training, possesses knowledge of some particular subject area in greater depth than the public at large. Black's Law Dictionary has defined an expert witness as "one who by reason of education or specialized experience possesses superior knowledge regarding a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct opinions" (Copeland, 1993, p. 1007). McWilliams (1990) stated that expert witnesses, by definition, know many things about the subject matter for which they are experts. Expert witness testimony is limited to the specific knowledge and experience of the witness.

According to Merenbach and Stephens (1993), "People from every stratum of life, every occupation, job or hobby on any subject matter qualify as experts" (p. 56). There are expert

witnesses on jogging, bicycles, dancing, solid waste management, speaking, writing, coastal planning, and even skydiving (Poynter, 1997). Although one does not have to be a doctor or a scientist to be an expert witness, one does have to be skilled in a particular area, trade, or profession.

According to Johnson, Johnson, and Little (1994), experts are proficient, smooth, and efficient in the actions they take. Experts are knowledgeable and have techniques that allow them to do an effective job. Experts can plow through irrelevant information to address basic issues or actual problems. Furthermore, experts are adept at recognizing problems, generating alternative solutions, and making good choices among the alternatives.

Expert witnesses must demonstrate mastery of a subject, have a field of expertise, and possess special abilities. Poynter (1997) stated that specific characteristics of expert witnesses are inquisitiveness, writing skills, speaking skills, ability to reason, ability to teach, credibility, prior experience, and proximity.

Vocational Expert Witnesses

According to Chick (1972), “vocational experts are highly skilled professionals who use basic tools and procedures in preparing to function in this role” (p. 32). Expertise in this role is “attained through adequate interest, formal preparation, experience and continual in-service training in the specialized area of vocational counseling, psychology, guidance, and the rehabilitative sciences” (p. 32).

Blackwell (1992) defined the vocational expert witness as one who “provides assistance to courts and attorneys in identifying the effect of injury on a person’s capacity to work, earn money, and/or maintain a quality of life” (p. 9).

Standards for Admissibility of Expert Witness Testimony

Prior to 1993, the majority of Federal courts relied on a 1923 case entitled *Frye v. United States* (1923) pertaining to expert testimony. Poynter (1997) stated that the *Frye* case ruling indicated that proposed scientific testimony be generally accepted by others in the field, specifically that expert testimony be peer-reviewed.

In the 1993 case, *Daubert v. Merrell Dow (Daubert)*, the standard for accepting expert witnesses in Federal Courts was broadened (Field, 2000) which led to an acceptance of any expert who might help the trier of fact (i.e., the judge or jury). The *Daubert* standard followed a four-part “nonexclusive test” for measuring the reliability of expert testimony offered in court (Sleister, 2000), which included the following:

1. Whether the theory or technique on which the testimony is based can be tested;
2. Whether the theory or technique has been subjected to publication and peer review;
3. Whether there is a known or potential rate of error for the theory or technique; and
4. Whether the theory or technique has attained a level of general acceptance in the particular discipline (p. 120).

On March 23, 1999, the United States Supreme Court issued another decision affecting the admissibility of expert witness testimony. This decision applied the tests identified in *Daubert* in 1993 (Field, 2000). *Kumho Tire Company v. Carmichael* (1999) resulted in the Supreme Court’s recognition that *Daubert* created a great deal of uncertainty about the scope and application of expert witness testimony. Most courts have ruled that the standard set forth in *Daubert* applied only to scientific testimony, yet some courts have ruled that it applied to all types of expert testimony. Therefore, in *Kumho*, the Supreme Court ruled that the trial judge is obliged to allow or disallow expert testimony. The trial judge has considerable leeway in

scrutinizing the testimony of the expert (Field). This is applicable to testimony based on technical and other specialized knowledge.

The definition of expert witnesses and the specifics regarding the circumstances in which they might testify, and how, are stated succinctly in Rule 702 of the Federal Rules of Evidence (Saks & Wissler, 1984):

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise (p. 435-436).

As stated by Sleister (2000), the Supreme Court emphasized the importance of reliable expert testimony. The Supreme Court indicated that experts must employ the same level of intellectual rigor in the courtroom that characterizes the practice of experts in their relevant field. Expert testimony should be evaluated whether information is based upon professional studies or personal experience. Experts must first establish a foundation of reliability before being allowed to testify about their observations and conclusions in a particular case. Furthermore, the decision concerning reliability is the exclusive province of the trial judge (Sleister).

Traits Associated with Effective Expert Witnesses

According to Murphy (1993), “the ideal expert witness is a detective, a teacher, and an interpreter” (as cited in Vogelsgang, 2001, p. 93). Expert witnesses must investigate the file material and obtain a good understanding of the case, teach the members of a jury in a court proceeding, and translate the information into language the jury members can understand. Experts must explain the methodology of their investigation in a way that captures the jury

members' interest. Expert witnesses can explain to the members of the jury why their opinion should be accepted.

Expert witnesses are good at reviewing and discarding irrelevant information in order to identify basic issues or actual problems. Expert witnesses are also adept at recognizing problems with which they are familiar, generating alternative solutions, and making good choices among the alternatives (Feder, 1991). According to Poynter (1997), expert witnesses help the jury understand the technical aspects of a case and try to persuade a jury to accept their explanation of technical facts. Expert witnesses help judges or jury members to infer from facts and conclusions which otherwise might not be accessible to them. Additionally, Saks and Wissler (1984) indicated that expert witness interpretations are usually presented as opinions.

The Office of Hearings and Appeals (OHA), which is an area of the Social Security Administration, hires rehabilitation counselors as vocational expert witnesses. According to OHA, the courts have ruled that the most credible and highly qualified vocational expert witnesses are those who possess the following credentials:

- A graduate degree in rehabilitation counseling;
- Experience in counseling and placement of adult handicapped people into jobs;
- Current knowledge and experience with industrial and occupational trends as well as labor market conditions; and
- Knowledge and experience utilizing vocational reference sources.

When providing expert testimony, the literature supports the contention that traits associated with effective expert witnesses are as follows: (a) knowledge, education, and training; (b) experience; (c) investigative orientation; (d) ability to formulate an objective opinion; (e) credibility; and, (f) ability to provide consistent testimony (Berry, 1990; Bronstein,

1999; Deutsch & Sawyer, 1990; Faherty, 1995; Feder, 1991; Iyer, 1993; Matkin, 1983; Matson, 1999; Miller & Bolster, 1977; Poynter, 1997; Quigley, 1991; Ruppel & Kaul, 1982; Sleister, 2000; Strong, 1968; Weikel & Hughes, 1993; Wilkerson, 1997). These traits are consistent among experts in varying fields and are not relegated to one type of expert. Each of the traits of effective expert witnesses and effective vocational expert witnesses is discussed in the following sections.

Knowledge, Education, and Training

Wilkerson (1997) stated that traits of expert witnesses include training or education and sufficient knowledge in their area of expertise to satisfy a judge that the opinion will be helpful in assisting the trier of fact. Wilkerson also indicated that effective expert witnesses should possess academic credentials such as advanced degrees, special areas of study, and patents or inventions.

Matson (1999) postulated that experts are persons who are thoroughly knowledgeable in the subject area in question with a high degree of academic training and experience. Effective experts must be knowledgeable of the specific tasks of their chosen field, while possessing a strong background in their area of expertise.

Rehabilitation counselors are often called vocational experts as their testimony usually surrounds vocational issues. According to Sleister (2000), “vocational expert witnesses should possess the following knowledge and skills in order to develop and present an effective expert opinion” (p. 121) for a judge or jury:

- “Ability to conduct a vocational evaluation; provide case management;
- possess knowledge of the psychosocial aspects of disability; provide job development and job placement, vocational and therapeutic counseling, and consultation.” (p.121).

- “Working knowledge of the Dictionary of Occupational Titles (1991) and its supplements, with particular emphasis on job requirements, job duties, occupational skills, physical demands, working conditions, and occupationally significant characteristics”(p. 121).
- “Working knowledge of transferability of skills and worker traits and functions” (p. 121).
- “Ability to observe and evaluate personal characteristics, educational level, and past relevant work” (p. 121).
- “Current knowledge of industrial and occupational trends and local labor market conditions and experience in these areas” (p. 122).
- “Ability to present client information and conclusions in written (i.e., report) and oral (e.g., deposition, trial) form so that various parties can obtain a clear understanding of the client’s vocational status” (p. 122).

The traits noted above are obtained through education, training, and experience in the field of vocational rehabilitation counseling. Most schools which have degree programs in Rehabilitation Counseling teach the skills needed to acquire such knowledge in these areas.

Experience

Matkin (1983) stated that possession of a degree of expertise is vital for expert witnesses. This expertise can assist the non-expert members of a court and jury in understanding a subject matter not known by common experience or knowledge. This degree of expertise may be based upon training or experience acquired by expert witnesses. Bronstein (1999) indicated that individuals are expert witnesses by knowledge, skill, experience, training, or education. Expert

witnesses need only one of these traits to qualify as an expert witness (Bronstein), although most expert witnesses possess all of them.

Experience provides a foundation for which effective vocational experts can build upon to persuade the trier of fact. Effective vocational expert witnesses who have experience can aid the trier of fact in understanding the facts of a case and may persuade the trier of fact to listen and believe their testimony.

Feder (1991) suggested traits such as training and experience, as well as participation in noteworthy projects and orientations are cited as desired traits of effective expert witnesses. Iyer (1993) added that the most credible experts are those who have worked in the field as practitioners at the time of the incident that triggered the lawsuit. Expert witnesses must also have the writing ability to express their opinion in a report and must have the speaking ability to relay the information effectively. Expert witnesses must also possess the teaching ability to relay their opinion in a manner that the listener will understand.

Vocational expert witnesses who have knowledge and experience may increase the persuasion of the trier of fact's perceptions. If the experts have published literature, especially literature that is consistent with the areas of the case for which they are testifying, persuasion will be greater.

Vocational expert witnesses who can write and speak in a manner that is understood by the trier of fact, will have more persuasion than experts who speak and write in ways that are above the understanding of the trier of fact. If the trier of fact does not understand what is said, the vocational expert witness' persuasion and influence will be limited.

Investigative Abilities

Poynter (1997) indicated that inquisitiveness is a trait associated with effective expert witnesses. Inquisitiveness will provide the motivation to investigate and research a matter extensively.

Poynter (1997) stated that effective expert witnesses need to investigate an event, research everything written on the subject, administer tests, and analyze the findings. He also indicated that expert witnesses evaluate the case theory of both the plaintiff and the defense to obtain their opinion, and then write a report on the findings of their investigation. Expert witnesses should be able to educate a judge or jury on the findings of their investigation and opinion.

Effective vocational expert witnesses must thoroughly examine the records associated with their area of expertise. They must review everything associated with an individual's work history, education, and physician's work restrictions. They must review all reports that have information that will aid in forming an opinion. It is important to read both negative and positive information, not just information that supports the side that retained the expert. The vocational expert's opinion should be based on all the information after thoroughly reviewing all the documentation. Tests are administered when additional information about education and interest and ability level is needed. Interpretation of the tests is required so that the results may be explained in a way that will help the trier of fact understand how the results are related to the opinion of the expert. Reviewing all the information and presenting it in a logical manner that the trier of fact can understand will increase persuasion and social influence.

Objective Opinions

According to Faherty (1995), expert witnesses are individuals who express an opinion on any relevant issue falling within the scope of their expertise based upon an assumed set of facts. Expert witnesses need not have personal knowledge of those facts. Expert witnesses are viewed as impartial, disinterested parties who are simply trying to explain to a judge or jury why and how things happened.

Quigley (1991) suggested that expert witnesses must be experts for either the plaintiff or for the defendant. However, it is very important that expert witnesses be objective in formulating their opinions. Berry (1990) stated that the role of expert witnesses in a court proceeding is that of advocate for the facts, or truth, as discovered through evaluation of the client.

According to Weikel and Hughes (1993), expert witnesses should be well prepared for rendering their objective opinions by studying all relevant evidence carefully to reach conclusions. An opinion should be based on scientific fact, knowledge in the field, and evaluation of the subject. The authors also stated that expert witnesses should be versed on the specifics of any instruments used. Faherty (1995) stated that expert witnesses should never write anything they would not want others to read, and that cross-referenced materials should not be brought to the courtroom when appearing in court to provide testimony.

Effective vocational expert witnesses must be objective in their opinions. They consider all information, both negative and positive, prior to developing their opinions. They are able to say why they believe a certain way and how they formulated their opinions based on the facts of a particular case. If their opinion varies from a specific report or statement in the records they will be able to explain why the record does not change their opinion. Clarity in explaining the

system they used to formulate their vocational opinion to the trier of fact in a way that is understandable is necessary.

Credibility

Issues regarding witness credibility are a crucial aspect of courtroom trials. Because factual information and evidence are necessarily incomplete and contradictory, “those charged with decision making, whether they may be judges or jurors, must not only weigh the information and evidence, but must also evaluate the veracity of the opposing evidential and informational sources” (Miller & Bolster, 1977, p. 28).

Credibility is cited in the literature as an important trait of effective expert witnesses. According to Feder (1991), credibility is comprised of believability, integrity, credentials, ability, experience, honesty, sincerity, objectivity, and consistency. Credibility is enhanced by being knowledgeable, having up-to-date information, and demonstrating professional practice and diligence (Feder). Weikel and Hughes (1993) indicated that demonstrating professionalism, being honest, and admitting when you do not know the answer to a question are important traits for expert witnesses.

Vocational expert witnesses need credibility. They present their testimony in an honest and sincere way to increase credibility which will improve persuasion and social influence. Being knowledgeable in the field and being consistent in testimony aids in credibility. If an opinion is formulated that is different than a previous opinion based on a similar set of facts, vocational expert witnesses would be viewed as lacking in credibility and their ability to persuade the trier of fact would be limited.

Berry (1990) stated that successful expert witnesses have the limitations of a case clearly in mind when working with an attorney. It is important for expert witnesses to understand the limitations so that they can appear to a judge or jury as credible witnesses.

When vocational expert witnesses investigate a particular case and read all the information associated with that case, they will learn the positive and negative aspects of the case as well as learn of the material that supports and refutes their opinion. Vocational expert witnesses will be able to discuss information that refutes their opinion and why they are refuting the information, as well as able to discuss information that supports their opinion. Ignoring refuting facts will hinder the vocational expert's ability to persuade the trier of fact.

Berry (1990) indicated that expert witnesses are prepared to present objective, unbiased renderings of information and their opinions. Expert witnesses must have a working knowledge of the most current literature, procedures, and tests used to evaluate a referred person in order to present credible testimony. Feder (1991) stated that it is also important for expert witnesses to be viewed as credible professionals interested in a factual presentation, not as advocates for either side.

Deutsch and Sawyer (1990) defined "credibility" as a combination of honesty and professionalism. In this context, credibility means that opposing counsel is unable to discredit expert witnesses regarding their credentials, experience, or knowledge. A typical challenge to the credibility of expert witnesses is to pose questions accusing them of bias. Opposing attorneys may question expert witnesses about credibility based on being paid for their testimony, and whether they are biased because the defense or plaintiff is paying for their services. Opposing attorneys may also raise a question of credibility if expert witnesses perform more work for one side, such as plaintiff or defense, indicating they are not of an objective

persuasion (Sleister, 2000). Vocational expert witnesses who present testimony for both plaintiffs and defendants are more credible than vocational expert witnesses who present testimony for only one side.

Consistent Testimony

Feder (1991) suggested that consistent testimony at trial is vital and that inconsistent testimony between deposition and trial is hazardous. If experts change their opinions without new information being introduced, their credibility will be questioned (Feder).

Consistent testimony is demonstrated through attitude and manner of speaking. Faherty (1995) stressed that expert witnesses should maintain a positive attitude, use a well-modulated voice, speak clearly, and speak in a voice that is slow and loud enough to be heard. Speech should be slow, clear, and natural. Feder (1991) and Weikel and Hughes (1993) suggested that expert witnesses should answer only the questions that they are asked. Expert witnesses should not answer too quickly, not look to the attorney for assistance, and know it is not necessary to have an answer for every question. It is a good idea for expert witnesses to pause for a moment before answering questions that are posed to them (Feder). Vocational expert witnesses must be consistent in their opinions and testimony from case to case. If vocational expert witnesses have an opinion on a case that is different from another opinion they offered with a similar set of facts, this can be used to demonstrate that they have a lack of credibility and that they are not consistent in their opinions. If vocational expert witnesses speak too fast or are unclear, what they say will not be understood and could reduce their ability to persuade and influence a judge or jury.

Ruppel and Kaul (1982) found that those expert witnesses who demonstrated congruency of role in a court of law promote influence to a greater extent than did expert witnesses who were

incongruent in their role as expert witnesses. Congruency of role can be exhibited through rendering an objective opinion and providing consistent testimony.

Association membership and publication are activities that establish congruency of role for expert witnesses. Association membership, including committee participation or chairmanship, is beneficial to expert witnesses (Ruppel & Kaul). Publications, such as papers written in the area of expertise, increase the expert witnesses' credibility to a judge and jury because this demonstrates additional knowledge of the subject in which testimony is requested (Ruppel & Kaul).

Vocational expert witnesses who demonstrate membership in appropriate organizations and participate on committees associated with rehabilitation counseling demonstrate congruency of role as expert witnesses. Publishing in an area that testimony is provided will increase congruency and influence.

Employment of Vocational Expert Witnesses

There are three traditional work settings for rehabilitation counselors: public (e.g., state and federal programs); private non-profit (e.g., rehabilitation centers); and private for-profit (e.g., workers' compensation, insurance rehabilitation facilities). The majority of vocational expert witnesses are employed in the private for-profit work sector. In the private for-profit sector, vocational expert witnesses perform work in the following areas (Weed & Field, 2000):

- Social Security Administration Hearings;
- Personal Injury and Production Liability Litigation;
- Worker's Compensation; and
- Divorce.

Purpose of Vocational Expert Witnesses

Vocational expert witnesses primarily work in the private for-profit sector and are typically retained when an injury has had a significant negative impact on an individual's earning potential (Pinder, 1996). For example, if a motorcycle mechanic suffers serious injury to a hand, employability is likely to be severely damaged. Vocational expert witnesses would then determine the individual's earning potential as a motorcycle mechanic.

Vocational expert witnesses customarily testify as to the normal physical requirements, work conditions, and occupationally significant characteristics of jobs that an individual has previously performed. Vocational expert witnesses must also be prepared to testify as to whether jobs exist that an individual can perform despite the disability of the individual.

Workers' compensation systems typically provide an injured employee with weekly compensation payments for lost wage earnings, full payment of related medical expenses, and in some cases rehabilitation services (Sleister, 2000). The purpose of a vocational expert witness who represents the state in the workers' compensation field is to demonstrate that substantial gainful work is available to an injured worker. Although an individual is injured on the job, the individual may still be able to perform work activity. A vocational expert witness' testimony is used by a judge to help determine if an individual can work or needs to remain on workers' compensation benefits due to an inability to obtain and maintain substantial gainful employment. Permanent and total disability is determined if a commissioner does not have evidence that a stable labor market exists for a claimant. Hence, insurance carriers benefit from employing vocational expert witnesses to conduct labor market surveys to provide evidence of the existence of jobs (Sleister).

When vocational expert witnesses are hired to testify in divorce cases, one spouse is often fully employed, while the other is either unemployed or underemployed. Vocational expert witnesses may be retained to conduct a vocational evaluation, which includes vocational testing, to determine vocational alternatives and the cost of those alternatives for the underemployed or unemployed individual who has been evaluated. Specifically, vocational expert witnesses evaluate employability.

Selection of Vocational Expert Witnesses

The selection of vocational expert witnesses may vary based on the area in which vocational experts are employed in the private for-profit sector of rehabilitation counseling. The selection of rehabilitation counselors as vocational expert witnesses is generally based on the following criteria:

- Qualifications and certifications;
- Continuing education;
- Practical work experiences;
- Communication skills; and
- Professional credibility.

The process is similar for the selection of vocational expert witnesses in personal injury, product liability, and workers' compensation liability litigation. Vocational expert witnesses may be hired by attorneys assigned to a case or by insurance companies for either the plaintiff or defendant in a lawsuit to render an opinion as to whether the rehabilitation counseling services provided meet acceptable standard of practice (McWilliams, 1990).

An insurance company or attorney may select vocational expert witnesses from a list of approved vendors that was compiled by a company based on the vendors' price, experience, and

location. If a company does not have a list of approved vocational expert witnesses, then an insurance company adjuster or attorney may select vocational expert witnesses based on previous use of vocational expert witnesses. Additionally, referral for vocational expert witness work may be the result of (a) marketing referral sources by vocational expert witnesses, or (b) company marketers who provided information specific to the services available by specific vocational expert witnesses.

The selection of vocational expert witnesses for Social Security hearings is completed by the Social Security Administration. The Social Security Administration selects vocational expert witnesses based on their education, work experience, and certifications. This process occurs on an irregular basis and depends on the given need at a particular time in a particular area. However, once selected, vocational expert witnesses are given a three-year contract that is renewable.

The selection of vocational expert witnesses in divorce cases is most often conducted by the attorney representing the individual in the case who is to be assessed. Vocational expert witnesses may also be retained by an opposing attorney, if an attorney is attempting to refute the information provided to a court by the opposing side on the case.

Certifications

Several certifications are available to private rehabilitation counselors. Those certifications include Certified Vocational Evaluation (CVE), Certified Vocational Specialist (CVS), Certified Case Manager (CCM), and Board Certified Vocational Expert (BCVE). Additional certifications in rehabilitation add credibility as a vocational expert witness.

Rehabilitation counselors who provide testimony as expert witnesses in personal injury litigation, workers' compensation, Social Security hearings, and divorce cases usually possess a

Certified Rehabilitation Counselor (CRC) credential and have at least a master's degree in rehabilitation counseling or a closely related field. In divorce cases, additional certifications such as the Certified Vocational Specialist (CVS) or Certified Vocational Evaluator (CVE) are beneficial because the claimant is usually tested for vocational skills and work potential. Certifications and licenses aid in enhancing credibility of a rehabilitation counselor and are helpful when applying to become an expert witness with the Social Security Administration, but are not necessary in order to testify.

Process of Expert Witness Cases

Social Security Administration Hearings

It is the function of vocational expert witnesses to testify as to whether an individual is able to engage in specified occupations with only the normal period of training and orientation usually given new employees (Janes, 1985). Vocational expert witnesses are neither expected nor authorized to testify as to whether the claimant is disabled. The Social Security Administration's Hearing Examiner alone has the responsibility for deciding this ultimate legal issue pertaining to disability (Janes). Similarly, vocational expert witnesses are not expected to express an opinion regarding the severity of the claimant's impairments, physical or mental. Vocational expert witness testimony will usually be predicated on assumptions posed by a hearing examiner based on a claimant's residual functional capacity. "The vocational expert has a dual task: (1) to evaluate and analyze the claimant's capabilities and experience, and (2) to furnish accurate occupational information tailored to fit both the claimant and the labor market in his region, as well as nationally" (Janes, p. 8).

Personal Injury, Product Liability, and Workers' Compensation Litigation

Vocational expert witnesses in litigation cases will offer opinions relevant to

one of the disputed issues in the case, such as work status or employability status. Vocational expert witness' opinions will be based upon an assumed set of facts.

From the perspective of vocational expert witnesses, discovery is the process by which the other side finds out what experts think, why experts think it, and the weak points in the experts' opinion (Bronstein, 1999). The identity of vocational expert witnesses may be obtained by opposing attorneys within the answers to interrogatories, by production of vocational expert witness' reports in response to requests for production of documents, or through sworn testimony by vocational expert witnesses during the taking of their deposition.

Vocational experts are presumed to be impartial, disinterested witnesses who are simply explaining why and how things happen (Poynter, 1997). The Federal Rules of Evidence that govern expert witnesses are Rules 702, 703, 704, 705, and 706. State rules are often the same or similar, but variations do exist in some jurisdictions (Vogelsgang, 2001).

Testimony of expert witnesses may be provided by either interrogation by the attorney for the plaintiff or defendant during the taking of a deposition or during testimony in a courtroom. A deposition is a type of pretrial discovery process in which opposing attorneys attempt to learn what expert witnesses will be saying in their testimony during a hearing or trial (Vogelsgang, 2001). The parties deposing expert witnesses want to learn and clarify the opinion, the basis for the opinion, and how the opinion was formed (i.e., the methodology used). Attorneys attempt to discover what records vocational expert witnesses have reviewed, who was interviewed by vocational expert witnesses, or what reports the vocational expert witnesses have written. They use the deposition to try to uncover, in advance, the opinions and conclusions of vocational expert witnesses (Vogelsgang).

Divorce Litigation

Vocational evaluations may be requested by individuals who are seeking a divorce. A vocational evaluation aids a judge in determining issues and decisions related to whether a spouse being evaluated should be awarded alimony. If a spouse has not worked during the marriage, vocational expert witnesses may assess the individual and provide information based on current and future earnings and employability. Alimony may be determined on what the individual can earn based on such factors as education and previous work experience, rather than what they have earned during the marriage.

Divorce cases are referred to vocational expert witnesses by an attorney requesting a vocational evaluation. The referral is usually performed through a telephone call. An appointment to perform an initial assessment of the individual is scheduled, an assessment is performed, and an assessment report is written.

Vocational expert witness reports indicate vocational ability at the present time and, if appropriate, following vocational intervention. Vocational expert witness reports are utilized to determine alimony based on a spouse's ability to earn a living.

Appearances Before Judges

Social Security Administration Hearings

Vocational expert witnesses appear before an Administrative Law Judge (ALJ) when testifying at Social Security Hearings. The ALJ provides a decision regarding whether an individual will receive Social Security benefits based on the merits of a case. Vocational expert witnesses provide information to the judge to aid in the decision making process. If an individual is unhappy with the decision of the ALJ, then the individual may seek reconsideration of the agency's administrative decision. The ALJ's judicial opinion is presumed to protect the rights of

the individual. Additionally, Social Security policy and practice, like those of other governmental agencies, are subject to monitoring by administrative law, the hearing process, and the potential of an individual appealing to the federal courts (Janes, 1985).

Personal Injury, Product Liability, and Workers' Compensation Litigation

In workers' compensation cases, vocational expert witnesses may be subpoenaed to appear before a judge by plaintiff or defense attorneys, customarily by defense attorneys representing the insurance company. Vocational expert witnesses are called to testify on the rehabilitation activity performed for the injured worker and an injured worker's response to these services.

Divorce Litigation

In divorce litigation vocational expert witnesses testify before a judge. Vocational evaluations are requested by individuals who are seeking a divorce. A vocational evaluation aids a judge in determining issues and decisions related to whether a spouse being evaluated should be awarded alimony. Vocational expert witnesses report their opinions of vocational ability. Alimony issues may be decided based on the opinions of vocational expert witnesses.

Preparation of Expert Witnesses

A review of the literature presents a plethora of findings regarding suggested areas of preparation for vocational expert witnesses. This section provides an overview of suggestions proposed by scholars who assist vocational expert witnesses in providing effective testimony.

Matkin (1983) recommended that in preparation for trial, testimony vocational expert witnesses should determine the expectations of the person requesting their services and determine if these expectations can be fulfilled. Attorneys outline the facts of the case and may

express their opinion of the case and their planned strategy to vocational expert witnesses (Scully, 1982). Rehabilitation expert witnesses should know their boundaries and not cross them.

Vocational expert witnesses must be prepared to testify as to the physical requirements, work conditions, and occupationally significant characteristics of jobs that a claimant has previously performed. Vocational expert witnesses must also be prepared to testify as to whether there are jobs in existence that an injured individual may be able to perform. According to Matkin (1980), there are three broad categories encompassing vocational counseling expert witness testimony: (1) compilation of existent jobs in the economy; (2) development of an occupationally significant transferable skills analysis profile; and, (3) analysis of each specific case. Information gathered from vocational testing, work evaluation, vocational counseling, work adjustment, and a review of labor market trends is combined to formulate an opinion regarding the client's vocational strengths and weaknesses (Carter & Saxon, 1977; Matkin, 1980; Vallario & Emener, 1991).

Blackwell (1992) indicated that preparation is the most important part of presenting effective and persuasive testimony at trial. Blackwell recommended the following activities in preparation for providing expert witness testimony:

- Review the procedures of trial and basic testifying rules.
- Know legal issues involved and applicable law.
- Have a clear understanding of your attorney's objectives and expectations.
- Understand general legal definitions.
- Refresh your memory by reading your entire file before deposition or trial.
- Compile an index for easy identification of documents.
- Base opinion on legally permissible grounds.

- Practice direct examination testimony with the attorney in the same manner and form you will use at trial.
- Obtain information about opposing attorneys, the judge, jurors, and opposing experts. Ask about judge's preferences.
- Suggest and prepare exhibits to illustrate testimony.
- Make sure the evaluation was thorough.
- Discuss the opposing attorney's practices and approach regarding cross-examination and obtain suggestions on how to handle the attorney's questions.
- Anticipate cross-examination questions and prepare answers for those anticipated questions.
- Review your deposition if one was conducted, and formulate explanations for difficult areas.
- Research and write all the facts so that you can provide your answers quickly if asked.
- Have credible explanations in response to potential areas of attack.
- Coordinate work with other experts being used so that information is consistent and not redundant.

Vocational expert witnesses should reflect and synthesize their opinions and basis for their opinions. Vocational expert witnesses should prepare the rationale that led to the opinions they will express. Matson (1999) postulated that trial preparation is the time when opinions can be practiced and perfected for presentation.

Faherty (1995) recommended that vocational expert witnesses refrain from writing down anything that they would not want someone to read. All case materials are discoverable and can

be used in a court of law by opposing counsel to discredit vocational expert witnesses. Additionally, cross-referenced material should not be brought to the courtroom.

Exhibits

Feder (1991) stated that prior to trial, vocational expert witnesses often prepare exhibits and demonstrative charts, tests, and documents. The exhibits must be made available to the opposing counsel, who must approve them prior to trial.

Familiarity with Material

Vocational expert witnesses must master the facts of a case. According to Faherty (1995), vocational expert witnesses should be familiar with the issues of a case, the mechanics of the process, the best technique to use when answering questions, and information about the opposing attorney. Faherty also stated that the greatest anxiety reducer is being thoroughly familiar with the material related to the testimony. Presenting testimony in court should be thought of as an opportunity to educate. However, the audience is the judge or jury, rather than a client, family member, or college student.

Weikel and Hughes (1993) suggested that vocational expert witnesses should review their notes and other materials prior to a deposition, hearing, or court appearance. Vocational expert witnesses should make sure that their files include all documents and tests related to the case. Furthermore, Weikel and Hughes recommended that vocational expert witnesses have an unmarked copy of their report with them at all appearances, including findings and opinions. Matkin (1983) suggested a review of all records related to the medical, psychological, social, vocational, and educational data pertaining to the individual. Vocationally relevant material should be summarized in a report and citations of related literature should be prepared, if needed, to support opinions.

Testimony Preparation with Attorney

Neff (1982) stated that at three to four weeks before the trial, vocational expert witnesses should refresh their recollection of the events and facts about which testimony will be given. It is important for vocational expert witnesses to have a pretrial conference with the attorney involved in the case to practice their testimony. Faherty (1995) recommended that a mock testimony session be held. If at all possible, it is suggested that vocational expert witnesses visit and view the actual courtroom where the testimony will take place.

Faherty (1995) suggested that a preparation meeting take place one or two days prior to testifying between the vocational expert witness and the attorney who retained the expert. The purpose for the meeting is to review the information, prepare for the kinds of questions that may be asked, and discuss potential responses (Faherty). Weikel and Hughes (1993) suggested that in final preparation for trial, a vocational expert witness should meet with the retaining attorney for a dry run of anticipated questioning. Practicing for testimony is an excellent opportunity for vocational expert witnesses to learn

- the issues of the case;
- the mechanics of the process;
- the best techniques to answer questions; and
- the opposing attorney's style.

A list of questions that indicate what will be asked during the testimony should be obtained by vocational expert witnesses from the counsel who retained them (Faherty, 1995, Matkin, 1983). Neff (1982) stated that vocational expert witnesses need to know which questions the retaining counsel will ask and need to feel reasonably prepared for their role in the case. Matson (1999) recommended that vocational expert witnesses compile a complete list of

questions that they want asked during direct examination by the attorney who retained them. Testimony should be disclosed and discussed with counsel, even that which might be damaging to the case.

Presenting Resume

Vocational expert witnesses may be requested to provide their resumes or curriculum vitae to both plaintiff and defense attorneys. Matkin (1983) suggested that vocational expert witnesses develop two resumes: one should be a detailed description of experience and education; the second should be a one-page summary. Matkin (1983) indicated that a short one-page resume is preferred. A long and detailed resume may open vocational expert witnesses to numerous questions that may be intended to discredit or upset them during testimony. Faherty (1995) reported that the more information provided to the opposing counsel, the more leverage the opposing counsel may have to unnerve expert witnesses during testimony. If the opposing attorney requests more information, it should be provided at a later date.

Prior to the trial or deposition, it is crucial for vocational expert witnesses to update and carefully check the accuracy of their resumes. Failure to do so can result in needless damage to vocational expert witnesses' credibility that could be easily avoided through advance preparation. According to Blackwell (1992), vocational expert witnesses may be asked about the following:

- Education and professional training;
- Work experience, job titles and responsibilities, and reasons for changing jobs;
- Professional activities, awards and honors, membership on any professional boards, societies, or peer review organizations, publications, teaching experience; and
- Prior experience as an expert (p. 11).

Physical Attractiveness

Physical attractiveness was found to be a strong positive influence on personal, but not professional, attributes (Paradise, Conway, & Zweig, 1986). The desired attributes for an expert are that of a middle-aged person who wears glasses and dresses in a dark, three-piece suit and carries a briefcase (Faherty, 1995; Matson, 1999).

Faherty (1995) indicated that business dress is recommended for expert witnesses. Matson (1999) stated that good expert witnesses act and look dignified, dress in good taste, and have a confident demeanor and attitude. Flashy jewelry and noisy accessories should be avoided (Faherty, 1995).

Presentation During Testimony

Presentation of expert witnesses during testimony can have an impact, positive or negative, on the judge or jury's opinion of the testimony and ultimately the decision of the case. Presentation and testimony provided are vital functions to be considered by expert witnesses. Projecting a positive attitude, confidence, and a professional demeanor are recommended by the literature. Gestures should be conservative and one's voice should be well modulated. Expert witnesses should look the questioner in the eye and have a pleasant expression (Faherty, 1995).

Demeanor and Communication Skills

One of an opposing attorney's goals at a deposition is to try to determine the level of credibility of expert witnesses when they appear at trial in front of a jury. Demeanor and communication skills are important factors in this determination. Attorneys want to know if expert witnesses are attractive and well groomed, communicate well, and are arrogant or evasive. Attorneys want to know how expert witnesses respond to surprise questions and if expert witnesses are prepared and well organized. How expert witnesses appear in front of a judge or

jury is crucial information to the attorney for determining cross-examination strategy and for evaluating the settlement value of a case.

Expert witnesses should strive to achieve a professional tone of quiet confidence. They should be careful not to cross the line from quiet confidence to arrogance. Expert witnesses must maintain strict control over their responses. To do this, they must concentrate and focus on the questions being asked. Expert witnesses must remember that they are experts, not advocates. Their role at deposition or trial is to answer the questions propounded to them truthfully, simply, and directly. Expert witnesses need to be polite and maintain their dignity. They should not be argumentative and should not ramble when answering open-ended questions. Expert witnesses should avoid, where possible, absolute words such as always and never. Absolute words are frequently an invitation to cross-examination by counsel. If expert witnesses make a mistake, they should correct their errors. If a mistake is discovered after the deposition concludes, expert witnesses should notify counsel and correct the deposition transcript.

In brief, the purpose of cross-examination is to bring forth any aspects of the testimony that may be impeachable; that is, either inaccurate or biased. By testing the credibility of witnesses, whether lay or expert, jurors can most accurately appraise the value of their testimony. This, in turn, affords the court a greater opportunity to arrive at the truth (Bank, 2001). Bank postulated that if expert witnesses cannot communicate their expertise in a clear and convincing fashion, the value of their knowledge to a court will be severely limited.

Overall, expert witnesses who are effective communicators are best able to convey their opinions accurately and thus prevent testimony from being distorted during direct examination, cross-examination, and, to a lesser extent, closing arguments. The process of testifying persuasively and ethically remains the same, regardless of the legal issue (Bank & Poythress,

1982). Courtroom verbal exchanges can be explained by three components: the speaker, the message, and the audience. In this instance the speaker is the expert witness, the message is the testimony, and the audience is the judge or jury. When testimony is concluded, expert witnesses should leave the courtroom unless instructed to remain. Expert witnesses who sit by an attorney or others involved in a case risk being perceived as overly involved or biased (Bank, 2001).

Answering Questions

According to Bank and Poythress (1982), testimony is likely to be most effective if the following three rules are followed when responding to questions:

1. Listen to the entire question and answer only that question.
2. Answer truthfully and carefully.
3. If a question is not understood, don't answer it.

It is recommended that expert witnesses take their time, not be rushed, and pause before answering questions. A pause helps expert witnesses to form their thoughts correctly. Matkin (1983) suggested that when answering questions, expert witnesses should answer deliberately and thoughtfully, and request clarification if the question is not clear.

Expert witnesses should answer questions that are within their area of expertise. Expert witnesses should answer only what is asked and be prepared to change their opinion if new information is presented that was not previously reviewed. Faherty (1995) suggested that expert witnesses carefully examine any documents handed to them prior to answering questions related to those documents (Faherty).

Matkin (1983) recommended that expert witnesses never answer any questions until the questions are understood. Expert witnesses should never base opinions on the average person or

say that payment is received for testimony. Testimony cannot be bought, but time for preparation and knowledge gained through experience can be purchased.

Expert witnesses may be questioned about their background, education, training, or experience. Attorneys may question their experience with situations matching, or closely resembling, the current case circumstances. The information obtained during a deposition can be used during the trial in an effort to lessen expert witnesses' credibility.

When professionals agree to become expert witnesses in a case, they can expect to be closely questioned on the subject of bias. They must accept this challenge as being an integral part of being an expert witness. Often, opposing attorneys accuse expert witnesses of bias based on the fact that they receive a fee and income for their testimony. Additionally, the propensity for testifying only for plaintiffs or defendants, any personal interest in the subject matter of the litigation, or the individual or corporate relationships expert witnesses may have, are often addressed by opposing attorneys.

Expert witnesses in litigation will offer opinions relevant to one of the disputed issues in the case such as work status and employability. Their opinion will be based upon an assumed set of facts as their testimony is only as good as the factual assumptions upon which it is based. The factual assumptions that expert witnesses will make in forming their opinions are, therefore, a legitimate area of inquiry during the deposition and trial. Expert witnesses are obligated to truthfully answer the questions put forth to them.

Document Review

Expert witnesses should review and attempt to memorize crucial dates in a case. Important dates to remember and note are (1) the date the counsel contacted the expert; (2) when the expert was retained; (3) when the records were received and from whom; (4) when the

expert's opinion was formed; (5) the date of the accident in question; and (6) the key tests that were performed. Accurate testimony regarding dates will increase an expert witness's credibility. The important facts of a case need to be mastered.

Expert witnesses should know the facts of a case and be prepared to provide their opinion as well as those of the expert witnesses for the opposing party. Expert witnesses will need to possess an absolute mastery of their own opinions and reports. Expert witnesses must thoroughly prepare prior to deposition or trial. To excel during depositions or trial, expert witnesses must be able to answer counsel's questions directly and truthfully without making mistakes or falling victim to an attorney's tactics, traps, or trick questions. Expert witnesses must answer questions truthfully. Those who do not tell the truth are eventually discovered and discredited.

Practicing Testimony

Blackwell (1992) indicated that the best preparation is "practice, practice, practice" and that expert witnesses should not try to "wing it" (p. 32). When expert witnesses take the witness stand, they should

- Speak clearly and loudly enough.
- Speak in their own style and words.
- Listen carefully to each question.
- Answer directly and simply.
- Whenever possible, give positive, definite answers.
- Avoid exaggerations.
- Correct wrong answers or statements.
- Immediately stop when the judge or hearing officer interrupts testimony.
- Refrain from asking the judge or hearing officer for advice.

- Demonstrate consistent politeness.
- Not try to win the case.
- Not repeat the questions.
- Present consistent style and mannerisms.
- If feeling fatigued, nervous, or angry, request a break to get water or go to the bathroom.

Social Influence

Social influence implies that an individual or collection of individuals affect another individual or collection of individuals in some manner (King, 1975). The influence is said to have occurred whenever an individual's behavior deviates from that predicted to occur based on a prior set of conditions. According to King, the social influence concept includes all instances in which the behavior of one person induces changes in the state of another person. Some examples of social influence include

- A political candidate's campaign literature persuades you to vote for him or her.
- A child imitates his or her parents.
- A liberal political science professor's lectures result in your registering as a Democrat.

Social influence theory has its roots in social psychology (Allport, 1967). In the 1920s, psychologists became interested in the basic psychological processes underlying attitudes and their modification. In the early 1920s and 1930s, studies of attitude change were conducted (Cohen, 1964). Social psychology was born from this movement (Allport, 1967).

“Social psychology is the experimental study of individuals in their social and cultural settings” (Lambert & Lambert, 1964, p. 1). Allport (1967) indicated that social psychologists

believe that behavior in general may be regarded as the interplay of stimulation and reaction between the individual and the social portion of their environment.

In 1955, Deutsch and Gerard attempted to differentiate the multidimensional process of social influence (King, 1975). The authors identified two types of social influence: informational and normative. Informational social influence was described as an influence to accept information obtained from another as evidence about reality. Informational social influence occurs when the recipient uses the behavior of others to assist him or her in arriving at a decision. The behavior is usually intended (King).

Normative social influence occurs when there is an influence to conform to the positive expectations of another (King, 1975). Normative social influence results because of a desire by the receiver to achieve something beyond being correct (King). Change is seen as a means to a desired goal such as being liked, getting a promotion, or making money (King). Normative influence occurs when the receiver accepts influence in order to gain some desired goal.

Cohen (1964) indicated that it is possible to say things that one disbelieves, but which agree with the beliefs of others. It is also possible to accept someone else's belief as evidence of reality even though one does not have a specific motivation to conform to the expectations. It is noted that a good deal of what is ordinarily considered conformity appears to be related to the judgments of others as factors to be weighed in making one's own judgments. Cohen stated, "To the degree that we see other people as motivated and competent to judge accurately, we use them as a basis for our own judgments" (p. 25). Cohen also stated that our entire experience of socialization teaches us that perceptions and judgments of others are often reliable sources of evidence about reality.

In litigation of a case during a trial, a juror who has a different opinion regarding the guilt of a defendant may fall in the category of normative social influence if he or she changes an opinion to conform to the group. The juror's change of opinion may be motivated by a desire to end the deliberation process and to end being sequestered so he or she can return home.

In certain cases of mental health law, outcomes of cases may be based on the persuasiveness of the mental health expert. Expert witnesses in the mental health field can be persuasive and effective forces in the courtroom. Even the most vacuous testimony can be persuasive and influential in the attitudes, opinions, or behaviors of others (Bank & Poythress).

Communication and social influence are interrelated (King, 1975). To study influence one must first study communication, for influence cannot occur without some form of communication (King). Characteristics of social influence and communication are

- A transactional process, which means that social influence and communication do not have a beginning or an end. Social influence is consistently moving. It is not static or at rest.
- Inevitable, in that an individual cannot not communicate or influence.
- Affected by meaning phenomena, which is assigned a behavior.
- Context bound, which indicates that social influence and communication cannot exist independent of context. The process of social influence and communication is affected by context.

Many factors contribute to an individual being influenced (King, 1975). The following are factors of social influence:

- Sociological factors which include all relationships between people-power, trust, leadership, status, anonymity, attraction, similarity, creditability, role, membership group, and reference group.
- Psychological factors which include attitude, ego-involvement, dogmatism, beliefs, values, personality, self-esteem, motivation, linguistic facility, and intelligence.
- Cultural factors which include language, religion, norms, laws, philosophy, values, government, prejudices, and food habits.
- Biological factors which include intelligence, sex, race, age, size, birth order, perceptual ability, psychomotor coordination, and physical features.
- Situational factors which include all factors related to a specific time-space or situation including time, location, physical setting, temperature, purpose, participants, behavior, message, atmosphere, speaker, topic, media, and financial status.

There are two major areas of social influence and persuasion when discussing expert testimony. One area is logical appeal (Bank & Poythress, 1982). With logical appeal, expert witnesses present a series of inductive or deductive arguments that invite reasoning toward their conclusions.

Knowledge is an area identified as a characteristic of an effective expert witness which would classify as an area of logical appeal as related to social influence. If scientific, technical, or other specialized knowledge will assist the trier of fact (judge or jury) to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion. Possessing

specialized knowledge in the field of vocational rehabilitation arms the vocational expert witness with the ability to influence the judge or jury in rendering an opinion regarding a case. Having knowledge of vocational rehabilitation and the vocational rehabilitation process will aid the vocational expert in being deemed an expert by the court as well as presenting as a competent individual in the area of vocational rehabilitation counseling and practices. Being knowledgeable in the area in which the expert is testifying is necessary to aid the trier of fact in making decisions. If the vocational expert is deemed unknowledgeable, he or she may not be deemed an expert witness by the court and what the witness has to say may not be taken seriously. According to Poynter (1997), expert witnesses help the jury understand the technical aspects of a case and try to persuade a jury to accept their explanation of technical facts. Expert witnesses help judges or jury members to infer from the facts conclusions which otherwise might not be accessible to them. This falls into the logical appeal area of social influence.

Training and experience are also areas that classified as traits that are in the logical appeal area of social influence. Matkin (1983) stated that possession of a degree of expertise is vital for expert witnesses. This expertise can assist the non-expert members of a court and jury in understanding a subject matter not known by common experience or knowledge. This degree of expertise may be based upon training or experience acquired by expert witnesses. The vocational expert must have the training and experience in the area of vocational rehabilitation to present as an expert in the field, so that the trier of fact will be in a position to believe what is said. Individuals who do not have training or experience in the area of expertise are not experts. The mere fact that an individual is deemed an expert by the court states that they have sufficient training and experience in the area to be called an expert. Being deemed an expert in vocational rehabilitation counseling requires individuals to have training and

experience in that area. Without this, vocational rehabilitation counselors are not vocational experts and will not be allowed to persuade the trier of fact through testimony.

Ruppel and Kaul (1982) indicated that those expert witnesses who demonstrated congruency of role in a court of law promote influence to a greater extent than did those expert witnesses who were incongruent in their role as expert witnesses. Congruency of role is a logical appeal area of social influence. An individual does not say they are congruent or express this through specific words pertaining to this topic. They express congruency through their testimony, through being consistent and by maintaining their opinion regardless of what the opposition states.

Congruency of role as a vocational expert witness can be exhibited through

- rendering an objective opinion that is consistent with normal and customary practices of vocational rehabilitation counseling.
- providing consistent testimony based on practices and procedures and objective issues.
- association membership in organizations consistent with the vocational rehabilitation field.
- publication of literature that supports the witness' findings and is related to the field of vocational rehabilitation counseling.

Expert witnesses can explain to the members of the jury why their opinion should be accepted in a logical way. They do this through the following means:

- they explain the methodology of their investigation in a way that captures the jury members' interest.
- they translate the information into language jury members can understand.

The second area of social influence and persuasion is emotional appeal. Emotional appeal utilizes affectively-laden language and innuendo with the goal of arousing certain emotional states in the trier of fact. Emotional appeal will facilitate their reaching the desired conclusion from the testimony (Bank & Poythress, 1982). Relatively subtle variations in courtroom speaking styles can influence jurors' reactions and deliberations (Conley, O'Barr, & Lind, 1978). One area of applying emotional appeal is relatively subtle variations in courtroom speaking styles that can influence jurors' reactions and deliberations. Another area where emotional appeal is displayed is in the area of consistent testimony. Consistent testimony is demonstrated through attitude and manner of speaking. Vocational expert witnesses who speak appropriately and consistently can persuade a trier of fact through emotional appeal. The trier of fact can concentrate on the facts of the case, rather than unrelated issues such as voice tone or wording, dialect, accent, or jargon.

When vocational expert witnesses use proper language, tone, and consistent testimony, they are appealing to the trier of fact in subtle influence that can affect the overall level of persuasion the vocational expert has on a judge or jury. The trier of fact is looking at the vocational expert witness' presentation and wants to know that the expert is knowledgeable in the area, has the proper training and experience, and is congruent as a vocational expert. Experts may be the most experienced, knowledgeable, and congruent experts available, but if they are not able to present themselves appropriately, their ability to persuade the trier of fact will be limited. If they cannot speak in a way that the trier of fact can understand what they are saying and how it impacts the case, all the knowledge, training, experience, and congruency to the field are useless.

Faherty (1995) stressed that expert witnesses should

- maintain a positive attitude

- use a well-modulated voice
- speak clearly
- speak in a voice that is slow and loud enough to be heard, and
- Speak in a slow, clear, and natural manner.

Physical attractiveness is also an area of emotional appeal. It may influence the trier of fact, but through subtle reference, not direct language. Physical attractiveness has been found to be a strong positive influence on personal, but not professional, attributes (Paradise, Conway & Zweig, 1986). This does not mean that vocational expert witnesses need to be running models; however, it means that they must present themselves in a professional manner that promotes confidence and promotes neatness. The desired attributes for an expert are that of a middle-aged person who wears glasses and dresses in a dark, three-piece suit and carries a briefcase (Faherty, 1995; Matson, 1999). Vocational expert witnesses must present themselves in an attractive manner, and not be sloppy, unorganized or dressed inappropriately for the presentation to the trier of fact. Time and consideration must be taken to determine the most attractive, appropriate presentation the expert can make to the trier of fact.

Matson (1999) stated that good expert witnesses act and look dignified, dress in good taste, and have a confident demeanor and attitude. Flashy jewelry and noisy accessories should be avoided. This is consistent with the emotional appeal area of social influence. Dress and appearance have nothing to do with the skills and abilities of an expert witness, yet have an effect on influencing the trier of fact. Presentation during testimony can illicit an emotional response and have an impact, positive or negative, on the judge or jury's opinion of the testimony and ultimately the decision of the case. Vocational experts should plan their presentation so that it does not take away from their testimony. For example, vocational experts

dressed in a sloppy or unorganized manner may affect the trier of fact. A judge or jury may have negative thoughts about the testimony of an expert who is not dressed well, believing that the expert is unprofessional, strange, or unrealistic. A judge or jury may ignore the testimony of an expert who is dressed in a sloppy or unorganized manner, and such a vocational expert's ability to persuade the trier of fact may be limited.

Social influence research is consistent in reporting that behavioral issues can positively or negatively influence a particular population (Faherty, 1995; Matson, 1999). The research was consistent that rehabilitation counselors and vocational expert witnesses influence the populations with which they work, whether those being influenced are clients coming in for rehabilitation counseling services, or judges or jury members. Although it appears that counseling and providing expert testimony are quite different, the research shows that there are commonalities important to both, such as credibility, trustworthiness, honesty, confidence, and communication skills.

Strong (1968) stated that counselors enhance their perceived credibility by means of their inherent role as helpers. This is an advantage that expert witnesses in the rehabilitation counseling profession may have over expert witnesses in other professions.

Chapter Summary

Rehabilitation counseling was developed in the beginning of the twentieth century to assist veterans in returning to work. This form of public rehabilitation continues today. Private for-profit rehabilitation counseling is a relatively new field. Expert vocational testimony is performed primarily by rehabilitation counselors employed in the private-for-profit sector.

A review of the literature revealed considerable discussion of traits associated with effective expert testimony (Berry, 1990; Bronstein, 1999; Deutsch & Sawyer, 1990; Faherty,

1995; Feder, 1991; Iyer, 1993; Matkin, 1983; Matson, 1999; Miller & Bolster, 1977; Poynter, 1997; Quigley, 1991; Ruppel & Kaul, 1982; Sleister, 2000; Strong, 1968; Weikel & Hughes, 1993; Wilkerson, 1997). Earlier articles pointed towards communication skills as being the most important characteristic of effective expert witnesses, whereas the more recent literature takes other factors into consideration. Several authors have postulated that dress, credentials, and specific behaviors are associated with effective expert testimony.

Vocational expert witnesses testify primarily at trial in civil lawsuits. Vocational expert witnesses are asked questions about a plaintiff's ability to work and to earn a living. Vocational expert witnesses must undergo dialogue, which is often designed to achieve a favored outcome in an adversarial situation. Vocational expert witnesses must remember to be experts in their field, not strive to become just a successful expert witness.

Social influence studies began in the twentieth century. The studies have increased due to marketing, advertising, and research that show how individuals are influenced. Expert witnesses often are thrust into a position to change an audience's opinion to one that matches their own. Strong (1968) has reported that interpersonal persuasion is affected by the specific characteristics of expertness, trustworthiness, attractiveness, and involvement. These traits are similar to traits that the literature associates with effective expert witness testimony.

There is evidence in the literature that specific traits are associated with effective expert witness testimony. There are commonalities between social influence characteristics and effective expert witness testimony characteristics. Learning characteristics of influence and effective expert witness testimony will be ineffective if expert witnesses are not working from an ethical foundation. Vocational expert witnesses must always attempt to be neutral experts in the field of rehabilitation counseling.

CHAPTER THREE

METHODOLOGY

This chapter describes the methodology that was used in this study. Organization of this chapter includes subsections that present the purpose of the study, research question, hypotheses, a description of the sample, selection procedures, instrumentation, and methods for data analysis.

Purpose of the Study

The purpose of this descriptive study was to provide specific information that identifies the characteristics of effective vocational expert witnesses. Warren (1997) has defined effective expert testimony as a highly disciplined, systematic, survival-oriented process that requires analytical skills, specialized knowledge, pertinent experience, professional reputation, and organizational authority to authenticate conclusions and opinions. The literature has suggested a number of traits that may be associated with effective expert witnesses such as gender, age, teaching ability, specialized knowledge, education, credentials, experience, honesty, credibility, objectivity, and appropriate dress (Blackwell, 1992; Isaac & Sognaes, 1983; Poynter, 1997). However, empirical evidence is needed to confirm those suggestions. There is a need for research studies that will develop a profile of effective vocational expert witnesses. Such a profile could be used by rehabilitation counselors who are preparing to become expert witnesses and as an educational tool to prepare counselors to function effectively as expert witnesses.

Rehabilitation counselors often are called to testify as vocational expert witnesses in personal injury litigation. They may testify in depositions, hearings, and trials. Identifying the characteristics that effective vocational expert witnesses possess would be advantageous to rehabilitation counselors who testify in the area of personal injury litigation. Once characteristics

of effective vocational expert witnesses are identified, it may be possible for rehabilitation counselors to develop and enhance some of these characteristics through training.

A pool of Certified Rehabilitation Counselors were asked to complete a Rehabilitation Counselor Questionnaire and a Rehabilitation Counselor Survey. The Certified Rehabilitation Counselors were asked to nominate other Certified Rehabilitation Counselors whom they considered to be effective vocational expert witnesses. Those who were nominated were asked to complete the Rehabilitation Counselor Questionnaire and Rehabilitation Counselor Survey, if they had not already completed the surveys and returned them in the original mailing.

Research Question

Are Certified Rehabilitation Counselors who have been nominated by their peers as effective vocational expert witnesses different from non-nominated Certified Rehabilitation Counselors?

Hypotheses

The following hypotheses were tested in this study:

Hypothesis 1:

There is some combination of variables (gender, age, educational level, years in the rehabilitation field, number of times testimony was provided, professional organization membership and certifications and licenses) that will significantly predict characteristics of effective expert witnesses in rehabilitation counseling.

Hypothesis 2:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as having more self-confidence, enjoy debating more, be more detail oriented, enjoy conducting research more, enjoy administering tests more, enjoy analyzing tests results more, see

themselves as more physically attractive, dress in a more business-like manner, be more comfortable performing marketing activities, be more organized, and believe there is a right and wrong answer for most questions more than rehabilitation counselors who were not nominated as effective expert witnesses.

Hypothesis 3:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as more objective in formulating opinions than rehabilitation counselors whom were not nominated as effective expert witnesses.

Hypothesis 4:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as more truthful than rehabilitation counselors who were not nominated as effective expert witnesses.

Hypothesis 5:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as being better at teaching others and explaining difficult concepts in an easy-to-understand way more than rehabilitation counselors who were not nominated as effective expert witnesses.

Hypothesis 6:

Rehabilitation counselors who are nominated as effective expert witnesses will be more comfortable in public speaking than rehabilitation counselors who were not nominated as effective expert witnesses.

Additional Data

Relevant post hoc analysis were completed using correlation and analysis of variance procedures.

Participants

The participants in this study were Certified Rehabilitation Counselors (CRC) who were members of the International Association of Rehabilitation Professionals Private Sector (IARP). The International Association of Rehabilitation Professionals Private Sector unites rehabilitation professionals across North America and beyond to promote the availability of effective, interdisciplinary services for persons with disabilities. IARP serves a diverse membership of professionals who practice in the fields of long-term disability and disability management consulting, case management and managed care, forensics and expert testimony, life care planning, and Americans with Disabilities Act consulting. IARP has 2,800 members, of whom 935 are Certified Rehabilitation Counselors. Only those IARP members who are Certified Rehabilitation Counselors were asked to participate in this study.

Rehabilitation counselors who work in the private sector primarily provide rehabilitation services and assessments to individuals who have been involved in an accident or injury and have a third-party payer. There were 935 Certified Rehabilitation Counselors (CRC) listed in the International Association of Rehabilitation Professionals Private Sector (IARP) directory. The field of private sector rehabilitation counseling is a relatively new field, having had its start in the 1970s. As private sector rehabilitation counselors continue to provide services to individuals involved in litigation, learning skills that will assist them in being effective expert witnesses will prove beneficial to this group in performing the necessary functions of their job.

The Role of Vocational Expert Witnesses in the Personal Injury Litigation Process

In personal injury litigation, the third-party payer is a company or person, other than the person filing the complaint or the person defending the complaint, which contracts with and compensates the vocational expert witness for his or her professional service or expert opinion. For example, an attorney representing an insurance company may retain the services of a vocational expert witness. The attorney would be responsible for paying the fee of the vocational expert witness. The defense attorney customarily obtains the money to pay the vocational expert witness from the insurance company or the party that has retained the attorney. The plaintiff's attorney pays the vocational expert witness from the proceeds that clients obtain if they receive a settlement or favorable trial decision. The person paying for the services of the vocational expert witness is not the injured individual; the attorney is considered a third-party payer. In many instances, the insurance company that represents the defendant in the litigation, or the person or company being sued, retains a vocational expert witness and is considered the third-party payer.

The term, private rehabilitation, is often used when discussing expert testimony. Private rehabilitation is different from traditional state rehabilitation, or public rehabilitation, which consists primarily of services for individuals with developmental disabilities or catastrophic injuries who are supported through public funds. For example, persons who are born with a severe mental disability may qualify for state or public rehabilitation. If a person is blind from birth, or has acquired blindness later in life, he or she may qualify for state rehabilitation services. State rehabilitation services are provided to assist individuals with acquired or developmental disabilities to reach their highest level of functioning. Developmental disabilities are defined as disabilities acquired before the age of 18 and are usually not accident related. Acquired disabilities may be caused from an accident or injury. Some acquired disabilities, such

as spinal cord injury, are treated by state rehabilitation agencies due to the severity of the case. However, financial need, which indicates that the client is indigent, has to be demonstrated for a client to qualify for various programs and public assistance.

In this study, private sector Certified Rehabilitation Counselors who are members of IARP were asked to complete a Rehabilitation Counselor Questionnaire, a Rehabilitation Counselor Survey, and a Vocational Expert Witness Nomination form (on which they were requested to nominate effective vocational expert witnesses).

Procedure

The Certified Rehabilitation Counselor members of IARP (participants) were sent a letter of introduction (see Appendix A), the Rehabilitation Counselor Questionnaire (see Appendix D), which includes demographic information, and a Rehabilitation Counselor Survey (see Appendix E). A Vocational Expert Witness Nomination form (see Appendix B) was also included. The nomination form requested that the participants nominate other rehabilitation counselors who are effective vocational expert witnesses. Participants were asked to nominate both local and national vocational expert witnesses to ensure that the best-known vocational experts from the national level were included. Participants were told they may nominate the same person as an effective local vocational expert and as an effective vocational expert who has a national reputation. The participants were able to nominate themselves, if they appropriately fit the criterion of having a reputation as an effective vocational expert witness in the personal injury field of rehabilitation counseling.

The letter of introduction specifically requested that the information be completed and returned to the researcher within a two-week time frame. A numerical code was assigned to each participant to ensure confidentiality. Once the research study was completed and approved, all

material with name identification was destroyed to maintain confidentiality of the participants. The participants were also given the opportunity to complete the survey instrument over the internet at a designated website.

When a rehabilitation counselor was nominated as an effective expert witness, a search of the original mailing list was conducted to determine whether the nominated individual was among the original list of participants. All respondents, non-nominated and nominated, were among the original 935 individuals who received the initial mailer. Once the information and nominations were collected, the responses were reviewed and separated into two groups, non-nominated and nominated respondents.

Rehabilitation Counselor Questionnaire

The Rehabilitation Counselor Questionnaire was developed to obtain demographic information relative to each participant. Each participant was asked to complete the questionnaire providing information relative to gender, age, and highest level of education. The items were developed to address specific characteristics of effective expert witnesses reported in the literature. The characteristics reported in the literature were identified and items to measure the characteristic were created on this form. Additional information, such as number of years in the rehabilitation profession and number of times testimony was provided in the past year, was requested. Participants were asked to provide information regarding the number of times testimony had been performed annually. Participants were asked to provide information regarding professional memberships, certifications, and licenses. Each item addressed a specific effective expert witness characteristic identified in the literature.

Rehabilitation Counselor Survey

The Rehabilitation Counselor Survey was developed for the purpose of obtaining information from Certified Rehabilitation Counselors associated with characteristics of effective vocational expert witnesses. Certified Rehabilitation Counselors were asked various questions pertaining to expert testimony characteristics and these questions were reviewed and analyzed. The characteristics identified in the literature for effective expert witnesses were identified and recorded. Items to measure these characteristics were developed for the Rehabilitation Counselor Survey. All items on the survey were specific to a documented characteristic reported in the literature.

Pilot Study

Pilot testing is necessary in order to establish the face validity of an instrument (Creswell, 194). Pilot testing allows the researcher to improve the format, questions, and scales of an instrument (Creswell). A pilot test was completed on the instruments in this study.

The Pilot study tested face validity of the Rehabilitation Counselor Survey and Rehabilitation Counselor Questionnaire. The Rehabilitation Counselor Survey and Questionnaire were sent to 19 Certified Rehabilitation Counselors working in the vocational rehabilitation field, who were not members of IARP. Feedback pertaining to completion of the instruments was requested. The Certified Rehabilitation Counselors were questioned about the clarity, problems experienced while completing the instrument, and the amount of time required completing the instrument. Feedback from the pilot study was considered when the instruments were revised for use in this study.

Data Analysis Plan

Data analyses were performed by using descriptive statistics as well as Discriminate Function Analysis and MANOVA. Listed below are each research hypothesis and its related data analysis plan.

Hypothesis 1:

There is some combination of variables (gender, age, educational level, years in the rehabilitation field, number of times testimony was provided, professional organization membership and certifications and licenses) that will significantly predict characteristics of effective expert witnesses in rehabilitation counseling.

Data Analysis

Data for this hypothesis were gathered from the Rehabilitation Counselor Questionnaire. A discriminate function analysis was used to assess the importance of the independent variables (gender, age, educational level, years in the rehabilitation field, number of times testimony is provided, professional organization membership, and certifications and licenses) in classifying the dependent variable (nominated effective expert witness).

Hypothesis 2:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as having more self-confidence, enjoy debating more, be more detail oriented, enjoy conducting research more, enjoy administering tests more, enjoy analyzing tests results more, see themselves as more physically attractive, dress in a more business-like manner, be more comfortable performing marketing activities, be more organized, and believe there is a right and wrong answer for most questions more than rehabilitation counselors who were not nominated as effective expert witnesses.

Data for this hypothesis were gathered from questions A, B, C, D, E, F, M, N, P, S, and T of the Rehabilitation Counselor Survey. A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses

Hypothesis 3:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as more objective in formulating opinions than rehabilitation counselors who were not nominated as effective expert witnesses.

Data Analysis

Data for this hypothesis were gathered from questions H, L, R, and W of the Rehabilitation Counselor Survey. A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

Hypothesis 4:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as more truthful than rehabilitation counselors who were not nominated as effective expert witnesses.

Data Analysis

Data for this hypothesis were gathered from questions I, J and U of the Rehabilitation Counselor Survey. A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

Hypothesis 5:

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as being better at teaching others and explaining difficult concepts in an easy to understand way more than rehabilitation counselors who were not nominated as effective expert witnesses.

Data Analysis

Data for this hypothesis were gathered from questions G and K of the Rehabilitation Counselor Survey. A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

Hypothesis 6:

Rehabilitation counselors who are nominated as effective expert witnesses will be more comfortable in public speaking than rehabilitation counselors who were not nominated as effective expert witnesses.

Data Analysis

Data for this hypothesis were gathered from questions O, Q and V of the Rehabilitation Counselor Survey. A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

CHAPTER FOUR

RESULTS

Introduction

The purpose of this study was to determine if there are differences between characteristics of Certified Rehabilitation Counselors (CRC) who were nominated by their peers as effective expert witnesses and CRCs who were not nominated as effective expert witnesses by their peers. The study explored the demographic information of the CRCs as well as their responses to items related to characteristics of effective expert witnesses which had been previously identified in the literature.

Characteristics of the Sample

In order to acquire a suitable sample, 935 CRCs who are members of the International Association of Rehabilitation Professionals (IARP) were sent a survey for their completion. The survey included a form to nominate other individuals in the field of rehabilitation counseling who possessed the traits associated with effective expert witnesses. The traits were listed on the nomination form. Of the 935 surveys sent to IARP members, 912 (98%) had correct addresses. Total responses received were 346, representing a return rate of 38%. Of the 346 respondents, 198 names were noted by respondents as individuals who are effective expert witnesses. Several of the nominated respondents were named by more than one person. Individuals were nominated from one to ten times by respondents. The majority of individuals nominated were named only once.

Of the 198 names identified by the respondents, a total of 142 CRCs were named at least once as nominated effective expert witnesses by their peers. A total of 125 were nominated only once; 2 were nominated twice; 3 were nominated 3 times; 6 were nominated 4 times; 4 people

were nominated 5 times; 1 person was nominated 6 times; 1 person was nominated 10 times. Of the 142 nominated CRCs, 95 responded to the survey representing a return rate of 67%. All of those nominated were from the original sample. A total of 251 non-nominated experts and 95 experts participated in this study, to total 346 respondents. Descriptive data from participants' responses are in Tables 1 through 7.

In Table 1, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by gender.

Table 1

Respondent Categories by Gender

	Non-nominated Respondents <i>n</i>	Non-nominated Respondents Percentage %	Nominated Respondents <i>n</i>	Nominated Respondents Percentage %
Male	104	41.4	52	54.7
Female	147	58.6	43	45.3
Total	251	100	95	100

The total respondents were divided into two groups, nominated and non-nominated respondents. The majority of non-nominated respondents completing the survey were female 147 (58.6%). The majority of nominated respondents who completed the survey were male 52 (54.7%). Of the 142 experts who were nominated by their peers, 77 (54%) were male. A total of 95 of the 142 nominated CRCs responded to the survey. Of the 95 nominated respondents, 52 (54.7%) were males and 43 (45.3%) were females. Therefore, the majority of nominated experts and nominated expert respondents were male.

In Table 2, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by age group.

Table 2

Respondent Categories by Age

	Non-nominated Respondents <i>n</i>	Non-nominated Respondents Percentage %	Nominated Respondents <i>n</i>	Nominated Respondents Percentage %
20-30	6	2.4	0	0.0
31-40	30	12.0	4	4.2
41-50	61	24.3	24	25.3
51-60	113	45.0	57	60.0
61 >	30	12.0	9	9.5
No Res.	11	4.4	1	1
Total	251	100	95	100

The respondents were grouped into two categories, non-nominated respondents and nominated respondents. All respondents were asked their age group on the Rehabilitation Counselor Questionnaire. Eleven non-nominated respondents did not report their age on the survey. One nominated respondent did not report his or her age on the survey. The majority of non-nominated and nominated respondents were between the ages of 51 and 60 (45% non-nominated and 60% nominated). The most non-nominated and nominated Certified Rehabilitation Counselors respondents were in the 51-60 age category. The non-nominated respondents had 113 (45%) respondents in the 51-60 age

category. The nominated respondents had 57 (60%) of the respondents in the 51-60 age category.

In Table 3, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by education.

Table 3

Respondent Categories by Education Level

	Non-nominated Respondents <i>n</i>	Non-nominated Respondents Percentage %	Nominated Respondents <i>n</i>	Nominated Respondents Percentage %
High School	0	0	0	0
60>credits	0	0	0	0
Assoc. Deg	0	0	0	0
Bach. Deg	5	2.0	2	2.1
15> Grad	9	3.6	1	1.1
Mast. Deg	162	64.5	53	55.8
15> Post	49	19.5	19	20.0
Ph.D	15	6.0	18	18.9
Post PhD	7	2.8	2	2.1
No Res.	4	2.0	0	0
Total	251	100	95	100

The respondents were asked their education level. One hundred and sixty-two (64.5%) non-nominated respondents possessed a master’s degree. Forty-nine (19.5%) non-nominated

respondents possessed credits post-master's-degree. Fifteen (6%) respondents possessed doctoral degrees and 7 (2.8%) respondents reported post-doctoral credits.

Nominated respondents were asked to report their education. Fifty-three (55.8%) nominated respondents possessed a master's degree. Nineteen (20%) possessed post master's credits. Eighteen (18.9%) possessed doctoral degrees and two (2.1%) respondents had obtained post doctoral credits. The nominated respondents possessed a higher percentage of PhD's (18.9%) than did the non-nominated group (6%). Overall, 92.8% of the non-nominated group possessed a master's degree or higher and 96.8% of the nominated experts possessed a master's degree or higher.

In Table 4, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by the number of years they have been in the rehabilitation field.

Table 4

Respondent Categories by Number of Years in the Rehabilitation Profession

	Non-nominated Respondents <i>n</i>	Non-nominated Respondents Percentage %	Nominated Respondents <i>n</i>	Nominated Respondents Percentage %
0-5	11	4.4	0	0
6-10	10	4.0	3	3.2
11-15	31	12.4	3	3.2
16-20	34	13.5	9	9.5
20>	160	63.7	80	84.2
No Res.	5	2.0	0	0
Total	251	100	95	100

The respondents were asked to report the years that they have worked in the rehabilitation profession. Eleven of the non-nominated respondents reported 0-5 years experience (4.4%). Ten (4.0%) of the non-nominated respondents reported experience in the 6-10 year category. Thirty-one (12.4%) non-nominated respondents reported experience in the 11-15 year category. Thirty-four (13.5%) non-nominated respondents reported experience in the 16-20 year category. One hundred and sixty (63.7%) non-nominated respondents reported 20 or more years experience in the rehabilitation profession. The majority of non-nominated respondents possessed greater than 20 years in the rehabilitation profession.

Three (3.2%) nominated respondents reported having 6-10 years experience in the rehabilitation field. Three (3.2%) nominated respondents reported having 11-15 years experience in the rehabilitation field. Nine (9.5%) nominated respondents reported having 16-20 years experience in the rehabilitation profession. The majority of non-nominated (63.7%) and nominated (84.2%) respondents possessed more than 20 years experience in the rehabilitation profession. Non-nominated respondents reporting 16 and over years experience in the rehabilitation field totaled 77.2%. Nominated respondents having over 16 years experience in the rehabilitation field totaled 93.7%.

In Table 5, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by the number of times they reported that they provided testimony on a yearly basis.

Table 5

Respondent Categories by Frequency of Testimony per Year

	Non-nominated Respondents <i>n</i>	Non-nominated Respondents Percentage %	Nominated Respondents <i>n</i>	Nominated Respondents Percentage %
0-5	127	50.6	20	21.1
6-10	30	12.0	19	20.0
11-15	21	8	7	7.4
16-20	10	4.0	9	9.5
20>	59	23.5	40	42.1
No Response	4	2.0	0	0
Total	251	100	95	100

Respondents were asked to report the number of times they provide expert testimony each year. One hundred and twenty seven (50.6%) of the non-nominated respondents reported testifying 0-5 times per year. Thirty (12.0%) of the non-nominated respondents reported 6-10 years and 21 (8.4%) reported testifying 11-15 times per year. Ten (4.0%) of the non-nominated respondents reported testifying 16-20 times per year and 59 (23.5%) non-nominated respondents (23.5%) reported testifying more than 20 times per year.

The nominated respondent's responses were received and documented in table 5. Ninety five respondents responded to this item and 20 (21.1%) nominated respondents reported testifying 0-5 times per year. Nineteen (20%) nominated respondents reported testifying 6-10 times per year. Seven (7.4%) nominated respondents reported testifying 11-15 times per year and 9 (9.5%) nominated respondents reported testifying 16-20 times per year. Forty (42.1%) of nominated respondents reported testifying more than 20 times per year. The nominated

respondents testified more times per year than the non-nominated respondents in the 6 -10 times per year category and in the greater than 20 times a year category. Over twenty-seven (27.5%) percent of non-nominated respondents reported testifying 16 or more times per year. Nominated respondents reported testifying 16 or more times per year at a rate of 51.6%.

In Table 6, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by the number of memberships they hold in professional organizations.

Table 6

Respondent Categories by Membership in Professional Organization

	Non-nominated Respondents <i>n</i>	Non-nominated Respondents Percentage %	Nominated Respondents <i>n</i>	Nominated Respondents Percentage %
IARP	244	97.2	93	97.9
ARCA	31	12.4	21	22.1
ACA	34	13.5	20	21.1
VEWAA	15	6.0	7	7.4
NRCA	47	18.7	27	28.4
NRA	76	30.3	38	40.0
OTHER	55	21.9	27	28.4

Note. Multiple responses of participants allow for greater than 100% totals. A few respondents whose names were obtained from the list of members in IARP who had indicated they have CRCs did not indicate on the survey form that they were members of IARP.

- IARP International Association of Rehabilitation Professionals, Private Sector
- ARCA American Rehabilitation Counseling Association
- ACA American Counseling Association
- VEWAA Vocational Evaluation and Work Adjustment Association
- NRCA National Rehabilitation Counseling Association
- Other Other Associations not listed above.

Non-nominated and nominated respondents were asked to report their professional organizational membership status. Overall, nominated respondents had a higher percentage of organizational memberships than non-nominated respondents for each organization listed. Although the list of respondents was obtained from the IARP membership list, some individuals did not report current membership in the organization. Their membership may have expired between the time the list was gathered and the survey was mailed, or perhaps their membership was paid by their employer and they were unaware of their status.

In Table 7, the number and percentage of respondents nominated by their peers as effective expert witnesses and those who were not nominated as effective expert witnesses are reported by their number of certifications and licenses.

Table 7

Frequency Distribution by Certifications and Licenses

	Non-nominated Respondents n	Non-nominated Respondents Percentage %	Nominated Respondents n	Nominated Respondents Percentage %
LPC	66	26.3	46	48.4
LRC	51	20.3	24	25.3
LMFT	3	1.2	2	2.1
PSYC	5	2.0	4	4.2
CRC	242	96.4	92	96.8
CCM	84	33.5	33	34.7
CVE	24	9.6	10	10.5
CVS	9	3.6	3	3.2
CIRS	64	25.5	25	26.3
OTHER	84	33.5	45	47.4

Note. Multiple responses of participants allow for greater than 100% totals. A few respondents whose names were obtained from the list of members of IARP who had indicated they were CRCs did not indicate on the survey form that they were CRCs.

- LPC= Licensed Professional Counselor
- LRC= Licensed Rehabilitation Counselor
- LMFT= Licensed Marriage and Family Therapist
- PSYC= Psychologist
- CRC= Certified Rehabilitation Counselor
- CCM= Certified Case Manager
- CVE= Certified Vocational Evaluator
- CVS= Certified Vocational Specialist
- CIRS= Certified Insurance Rehabilitation Specialist
- Other= Certifications and Licenses Other Than Those Listed

Respondents were asked to report their certifications and licenses as part of the Rehabilitation Counselor Questionnaire. Table 7 lists the responses of the non-nominated and

nominated respondents. Nominated respondents reported holding certificates and licenses more often than non-nominated respondents in each category except CVS.

The survey was sent only to Certified Rehabilitation Counselors (CRCs) who indicated to IARP that they were CRCs. Nine non-nominated respondents and 3 nominated respondents did not mark CRC as a certification that applied. Oversight on their part of the respondent or a mistake in the listing with IARP may have accounted for this error. However, the names of the 12 individuals who did not check CRC as a certification were cross-referenced with the CRC database and were listed as holding this certification, so their information was included in the survey.

In Table 8, the number, mean scores, and standard deviations for the non-nominated and nominated respondents on survey items A through W are reported.

Table 8***Mean and Standard Deviations for Items A-W on the Rehabilitation Counselor Survey by Respondent Category***

	Non-nom. n	Non-nom. Mean	Non-Nom. SD	Nom. n	Nom. Mean	Nom. SD
A. I have self conf.	247	4.15	.740	94	4.35	.667
B. Enjoy debating	247	3.47	1.050	94	3.73	.894
C. Big picture	247	3.31	1.149	94	3.13	1.220
D. Enjoy research	247	3.37	1.212	94	3.71	.991
E. Enjoy testing	247	3.16	1.199	94	3.51	1.034
F. Enjoy analyzing	247	3.52	1.143	94	3.71	1.053
G. Great Explaining	247	4.20	.761	94	4.31	.659
H. No opinion	209	4.27	.813	89	4.35	.725
I. Not truthful*	208	3.54	1.111	89	3.80	1.013
J. Truthful	208	4.68	.602	89	4.76	.477
K. Trouble explaining*209		3.83	1.008	89	3.88	.902
L. Consistent review	208	4.47	.680	89	4.57	.689
M. Physically attract.	207	3.55	.828	89	3.45	.723
N. Dress attractive	208	4.20	.835	89	4.25	.758
O. Enjoy testifying	208	2.89	1.205	89	3.28	1.177
P. Uncomfort. Mark.*	247	3.23	1.218	94	3.32	1.280
Q. Anxious testifying*246		2.57	1.151	94	3.26	1.126
R. Opinion varies*	246	4.21	1.067	94	4.49	.744
S. Not organized*	247	4.06	1.026	94	4.06	.993
T. Right and wrong	246	2.68	1.062	93	2.78	1.091
U. Truth consistently	245	4.26	.974	94	4.15	1.004
V. Public speaking	247	3.64	1.163	94	3.86	1.169
W. Subjective info.	244	2.80	1.046	94	3.02	1.005

*Reverse scored items

Tests of Hypotheses

Research Question

Are Certified Rehabilitation Counselors who have been nominated by their peers as effective vocational expert witnesses different from non-nominated Certified Rehabilitation Counselors?

Test of Hypothesis 1

Hypothesis 1 stated that there is some combination of variables (gender, age, educational level, years in the rehabilitation field, number of times testimony was provided, professional organization membership and certifications and licenses) that will significantly predict characteristics of effective expert witnesses in rehabilitation counseling.

The hypothesis was tested by gathering data from the Rehabilitation Counselor Questionnaire (Appendix D) on gender, age, educational level, years in the rehabilitation field, number of times testimony is provided each year, professional organizational membership, and certifications and licenses. A discriminate function analysis was used to assess the importance of the independent variables (gender, age, educational level, years in the rehabilitation field, number of times testimony is provided, professional organization membership, and certifications and licenses) in classifying the dependent variable (effective expert witness).

The Box's M test was conducted and it yielded a significance of .000, which indicates that group covariances were not equal. According to Mertler and Vanatta, (2002, p. 290) "failure of the homogeneity of covariance assumption may limit the interpretation of results." However, "one should keep in mind that the Box's Test is

highly sensitive to non-normal distributions and therefore should be interpreted with caution” (Mertler & Vanatta, p.290). The results of the discriminate analysis indicate that the following three variables were able to predict which rehabilitation counselors would be nominated as effective expert witnesses by their peers: the number of times yearly that an individual testifies, LPC status, and the number of years in the rehabilitation profession.

The percentages shown in Tables 4, 5, and 7 demonstrate that those nominated as effective expert witnesses have testified more often in court each year (see Table 5), are more often LPCs (see Table 7), and have worked more years in the rehabilitation profession (Table 4) than those not nominated as effective expert witnesses. Hypothesis 1 was supported.

Table 9

Correlation Coefficients and Standardized Function Coefficients for Significant Predictors

	Correlation Coefficients with Discriminate Function	Standardized Function Coefficients
Testify Yearly	.740	.572
LPC	.620	.508
Years in Field	.592	.442

Table 10

Classification Results of Discriminate Analysis for Group Prediction Survey

Original	Count	Expert	Yes	No	Total
		Yes	22	72	94
No	24	222	246		
<hr/>					
	%	Yes	23.4	76.6	100.0
		No	9.8	90.2	100.0
<hr/>					
Cross-Validated	Count	Yes	20	74	94
		No	24	222	246
<hr/>					
	%	Yes	21.3	78.7	100.0
		No	9.8	90.2	100.0

The discriminate analysis was conducted to predict the expert witness status of the nominated and non-nominated respondents in the survey. Standardized function coefficients and correlational coefficients (see Table 9) revealed that the variables of number of times testimony is provided, LPC status, and years in the rehabilitation field were most associated with expert witness status. The discriminate analysis ran a correlational case identification table that found 71.8% of original group cases correctly classified. Thus, hypothesis 1 was supported.

Test of Hypothesis 2

Rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as having self-confidence, enjoy debating, be detail oriented, enjoy conducting research, enjoy administering tests, enjoy analyzing tests results, see themselves as physically attractive, dress in a business-like manner, be comfortable performing marketing activities, be organized, and believe there is a right and wrong answer for most questions more than rehabilitation counselors who were not nominated as effective expert witnesses.

A MANOVA was used to compare the results of the items between non-nominated and nominated respondents to the survey. The Box's M test was conducted and was not significant ($p = .041$), indicating the Wilks' Lambda could be utilized as the test statistic for this hypothesis. The results in Table 11 indicate there was significance ($p = .001$) in responses to items A, B, C, D, E, F, M, N, P, S, and T of the Rehabilitation Counselor Survey. Responses for Items A, B, C, D, E, F, M, N, P, S, and T indicate that there was an overall significant difference between groups who were nominated as effective expert witnesses than those who were not nominated as effective expert witnesses in reporting responses to these items. Thus, hypothesis 2 was supported.

Table 11

Multivariate Analysis of Variance Summary Table for items A, B, C, D, E, F, M, N, P, S, and T

Effect	Λ	F	Hypothesis	Error df	p
Expert Wilks' Lambda	.899	2.870	11.000	282.000	.001

Post hoc ANOVAs were performed on items A, B, C, D, E, F, M, N, P, S, and T to determine which dependent measures accounted for the significant lambda. The results are reported in Tables 12- 22.

Table 12 presents an ANOVA summary table for item A of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between non-nominated respondents and nominated respondents. The results in Table 12 indicate that there is a significant difference ($p = .019$) between groups in their response to item A. The means for Item A in Table 8 indicate that those who were nominated as effective expert witnesses reported having greater self confidence ($M = 4.35$) than those who were not nominated as effective expert witnesses ($M = 4.15$).

Table 12

Analysis of Variance summary for item A, I have a great deal of self confidence, by expert groups

Source	SS	df	MS	F	p
Between Groups	2.870	1	2.870	5.523	.019
Within Groups	176.168	339	.520		
Total	179.038	340			

Table 13 presents the ANOVA summary table for item B of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between non-nominated and nominated respondents on the Rehabilitation Counselor Survey. The results in Table 13 indicate that there was a significant difference ($p=.034$) between groups related to item B. The means for Item B in Table 8 indicate that those who were nominated as effective expert witnesses reported having greater enjoyment in debating ($M = 3.73$) than those who were not nominated as effective expert witnesses ($M = 3.47$).

Table 13

Analysis of Variance summary table for item B, I enjoy debating with others, by expert groups.

Source	SS	df	MS	F	Sig
Between Groups	4.615	1	4.615	4.523	.034
Within Groups	345.930	339	1.020		
Total	350.545	340			

Table 14 presents the ANOVA summary table for item C of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between non-nominated and nominated respondents. The results in Table 14 indicate that there was no significance ($p = .195$) between groups related to item C. The results suggest that counselors nominated as effective expert witnesses by their peers ($M = 3.13$) are no more

detail-oriented than those counselors who were not nominated by their peers ($M = 3.31$) as effective expert witnesses.

Table 14

Analysis of Variance summary table for item C. I am more oriented toward the “big picture” than I am toward details; I need few details to come to an understanding of an issue or concept, by expert groups.

Source	SS	df	MS	F	Sig
Between Groups	2.307	1	2.307	1.688	.195
Within Groups	463.464	339	1.367		
Total	465.771	340			

Table 15 presents the results of item D of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between non-nominated and nominated respondents to the survey. The results in Table 15 indicate that there was a significant difference between groups ($p = .014$) related to item D. The means for Item D in Table 8 indicate that those who were nominated as effective expert witnesses reported enjoying conducting research more ($M = 3.71$) than those who were not nominated as effective expert witnesses ($M = 3.37$).

Table 15

Analysis of Variance summary table for item D, I enjoy conducting research, by expert groups.

Source	SS	df	MS	F	p
Between Groups	8.073	1	8.073	6.045	.014
Within Groups	452.718	339	1.335		
Total	460.792	340			

Table 16 presents the results of item E of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between non-nominated and nominated respondents to the survey. The results in Table 16 indicate that there was a significant difference between groups ($p = .013$) related to item E. The means for Item E in

Table 8 indicate that those who were nominated as effective expert witnesses reported enjoying administering tests ($M = 3.51$) more than those who were not nominated as effective expert witnesses ($M = 3.16$).

Table 16

Analysis of Variance summary table for item E, I enjoy administering tests, by expert groups.

Source	SS	df	MS	F	p
Between Groups	8.279	1	8.279	6.195	.013
Within Groups	453.012	339	1.336		
Total	461.290	340			

Table 17 presents the results of item F of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between non-nominated and nominated respondents to the survey. The results indicated in Table 17 that there were no significance ($p=.170$) between groups related to item F. The means for Item F in Table 8 indicate that there was no significant difference between those who were nominated as effective expert witnesses ($M = 3.52$) than those who were not nominated as effective expert witnesses ($M = 3.71$) in reporting their enjoyment of analyzing tests.

Table 17

Analysis of Variance summary table for item F, I enjoy analyzing test results, by expert group

Source	SS	df	MS	F	p
Between Groups	2.367	1	2.367	1.889	.170
Within Groups	424.824	339	1.253		
Total	427.191	340			

Table 18 presents data from item M of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between rehabilitation counselors

who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

The results indicate that there was no significance ($p = .341$) see Table 18, between groups on item M. The means for Item M in Table 8 indicate that there was no significant difference between those who were nominated as effective expert witnesses ($M = 3.55$) than those who were not nominated as effective expert witnesses ($M = 3.45$) in reporting their belief that they were physically attractive.

Table 18

Analysis of Variance summary table for Item M, I believe I am physically attractive, by expert group.

Source	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>p</i>
Between Groups	.579	1	.579	.909	.341
Within Groups	187.336	294	.637		
Total	187.916	295			

Table 19 presents data from item N of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

The results indicate that there was no significance ($p = .594$) see Table 19, between groups on item N. The means for Item N in Table 8 indicate that there was no significant difference between those who were nominated as effective expert witnesses ($M = 3.20$) than those who were not nominated as effective expert witnesses ($M = 3.42$) in reporting that they dress in a professional business-like manner.

Table 19

Analysis of Variance summary table for Item N I dress in an attractive, business like manner, by expert group

Source	SS	df	MS	F	p
Between Groups	.188	1	.188	.284	.594
Within Groups	194.869	295	.661		
Total	195.057	296			

Table 20 presents data from item P of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

The results indicated that there were no significance ($p = .592$) between groups on item P. The results in Table 20 indicate that there was no significant between groups ($p = .592$) related to item P. The means for Item P in Table 8 indicate that those who were nominated as effective expert witnesses ($M = 3.32$) were not more comfortable marketing their professional services than those who were not nominated as effective expert witnesses ($M = 3.23$).

Table 20

Analysis of Variance summary table for Item P, I am uncomfortable marketing myself and discussing my professional qualities with potential referral source, by expert group

Source	SS	df	MS	F	p
Between Groups	.439	1	.439	.288	.592
Within Groups	517.332	339	1.526		
Total	517.771	340			

Table 21 presents data from item S of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between rehabilitation counselors

who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

The results in Table 21, indicate that there was not a significant difference between groups ($p = .994$) related to item S. The means for Item S in Table 8 indicate that those who were nominated as effective expert witnesses ($M = 4.06$) did not report that they were more organized than those who were not nominated as effective expert witnesses ($M = 4.06$).

Table 21

Analysis of Variance summary table for Item S, I am not very organized, by expert group

Source	SS	df	MS	F	p
Between Groups	.000	1	<.000	.000	.994
Within Groups	350.581	339	1.034		
Total	350.581	340			

Table 22 presents data from item T of the Rehabilitation Counselor Survey. An ANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses.

The results in Table 22 indicate that there was no significance ($p = .381$) between groups on item T. The means for Item T in Table 8 indicate that those who were nominated as effective expert witnesses ($M = 2.78$) did not feel there was a right and wrong answer for everything more than those respondents who were not nominated as effective expert witnesses ($M = 2.68$).

Table 22

Analysis of Variance summary table for Item T, I do not believe that there is a right or a wrong answer for most Questions, by expert group.

Source	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>p</i>
Between Groups	.880	1	.880	.769	.381
Within Groups	386.028	337	1.145		
Total	386.909	348			

Test of Hypothesis 3

Hypothesis 3 indicated that rehabilitation counselors who were nominated as effective expert witnesses will consider themselves as more objective in formulating opinions than rehabilitation counselors who were not nominated as effective expert witnesses.

Because there were four dependent variables, a MANOVA was used to compare the results of the items between non-nominated and nominated respondents to the survey. The Box's M test was conducted and was not significant ($p = .005$), indicating the Wilks' lambda could be utilized as the test statistic for this hypothesis. The results in Table 23 indicate that there was significance ($p = .046$) between these 2 groups for their responses to items H, L, R, & W. Pot hoc tests were performed on these items (see Table 24). The responses for Items H, L, R, & W, indicate that there was a significant difference between groups who were nominated as effective expert witnesses than those who were not nominated as effective expert witnesses in reporting objectivity. Thus, hypothesis 3 was supported.

Data for this hypothesis were gathered from items H, L, R, and W of the Rehabilitation Counselor Survey. Post hoc tests were completed on these items (Table 24). Item H stated, "My opinion is not formed until I have reviewed all collected relevant

information.” The results of item H indicate that there was no significance ($p = .474$) between the nominated respondents ($M = 4.35$) and the non-nominated respondents ($M = 4.27$) on this item. Item L stated, “I formulate my opinions following a consistent method of review of information, regardless of the case or reason for referral.” The results of item L indicate that there was no significance ($p = .240$) between the nominated respondents ($M = 4.57$) and the non-nominated respondents ($M = 4.47$) on this item. Item R stated, “My opinion tends to vary depending on the referral source. I find out what the referral source is looking for and try to provide that to the best of my ability.” The results of item R indicate that there was no significance ($p = .065$) between the nominated respondents ($M = 4.49$) and the non-nominated respondents ($M = 4.21$) on this item. Item W stated, “Subjective sources, other than test findings and documentation, often affect my opinion.” The results of item W indicate that there was significance ($p = .031$) between the nominated ($M = 3.02$) and the non-nominated ($M = 2.80$) on this item.

Table 23

Multivariate Analysis of Variance Summary Table for items H, L, R, & W

Effect	Λ	F	Hypothesis	Error df	p
Expert					
Wilks' Lambda	.967	2.461	4.000	290.000	.046

Note. The ANOVA follow-up procedure found significance on one dependant variable, item W which states subjective sources, other than test findings and documentation, often affect my opinion (Table 24).

Table 24

Analysis of Variance Summary Table for Post Hoc Tests of items H, L, R, & W

Source	Dep. Variable	Type III Sums of Squares	df	Mean Square	F	p
Expert	H	.319	1	.319	.515	.474
	L	.649	1	.649	1.386	.240
	R	3.265	1	3.265	3.440	.065
	W	5.098	1	5.098	4.725	.031

Test of Hypothesis 4

Hypothesis 4 indicated that rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as more truthful than rehabilitation counselors who were not nominated as effective expert witnesses.

A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses. The Box's M test was conducted and was not significant ($p = .037$), indicating the Wilks' lambda could be utilized as the test statistic for this hypothesis. The results in Table 25, indicate that there was no significance ($p = .095$), among the groups (Wilks $\Lambda = .9792.142a$, $df = 3, 293$, $p = .095$) in this hypothesis. The responses for Items I, J, & U, indicate that there was no significant difference between those who were nominated as effective expert witnesses and those who were not nominated as effective expert witnesses in reporting truthfulness. Thus, hypothesis 4 was rejected.

Table 25

Multivariate Analysis of Variance Summary Table for Items I, J, & U

Effect	Λ	F	Hypothesis	Error df	sig
Expert Wilks' Lambda	.979	2.142	3.000	293.000	.095

Test of Hypothesis 5

Hypothesis 5 indicated that rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as being better at teaching others and explaining difficult concepts in an easy to understand way more than rehabilitation counselors who were not nominated as effective expert witnesses.

A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses. The Box's M test was conducted and was not significant, indicating the Wilks' lambda could be utilized as the test statistic for this hypothesis. The results reported in Table 27 indicate that there was no significance ($p=.349$), between these 2 groups (Wilks $\Lambda=.9931.057$, $df=2,294$, $p=.349$). The results for Items G and K indicate that there was no significant difference between those who were nominated as effective expert witnesses than those who were not nominated as effective expert witnesses in reporting that they were better at teaching others and reporting difficult concepts. Thus, hypothesis 5 was rejected.

Table 26

Multivariate Analysis of Variance Summary Table for Items G & K

Effect	Λ	F	Hypothesis	Error df	p
Expert Wilks' Lambda	.993	1.057	2.000	294.000	.349

Test of Hypothesis 6

Hypothesis 6 indicated that rehabilitation counselors who are nominated as effective expert witnesses will be more comfortable speaking generally and speaking before a judge or jury than rehabilitation counselors who were not nominated as effective expert witnesses.

A MANOVA was used to compare the results of the items between rehabilitation counselors who were nominated as effective expert witnesses and rehabilitation counselors who were not nominated as effective expert witnesses. The Box's M test was conducted and was significant ($p =.000$), suggesting that the Pillai's Trace should be

utilized as the test statistic for this hypothesis. The results in Table 29 indicate that there was significance ($p = .000$) among these groups when asked their comfort level with speaking in public. Hypothesis 6 was supported.

Data for this hypothesis were gathered from items O, Q, and V of the Rehabilitation Counselor Survey (Appendix E). Post hoc tests were completed on these items (Table 30). Item O stated, “Being in front of a judge or a jury and providing expert witness testimony is one of my favorite tasks of my job.” The results of item O indicate that there was significance ($p = .010$) between the nominated ($M = 3.28$) and the non-nominated ($M = 2.89$) on this item. Item Q stated, “I get anxious before I testify.” The results of item Q indicate that there was significance ($p = .000$) between the nominated ($M = 3.26$) and the non-nominated ($M = 2.57$) on this item. Item V stated, “I feel comfortable speaking in public.” The results of item V indicate that there was no significance ($p = .083$) between the nominated ($M = 3.86$) and the non-nominated ($M = 3.64$) on this item.

Table 27

Multivariate Analysis of Variance Summary Table for Items O, Q, & V

Effect	P	F	Hypothesis	Error df	p
Expert Pillai's Trace	.086	9.175b	3.000	293.000	.000

Table 28

Analysis of Variance Summary Table for Post Hoc Tests of Items O, Q, & V

Source	Dep. Variable	Type III Sums of Squares	df	Mean Square	F	Sig.
Expert	O	9.552	1	9.552	6.671	.010
	Q	32.023	1	32.023	24.414	.000
	V	4.093	1	4.093	3.031	.083

Note. The ANOVA follow-up procedure found significance on two dependant variables, item O which states, “being in front of a judge or a jury and providing expert witness testimony is one of my favorite tasks of my job” and item Q which states, “I get anxious before I testify” (Table 8).

Additional Data

Rank Order of Referral Sources

Respondents were asked to rank order five responses they believe attribute to their referral base. The five choices were listing in a professional journal, marketing referral sources, previous experience in providing expert witness testimony, word of mouth, and other. The results (see Table 30), indicate that 160 respondents reported word of mouth as the leading reason they receive referrals. Previous experience in providing expert witness testimony was the second choice reported by 125 respondents. Marketing referral sources was reported as the third choice 117 times. Listing in a professional journal was reported as a fourth choice by 138 respondents and other was reported as a fifth choice by 50 respondents, not all respondents completed the rank order section of the survey.

Table 29

Rank Order of Items that Contribute to CRCs Obtaining Referrals

	1 st	2 nd	3 rd	4 th	5 th
Listing	2	17	88	138	22
Marketing	20	32	117	68	24
Exp.	86	125	42	22	15
Word	160	96	25	11	3
Other	22	13	24	9	50

Top Five Characteristics of Effective Expert Witnesses

Respondents were asked to choose the five most important traits of an effective expert witness using numbers 1-5, with one being the highest of importance. The results are reported in Table 31. Credibility was ranked the first choice by the majority of respondents (38.4%). Physical attractiveness and writing ability were chosen first by the fewest number of respondents (1%).

Table 30

Most Important Trait of an Effective Expert Witness.

Characteristic	First choice %
Ability to persuade others	3.3
Analytical ability	5.5
Consistency in testimony	5.2
Credibility	38.4
Education	2.9
Honesty	11.8
Integrity	11.1
Investigative ability	2.0
Objectivity in testimony	15.3
Physical attractiveness	1.0
Preparation prior to trial	8.5
Prior experience	5.2
Public speaking ability	2.0
Teaching ability	2.6
Writing ability	1.0

Note. Total does not equal 100% because respondents were asked to choose 5 items.

Questions

Respondents were asked to complete three items on the Rehabilitation Counseling Survey. These three items were the only section of the survey that allowed freedom of expression. Question 1 was as follows:

If you do consider yourself to be an effective expert witness, in your own words, please describe what makes you effective?

The responses were placed into various categories, depending on the nature of the response as related to a characteristic of an expert witness. The characteristics that emerged were as follows: investigative skills; thoroughness; understanding; detail orientation; organizational ability; analytical ability; objectivity; credibility; integrity; writing ability; speaking ability; professionalism; teaching ability; persuasiveness; confidence level; education; training; experience; knowledge; preparation; consistency; honesty; ethical performance; and listening skills.

The majority of respondents reported that speaking skill was the primary characteristic that made them effective. The respondents reported “direct and concise responses to questions” and “If I don’t know something or there is conflicting information, I acknowledge it and don’t try to come up with answers because I think I have to” as responses to this question. Comments such as “maintaining a slower pace and being more thoughtful in answering” as well as “able to convey knowledge and experience in a manner that people can trust and respect” were reported as responses to this question. Speaking ability was the response most frequently offered by respondents to this question.

The second most frequently reported response to this question related to objectivity. Respondents reported “formulating a realistic objective opinion and recommendation” as a characteristic that makes them effective. They also reported “objective opinions regardless of who hires me” as a response to this question. Another respondent reported “I do not pick and choose who to base my opinion on; if more than one opinion is available I do more than one analysis. I only use objective and not subjective assessments.”

The respondents were asked to complete a second question. The second question asked the respondents the following question:

What do you consider to be traits of individuals who are ineffective expert witnesses?

This was also a question that allowed free answer and the responses were organized into themes according to specific characteristics of an effective expert witness. The respondents identified the following traits as those of an ineffective expert witness: inability to investigate appropriately; inconsistency; lack of objectivity; lack of credibility; lack of speaking ability; lack of confidence; poor writing ability; lack of preparation; inappropriate knowledge, education, or experience; being unprofessional.

The majority of respondents identified lack of objectivity as the primary reason an individual would be identified as an ineffective expert witness. Comments such as “Biased in their evaluations; lack of objectivity and biasing one’s opinion; subjective opinions; opinions formulated entirely on subjective complaints” were reported by respondents. Other comments included “vocational experts who sit on the fence and base their opinion on who is paying the bill” were common in the response category.

The second most frequent response to this question related to speaking ability. Responses such as “beating around the bush” and “contradict themselves and try to back peddle” as reasons a vocational expert would be ineffective. Another response reported “anyone who would not be able to explain findings in a clear and concise manner” as an ineffective expert witness.

The final question asked of the respondents was as follows:

If you were advising a person who wanted to become an effective expert witness, what recommendations would you offer?

The responses were evaluated and placed in common theme areas as related to characteristics of an effective expert witness. The respondents reported the following areas as responses to this question: speaking ability; honesty; consistency; methodology; understanding of the legal process; preparation; education; experience; knowledge; skills; mentorship; observance; networking.

The most frequently reported advice related to preparation. Respondents reported “know the case and details so you don’t get rattled.” Respondents also reported “take adequate time to review and know all issues in the file” as a recommendation to others.

Education was the second most frequently reported area of recommendation for individuals who desire to become expert witnesses. Responses such as “take extra classes, seminars with experts” were common on this question. Respondents also stated “get credentials and experience to give you gravity,” as a recommendation to a potential expert.

Summary

Respondents were classified as either nominated or non-nominated for the purpose of this study. All respondents were asked to nominate individuals in local areas and at the national level who were effective expert witnesses in the area of vocational rehabilitation. Respondents could self nominate if they met the criteria of an effective expert witness. Respondents who were not nominated as effective expert witnesses were categorized as non-nominated respondents. Respondents who were nominated as effective expert witnesses were identified as nominated respondents. For the purpose of this study, the

non-nominated and the nominated groups were compared to identify characteristics of effective expert witnesses.

According to the demographic information the majority of nominated respondents possessed the following characteristics: male gender; 51-60 years of age; possessed a master's degree or higher; had more than 20 years experience in the rehabilitation field; and testified more than 20 times per year. When the non-nominated and nominated groups were compared, the results indicated that nominated expert witness status could be predicted by the number of years in the rehabilitation profession, LPC status, and the number of times testimony is provided yearly.

Nominated expert witnesses also demonstrated greater self confidence than the non-nominated group. They reported enjoying debating and conducting research more than non-nominated respondents. They enjoyed administering tests and were more comfortable speaking in public than non-nominated respondents. They considered themselves as less objective than non-nominated respondents.

All CRCs reported that the majority of their referrals come from word of mouth, meaning someone tells another person about their skills and abilities. Credibility was reported as the most important characteristic of an effective expert witness by the majority of respondents.

CHAPTER FIVE

DISCUSSION

The results of this study indicated that there are a number of significant differences between certified rehabilitation counselors who were nominated by their peers as effective expert witnesses and certified rehabilitation counselors who were not nominated as effective expert witnesses. The results indicated that certified rehabilitation counselors who are looked upon by their peers as effective expert witnesses responded differently to many items in the Rehabilitation Counselor Survey. The nominated expert witnesses also had demographic and background information that was different from the non-nominated counselors.

This study proposed that certified rehabilitation counselors who were nominated by their peers as effective expert witnesses would possess different characteristics than certified rehabilitation counselors who were not nominated by their peers as effective expert witnesses. In some areas the findings supported this study's proposal, and in other areas nominated counselors were not found to be different from non-nominated counselors.

Findings

Hypothesis 1 stated that there is some combination of variables (gender, age, educational level, years in the rehabilitation field, number of times testimony is provided, professional organization membership, and certifications and licenses) that will significantly predict characteristics of effective expert witnesses in rehabilitation counseling. Data for this hypothesis were gathered from the Rehabilitation Counselor

Questionnaire. A test of the data gathered indicated that three characteristics can predict which rehabilitation counselors would be nominated as effective expert witnesses by their peers (Table 9). A few of the traits associated with effective expert witnesses that have been identified in the literature (Feder, 1991; Iyer, 1993; Matkin; Wilkerson, 1997) are as follows:

- Knowledge and training
- Experience
- Education, certifications, and licensure
- Practical work experience

The discriminate function analysis that was applied to the data revealed that the variables of number of times testimony is provided each year, LPC status, and years in the rehabilitation field were most associated with the nomination of rehabilitation counselors by their peers as effective expert witnesses. The number of times testimony is provided each year and number of years in the rehabilitation field are associated with the knowledge and experience characteristics of an effective expert witness. In order to obtain an LPC, an individual has to obtain specific education and training, which is also a characteristic identified as that of an effective expert witness. The results of the discriminate analysis predicted the status of the certified rehabilitation counselors who were nominated as effective expert witnesses. According to these results, effective expert witness can be identified as those who testify frequently, are licensed, and have been working in the rehabilitation field a long time. All three of the factors suggest that experience in the field is the best predictor of being an effective expert witness. Therefore, good advice for a rehabilitation counselor would be: “If you want to be

effective, testify a lot, work a lot of years in the field of rehabilitation, and obtain a professional license as a counselor.”

This finding is important to note because the three predictor factors cannot be taught in a seminar or training class. These are factors that a certified rehabilitation counselor obtains through completing education and training necessary to attain licensure (LPC), working in the field as a rehabilitation counselor for a number of years, and providing testimony on a frequent basis. According to Chick (1972), “vocational experts are highly skilled professionals who use basic tools and procedures in preparing to function in this role” (p. 32). Expertise in this role is “attained through adequate interest, formal preparation, experience, and continual in-service training in the specialized area of vocational counseling, psychology, guidance, and the rehabilitative sciences” (p. 32). The literature on the subject of knowledge, education, training, and practical work experience is consistent with the findings in hypothesis 1 of this study.

Hypothesis 2 stated that rehabilitation counselors who are nominated as effective expert witnesses will consider themselves as having self-confidence, enjoy debating, be detail oriented, enjoy conducting research, enjoy administering tests, enjoy analyzing tests results, see themselves as physically attractive, dress in a business-like manner, be comfortable performing marketing activities, be organized, and believe there is a right and wrong answer for most questions more than rehabilitation counselors who were not nominated as effective expert witnesses.

Data for this hypothesis were gathered from items A, B, C, D, E, F, M, N, P, S, and T of the Rehabilitation Counselor Survey. The responses of the two groups were significantly different on this item (Table 11). The hypothesis was supported. Post hoc

ANOVAs were performed to determine which dependent measures accounted for the significant lambda.

Item A of the Rehabilitation Counselor Survey stated, “I have a great deal of self-confidence.” The responses of the two groups were significantly different on this item (Table 12). The means of the non-nominated respondents and nominated respondents were between the 4.0 and 5.0 range, indicating the item was “Very much like me.” The nominated group scored higher than the non-nominated group on this item, indicating a higher level of self-confidence among the respondents.

Expert witnesses should possess self-confidence (Bank 2001, Faherty, 1995; Matson, 1999). They should be careful not to cross the line from quiet confidence to arrogance (Bank, 2001). An expert witness is any person who has the special knowledge, skills, experience, training, or education necessary to become an expert in the field (Crawford, 2001). Therefore, the literature as it relates to self confidence of an effective expert witness is consistent with the results of this analysis. Self-confidence is identified as a characteristic of an effective expert witness. The results supported this conclusion which was reported in the literature.

Expert witness status could be predicted by the number of years in the rehabilitation field, LPC status, and number of time testimony is provided each year. Considering these three factors, it is understandable why CRCs who are nominated as effective expert witnesses by their peers possess a greater self-confidence than non-nominated CRCs. If an individual has more years experience, education and training to obtain LPC licensure, and experience testifying a number of times each year, it seems

only logical that a certain level of self-confidence would accompany this experience, which could attribute to the significant difference between the groups.

Although there was a significant difference in the non-nominated and nominated groups, the means of both groups were in the highest range, 4.0 to 5.0, which indicates that the majority of respondents answered the items regarding high level of self-confidence as “Very much like me.” Therefore, both groups possessed a high level of self confidence. Because the majority of non-nominated and nominated respondents had master’s degree or higher levels of education, were 41 and older in age, had greater than 10 years experience in the field of rehabilitation counseling, possessed CRCs and other licenses and certifications, and were members of professional organizations, high self-confidence would be expected. The non-nominated and nominated CRCs were a group of trained, educated, and experienced professionals. High levels of education and experience could account for the high level of self-confidence scores both groups obtained, especially the nominated group, as the demographic information consistently reported higher levels of experience and education in the nominated respondents.

Item B of the Rehabilitation Counselor Survey stated, “I enjoy debating with others.” The responses of the two groups were significantly different on this item (Table 13).

Cross-examination in a courtroom or in a deposition can be considered a form of debate. The opposing attorney has an opinion and may question the expert witness in a manner that is opposing, much like that of a debate. The goal of a debate is to have the audience side with the debater’s opinion.

When CRCs are requested or required to testify as expert witnesses, they are required to answer questions and explain issues under direct examination, which are questions posed by the side that requested their testimony. They must also answer questions under cross examination, which are questions directed by the side that is opposing the side that requested the testimony. Experts have to defend their findings and opinions, which is similar to a debate.

According to the literature, testimony is demonstrated through attitude and manner of speaking. Faherty (1995) stressed that expert witnesses should maintain a positive attitude, use a well-modulated voice, speak clearly, and speak in a voice that is slow and loud enough to be heard. Speech should be slow, clear, and natural. Presentation during testimony is important. Being able to maintain control and professional demeanor in the face of controversy is important when testifying.

The results of item B, debating enjoyment, showed a significant difference between groups. Mean scores of the non-nominated and nominated groups were in the 3 to 4 range. The highest possible score was 5, which indicates that neither group scored in the 4 to 5 mean ranking for answer choice, "Very much like me". Therefore, it appears that although there was a difference, neither group had an exceptionally high ranking for this item. Since testifying at a trial can be similar at times to a debate, it was expected that this characteristic would be more prevalent in the nominated group. Although the results support this point, the mean range was lower than would be expected, considering that debating effectively could be the crux of being a good expert witness.

Since CRCs are counselors and trained as helpers, it is not surprising that the mean on this item was in the middle range. It would appear that the counseling field

attracts individuals who are interested in helping relationships, not controversial, argumentative, public speaking roles. Individuals who are interested in the type of work requiring debate would probably be more attracted to business or law fields, not the counseling profession. An orientation toward helping could explain why the means were in the middle section on this item, enjoy debating, and were not higher.

Item C of the Rehabilitation Counselor Survey stated, “I am more oriented toward the ‘big picture’ than I am toward details; I need few details to come to an understanding of an issue or concept.” The responses of the two groups were not significantly different on this item (Table 14).

Considering the majority of nominated and non-nominated respondents possessed at least a master’s degree, it is assumed that it takes some detail orientation to obtain advanced education. Additionally, the rehabilitation field is a paper-intensive industry. Rehabilitation counselors are required to review file material such as medical and vocational documents; document case notes; develop rehabilitation plans; write progress reports; and write letters to physicians, injured workers, employers, potential employers, therapists, and others involved in the rehabilitation process. A significant amount of detail is required to be successful with these tasks.

Poynter (1997) stated that effective expert witnesses need to investigate an event, research everything written on the subject, administer tests, and analyze the findings. Effective vocational expert witnesses must thoroughly examine the records associated with their area of expertise (Poynter, 1997). Detail orientation is required to perform the proper evaluation of the client and the records, and to document the records and report the findings. Because rehabilitation counselors have to perform these tasks,

regardless of their work industry, it is understandable that there was not a significant difference between the groups.

Although both mean scores were in the middle range, the non-nominated group's mean score on this item was higher than the nominated group's mean score. This would suggest that the non-nominated counselors scored closer to the "Very much like me" response than did the nominated experts. However, for experienced vocational rehabilitation counselors, every detail of the report may not be necessary to review. For example, Functional Capacity Reports give a great deal of information that the rehabilitation counselor does not need. The rehabilitation counselor needs to identify the physical functioning requirements in the report. Therefore, detailed information that is not necessary to perform the job required is unnecessary. The reason why nominated rehabilitation counselors scored in the middle range and slightly lower than the non-nominated group in this area, may be that the more experience counselors have, the more they know which information has to be reviewed in detail, and which information is unnecessary to review when developing an opinion.

Item D of the Rehabilitation Counselor Survey stated, "I enjoy conducting research." The responses of Item D indicate that there was a significant difference between the non-nominated and nominated groups on item D (Table 15).

The results indicate that the nominated group enjoyed conducting research more than the non-nominated group. This finding is consistent with the identification of "investigative abilities" as a characteristic of an effective expert witness. If vocational experts possess investigative abilities, they may enjoy conducting research and gathering

information more than individuals who do not enjoy this task. The results for this hypothesis were consistent with the literature.

According to Poynter (1997), inquisitiveness is a trait associated with effective expert witnesses. Inquisitiveness will provide the motivation to investigate and research a matter extensively. Poynter (1997) stated that effective expert witnesses need to investigate an event, research everything written on the subject, administer tests, and analyze the findings. Poynter (1997) also indicated that expert witnesses evaluate the case theory of both the plaintiff and the defense to obtain their opinion, and then write a report on the findings of their investigation. Expert witnesses should be able to educate a judge or jury on the findings of their investigation and opinion. Vocational expert witnesses should prepare the rationale that led to the opinion expressed (Matson, 1999). Vocational expert witnesses should reflect and synthesize their opinions. These tasks are completed through research of the file and the facts of the case.

According to Murphy (1993), “the ideal expert witness is a detective, a teacher, and an interpreter” (as cited in Vogelsang, 2001, p. 93). Expert witnesses must investigate the file material and obtain a good understanding of the case, teach the members of a jury in a court proceeding, and translate the information into language the jury members can understand (Weikel & Hughes, 1993). Weikel and Hughes suggested that vocational expert witnesses should review their notes and other materials prior to a deposition, hearing, or court appearance. Vocational expert witnesses should make sure their files include all documents and tests related to the case. Matkin (1983) suggested that experts review all records, medical, psychological, social, vocational, and educational data pertaining to the individual.

Rehabilitation counselors have the opportunity to review cases and utilize information from the cases to develop a vocational opinion. Understanding where to go for the information is part of the job of a CRC. Oftentimes, CRCs have to go through piles of depositions, employment records, medical records, job statistics, and future employment trends to develop their opinions on cases. Investigative skills are required to succeed in this area. Expert witnesses need to read, review, and probe through a mountain of records to pull the specific information they need to develop a reliable opinion that will withstand cross examination. Having investigative skills is beneficial to the expert witness.

Item E of the Rehabilitation Counselor Survey stated, "I enjoy administering tests." The results indicate a significant difference between the non-nominated and nominated groups on this item (Table 16). The means for Item E indicate that those who were nominated as effective expert witnesses reported enjoying administering tests more than those who were not nominated as effective expert witnesses.

Detail orientation and investigative skills are required of the effective expert witness. A part of being detailed and investigative is performing activities that define this quality. Performing objective tests to develop an opinion is a detail-oriented investigative quality. If CRCs want to present the appearance of being an objective expert, there to provide an opinion that assists the trier of fact, they will perform activities that help them present in this manner. Administering objective tests is such an activity. Testing helps effective experts develop and support their opinions on cases.

Vocational tests are required of vocational experts to aid in completing a vocational assessment (Carter & Saxon, 1977). Information gathered from vocational

testing, work evaluation, vocational counseling, work adjustment, and a review of labor market trends is combined to formulate an opinion regarding the client's vocational strengths and weaknesses (Carter & Saxon, 1977; Matkin, 1980; Vallario & Emener, 1991).

Vocational experts rely on objective material to support their opinions provided in their reports and evaluations. The more objective data vocational expert witnesses have to support their decision, the less subjective they appear to the judge and/or jury.

Objectivity is defined as a characteristic of an effective expert witness. When vocational experts can provide objective measurement tools to support their opinions, they appear more objective, which is a characteristic of an effective expert witness. The results are consistent with the literature for this hypothesis.

Item F of the Rehabilitation Counselor Survey stated, "I enjoy analyzing test results." There was not a significant difference between groups on this item (Table 17).

Although the nominated group reported enjoying administering tests more than the non-nominated group in item E, the results of item F did not indicate a significant difference on this item as related to test interpretation. It appears from the findings that expert witnesses enjoy administering the tests more than the non-nominated group, but do not enjoy interpreting the results more than the non-nominated group.

The literature indicates that vocational expert witnesses must understand information gathered from vocational testing, work evaluation, vocational counseling, work adjustment, and a review of labor market trends combined to formulate an opinion regarding the client's vocational strengths and weaknesses (Carter & Saxon, 1977; Matkin, 1980; Vallario & Emener, 1991). Vocational tests are required of the vocational

expert to aid in completing a vocational assessment (Carter & Saxon, 1977). The literature is consistent with the findings related to administering tests. However, analyzing the results was not a characteristic that was found significantly different between the groups.

Item M of the Rehabilitation Counselor Survey stated “I believe I am physically attractive.” The responses of the two groups were not significantly different on this item (Table 18). The mean score for the non-nominated and nominated group was in the middle range, meaning neither group believed the item was “Not like me at all” or “Very much like me.”

The literature states that physical attractiveness was found to be a strong positive influence on personal, but not professional, attributes (Paradise, Conway & Zweig, 1986). This means that appearance can have an influence on the personal presentation, but not the professional presentation. The professional presentation is based on factors other than appearance. Strong (1968) has reported that interpersonal persuasion is affected by the specific characteristics of expertness, trustworthiness, attractiveness, and involvement. It would appear that appearance makes a difference on the overall presentation, but does not determine if an individual is an effective expert witness.

There was not a significant difference between the groups on this item. This finding is understandable considering the respondents would have had to report that they thought they were physically attractive to answer this item. It would appear more socially appropriate to mark in the middle section on this item than on either of the extremes.

Item N of the Rehabilitation Counselor Survey stated, “I dress in an attractive business-like manner.” The results indicated that there was no significance between groups on this hypothesis (Table 19).

The response means for both groups were in the 4.0 to 5.0 category, indicating that they believed the item was “Very much like me.” Therefore, both groups believed they dressed in a professional business-like manner. Faherty (1995) indicated that business dress is recommended for expert witnesses. Matson (1999) stated that good expert witnesses act and look dignified, dress in good taste, and have a confident demeanor and attitude.

Although the results of this item were not significant, it appears that both groups believed they dressed in a more attractive, business-like manner, which is consistent with the literature. Rehabilitation counselors are trained and educated on skills that teach disabled individuals to obtain and maintain employment. It would appear that rehabilitation counselors have specialized training and education on proper work behaviors, as they teach these behaviors to disabled individuals. Dressing appropriately is a work behavior.

Item P in the Rehabilitation Counselor Survey stated, “I am uncomfortable marketing myself and discussing my professional qualities with potential referral sources.” The responses were not significant between groups on this item (Table 20).

The mean score for the non-nominated and nominated group fell in the middle range for this item, indicating that the statement was not “Very much like me” or “Not like me at all.”

According to Weikel and Hughes (1993), vocational expert witnesses come into contact with many individuals who are involved in the litigation process and can receive referrals through these relationships. When expert witnesses do well on a case, the referral source may consider them for another case and tell others about their work. Therefore, expert witnesses may rely on word of mouth as the leading referral source, rather than resorting to marketing their services. On the rank order section of the survey, 52.1% of respondents chose “word of mouth” as their first choice for the reason they receive referrals. Therefore, the results of this hypothesis support the literature pertaining to referral sources and support other data gathered in this study.

Marketing services is a sales function. Because counselors are not trained to be marketers, it would be expected that they would not feel the item was “Very much like me.” Rehabilitation counselors are trained and educated to work with individuals who need services, not individuals who pay for the services. Because rehabilitation counseling is primarily a third party payer system, meaning someone other than the client pays for the services, marketing is a function that must be performed out of necessity, not desire. In fact, many rehabilitation counselors may feel that this is a function which they must do, but it keeps them from their real work, which is working with clients. In order to do their “real work,” they have to perform marketing to get cases. Therefore, it is a necessary function, but one that is looked upon as a “must do” instead of a “want to,” which would explain the scores in the middle section on this item as indicated item P.

Item S of the Rehabilitation Counselor Survey stated, “I am not very organized.” The responses of the two groups were not significantly different on this item (Table 21).

Both the non-nominated and the nominated respondents felt they were very organized as indicated by their responses to item S. The groups had the same mean score on item S.

Considering the fact that vocational rehabilitation counseling is a very paper and form-oriented industry, the trait of being organized is an asset to rehabilitation counselors. Also, as with detail orientation in item C, the majority of respondents possessed advanced degrees and certifications, and a high degree of organization is required to reach these levels of education. It is apparent that the nominated experts felt they possessed this characteristic, therefore supporting the literature pertaining to organization skills of effective expert witnesses.

Item T of the Rehabilitation Counselor Survey stated, "I do not believe there is a right and wrong answer for most questions." The responses of the two groups were not significantly different on this item (Table 22).

Both the non-nominated and nominated group had mean scores in the 2.0 to 3.0 range. Both groups were closer to the "Not like me at all" response than the "Very much like me" response. Therefore, the respondents felt that they did believe there is a right or wrong answer for most questions.

When providing expert testimony, the literature supports the contention that traits associated with effective expert witnesses are as follows: (a) knowledge, education, and training; (b) experience; (c) investigative orientation; (d) ability to formulate an objective opinion; (e) credibility; and, (f) ability to provide consistent testimony (Berry, 1990; Bronstein, 1999; Deutsch & Sawyer, 1990; Faherty, 1995; Feder, 1991; Iyer, 1993; Matkin, 1983; Matson, 1999; Miller & Bolster, 1977; Poynter, 1997; Quigley, 1991; Ruppel & Kaul, 1982; Sleister, 2000; Strong, 1968; Weikel & Hughes, 1993; Wilkerson,

1997). Feder (1991) suggested that consistent testimony at trial is vital and that inconsistent testimony between deposition and trial is hazardous. If experts change their opinion without new information being introduced, their credibility will be questioned (Feder). Consistent testimony is also demonstrated through attitude and manner of speaking.

If expert witnesses feel that there is a right and wrong answer for most questions, their opinions can be based on factors that are objective and consistent, which will be reflected through their testimony. In a court of law, an attorney can point to opinions of the expert witness that were provided on similar cases previously. If the opinion on their case is different, expert witnesses must be able to specify why their opinion was different. If expert witnesses do not rely on objective, measurable information this can lead to a problem with consistency. Consistent testimony is a characteristic of an effective expert witness.

Hypothesis 3 stated that rehabilitation counselors who were nominated as effective expert witnesses would consider themselves as more objective in formulating opinions than rehabilitation counselors who were not nominated as effective expert witnesses. Four items from the Rehabilitation Counselor Survey, H, L, R, and W were used to test this hypothesis. The results of the 4 items combined were significant (Table 23). Of the 4 items individually, the response to item W was significant.

Item H stated, "My opinion is not formed until I have reviewed all collected relevant information." The responses of the two groups were not significantly different on this item. The means on this item for both groups were between the 4.0 and 5.0 range, indicating the responses were "Very much like me." Both groups reported that they did

not provide opinions until all the relevant information was reviewed. It would appear that they did not just look for information that supported their opinion, but reviewed everything before developing an opinion on a case.

Item L stated, “I formulate my opinions following a consistent method of review of information, regardless of the case or reason for referral.” The responses of the two groups were not significantly different on this item. The means on this item were in the 4.6 to 5.0 range, indicating that the respondents reported this item was “Very much like me.” Consistency of review and reporting appeared to be an important quality of both groups of respondents.

Item R stated “My opinion tends to vary depending on the referral source. I find out what the referral source is looking for and try to provide that to the best of my ability.” The responses of the two groups were not significantly different on this item. The results of the respondents indicated that this item was “Not like me at all.” Both groups reported that basing an opinion on the referral source was not like them.

Item W stated, “Subjective sources, other than test finding and documentation, often affect my opinion.” The responses of the two groups were significantly different on this item. The nominated group had a higher mean on this item, indicating that they reported the item was in the “Very much like me” range.

Quigley (1991) suggested that expert witnesses must be an expert for either the plaintiff or for the defendant. However, it is very important that expert witnesses be objective in formulating their opinions. Berry (1990) stated that the role of expert witnesses in a court proceeding is that of advocate for the facts, or truth, as discovered through evaluation of the client. When providing expert testimony, the literature supports

the contention that traits associated with effective expert witnesses are as follows: (a) knowledge, education, and training; (b) experience; (c) investigative orientation; (d) ability to formulate an objective opinion; (e) credibility; and, (f) ability to provide consistent testimony (Berry, 1990; Bronstein, 1999; Deutsch & Sawyer, 1990; Faherty, 1995; Feder, 1991; Iyer, 1993; Matkin, 1983; Matson, 1999; Miller & Bolster, 1977; Poynter, 1997; Quigley, 1991; Ruppel & Kaul, 1982; Sleister, 2000; Strong, 1968; Weikel & Hughes, 1993; Wilkerson, 1997).

Based on the results of this hypothesis, it would appear that both groups report objectivity in forming an opinion. The nominated group was significantly different when considering subjective information when rendering an opinion than the non-nominated group. Considering the nominated group had more years of experience and higher education levels than the non-nominated group, this would be expected. For example, some subjective information can help the expert witness obtain more information and prove useful in forming opinions. Subjective cues can aid counselors in asking questions and in obtaining information from objective sources to develop their final opinions. This may be the subjective information nominated individuals considered when responding to this item. For example, if an individual is defensive when asked questions and tells the evaluator that he has a poor memory since the accident, the evaluator may use this information to investigate inconsistencies in self-reporting, and question the individual's honesty. Also, an individual may come to an appointment walking with a limp and using a cane and state that walking is significantly impaired. When the individual leaves the appointment, the evaluator may look out the window to view the client walking and

entering the car to see if the walking behavior is consistent. Subjective information can assist the experienced expert witness to arrive at accurate conclusions.

Hypothesis 4 stated that rehabilitation counselors who were nominated as effective expert witnesses would consider themselves as more truthful than rehabilitation counselors who were not nominated as effective expert witnesses. Data from this hypothesis were gathered from items I, J, and U of the Rehabilitation Counselor Survey. The responses of the group were not significantly different for these combined items (Table 25).

Item I stated “I sometimes avoid telling the truth if another person’s feelings will be hurt.” Both groups’ mean responses were in the upper middle category on this item, indicating the respondents did not choose the “Not like me at all” category or the “Very much like me” category.

Item J stated, “I always provide professional information that is truthful and reflects my honest opinion.” Both group means were in the 4.5 to 5.0 category on this item stating the item was “Very much like me.” It is obvious that truthfulness when providing professional information was an important characteristic for both groups.

Item U stated, “It makes me uneasy to be in a situation where I can’t tell the complete truth.” The response means were in the 4.0 to 4.5 range on this item. The responses indicated that honesty is an important trait to both groups. Deutsch and Sawyer (1990) defined “credibility” as a combination of honesty and professionalism.

Out of 23 response means, item J received the highest mean in both the non-nominated and nominated groups. It appears that responses related to honesty and work items were considered “Very much like me,” but less when the item related to honesty as

compared to hurting others feelings. Therefore, honesty appears to be very important when consequences are large, such as in professional situations as reported in item J. Honesty appears less important when faced with confrontational issues that may cause personal pain, as in item I. It appears that the respondents were aware of honesty and the ramifications of dishonesty, but choose to be selective in the times when honesty applies to their situation. In essence, it appears that the degree of honesty a respondent possesses is situational, based on the results of this hypothesis in non-nominated and nominated groups.

Hypothesis 5 stated that rehabilitation counselors who were nominated as effective expert witnesses would consider themselves as being better at teaching others and explaining difficult concepts in an easy to understand way than rehabilitation counselors who were not nominated as effective expert witnesses. Items G and K were used to test this hypothesis. The responses of the two groups were not significantly different on this item (Table 27).

Item G stated, "I am great at explaining concepts in ways that people can understand and learn." The means were in the 4.0 to 5.0 range indicating that both groups felt the statement tended to be "Very much like me." Both groups felt that they could explain concepts in ways that were easily understood by others.

Item K, stated, "I have trouble explaining technical data in a way that is easily understood by others." It was the same item as the previous one, just asked in a negative tone, instead of a positive tone. The mean scores for the non-nominated and nominated group were in the middle range on this item.

The literature suggests a number of characteristics that may be associated with effective expert witnesses such as gender, age, teaching ability, specialized knowledge, education, credentials, experience, honesty, credibility, objectivity, and dress (Blackwell, 1992; Brodsky, 1999; Isaac & Sognaes, 1983; Poynter, 1997; Warren, 1997) Poynter stated that specific characteristics of expert witnesses are inquisitiveness, writing skills, speaking skills, ability to reason, ability to teach, credibility, prior experience, and proximity. Iyer (1993) indicated expert witnesses must possess the teaching ability to relay their opinion in a manner that the listener will understand. According to Murphy (1993), “the ideal expert witness is a detective, a teacher, and an interpreter” (as cited in Vogelsgang, 2001, p. 93). Murphy, reports that experts must explain the methodology of their investigation in a way that captures the jury members’ interest. According to Poynter, expert witnesses help the jury understand the technical aspects of a case and try to persuade a jury to accept their explanation of technical facts.

Although both items asked the same thing, one in a positive tone and one in a negative tone, the respondents appeared to identify with the positive statement as “Very much like me,” based on the mean scores, more than the negative statement. Since CRCs are trained to be counselors and case managers, teaching is often a function of the job. Rehabilitation counselors have to teach disabled individuals to perform job search appropriately, dress appropriately for an interview, interview for jobs, research for jobs, find jobs that are appropriate for their ability level, and other issues surrounding independence and work. Rehabilitation counselors teach disabled individuals skills that help them to be independent. There was not a significant difference in the groups on these

items. This finding is understandable, because a large part of the rehabilitation counselor's job is teaching disabled individuals.

Hypothesis 6 stated that rehabilitation counselors who were nominated as effective expert witnesses would be more comfortable providing testimony in court and speaking in public. Items O, Q, and V were used for this hypothesis. There were significance differences in the responses of the two groups on this item (Table 29).

Item O stated, "Being in front of a judge or a jury and providing expert witness testimony is one of the favorite tasks of my job." There were significance between groups on this item. Nominated respondents' choices were in the 3 to 4 point range. Non-nominated respondents were in the 2 to 3 point range. Therefore, nominated respondents reported that the item was closer to "Very much like me" than non-nominated respondents.

Item Q stated, "I get anxious before I testify." The responses of the two groups were significantly different on this item. The mean score for the nominated group was between the 3 and 4 score area and the non-nominated group was in the 2 to 3 score area. Therefore, the nominated group reported the item was closer to the "Very much like me" response than the non-nominated group.

Item V stated, "I feel comfortable speaking in public." There was no significant difference between the two groups on this item. The mean scores for the groups were in the 3.5 to 4.0 range, indicating both feel comfortable speaking in public.

Poynter (1997) stated that specific characteristics of expert witnesses are inquisitiveness, writing skills, speaking skills, ability to reason, ability to teach, credibility, prior experience, and proximity. Iyer (1993) indicated that expert witnesses

must have the writing ability to express their opinion in a report and must have the speaking ability to relay the information effectively. Relatively subtle variations in courtroom speaking styles can influence jurors' reactions and deliberations (Conley, O'Barr, & Lind, 1978).

Although there was a significant difference between groups on hypothesis 6, the mean scores for the items were in the middle range, indicating that the responses were not "Very much like me" or "Not like me at all." Neither group had mean scores over the 4.0 level. Neither group scored in the "Very much like me" or "Not like me at all" category. Considering that the respondents were rehabilitation counselors who are trained and educated to work with individuals and groups in counseling relationships, this response was expected. Public speaking is not a normal function of the daily work of a rehabilitation counselor. The work of a rehabilitation counselor is completed primarily in individual or and small group settings, not in a public forum. It would appear that the scores identified by the respondents were normal for the industry in which they work. However, expert witnesses are required to speak in public, and oftentimes these speaking opportunities can be of a controversial nature, such as cross examination. If rehabilitation counselors have a low level of interest and ability in public speaking, especially under duress, they may lack the motivation to market themselves as expert witnesses and accept these types of cases. Considering that most cases settle out of court and do not require testimony, rehabilitation counselors may hope that testimony will not be required. Another possibility is that rehabilitation counselors are motivated to accept cases that require expert testimony because of the fees they collect in such cases, especially if they

are higher than their normal fees. This would be an issue that could be investigated in further research.

Rank Order Items

Respondents were asked to rank order five responses they believe attribute to their referral base. These items included the following: listing in a professional journal; marketing referral sources; previous experience in providing expert witness testimony; word of mouth; and other.

The results indicate that respondents chose word of mouth as the leading reason they receive referrals. Previous experience in providing expert witness testimony was reported as the second choice. Marketing referral sources was reported as the third choice. Listing in a professional journal was reported as a fourth choice, and other was reported as a fifth choice.

Vocational rehabilitation counselors are trained and educated to work with individuals and groups in helping relationships. They typically do not take courses in marketing and enterprise. The CORE curriculum does not require classes that teach ways to develop a private practice and increase business. Rehabilitation counselors understand that when they do a good job on a case, the referral source can become a repeat customer.

In private rehabilitation, third party payers receive reports and are aware of the work performance, which either encourages or discourages repeat business. If the customers like the work that is done, they usually will tell other individuals who perform the same type of work, and referrals will be obtained. The majority of respondents indicated that word of mouth was the main way they received referrals of cases.

The second choice was previous work experience, which is consistent with word of mouth. If an individual likes the work that was performed, they receive more referrals and they tell other people about the work that was performed.

Marketing was the third selection of reasons for referral. Marketing can be done in two ways. Some rehabilitation counselors work for companies that are large enough to have marketers and attend meetings and lunches with marketing professionals, but do not sell their services directly. Some rehabilitation counselors take referral sources to lunch and invite them to other events, which increases referrals. Marketing can be performed in a number of ways, and was selected as the third reason why rehabilitation counselors receive referrals.

Listing in a professional organization was selected as the fourth choice by respondents. Many rehabilitation counselors are listed in IARP and other professional organizations which have a web based database. Rehabilitation counselors may be selected from a professional journal listing based on their location or area of specialty.

Marketing is a very troublesome area for rehabilitation counselors, especially expert witnesses. The expert witness has to be an unbiased third party, and this is often difficult to achieve. In private rehabilitation, insurance adjusters refer cases to rehabilitation counselors. These insurance adjusters may be interested in reducing benefits and saving the insurance company money. They may have a preconceived notion about the disabled individuals and their motivation to work. They may refer the case to the rehabilitation counselor to achieve their goal, which may not be consistent with the rehabilitation counselor's goal. The goal of the rehabilitation counselor is to provide timely rehabilitation services to return disabled individuals to productive lifestyles and

independence. Although both the insurance adjuster and the rehabilitation counselor want to return the disabled individual to the job, the way they go about doing this may be different.

The rehabilitation counselor may want to develop a case plan with the disabled individual to direct the rehabilitation process. The insurance adjuster may not pay for plans. The rehabilitation counselor may want to go to job interviews with the disabled individual personally, to coach them through the process; the adjuster may not pay for that. The rehabilitation counselor may want to do personal job search rather than telephonic job search; the adjuster may not pay for that. Basically, the payer can direct services which are not in compliance with the rehabilitation counselor's professional code of ethics, which could put the rehabilitation counselor in a precarious situation. The rehabilitation counselor has to remain unbiased and professional, which may be difficult to achieve due to restraints placed by the third party payer, who has different motives for requesting services.

Top Five Characteristics of Effective Expert Witnesses

Respondents were asked to choose the five most important traits of an effective expert witness using numbers 1 through 5, with 1 being the highest of importance. The results indicate that credibility was ranked the first choice characteristic of an effective expert witness by the majority of respondents. Objectivity in testimony was selected as the second choice by the majority of respondents. Honest and integrity were selected as numbers three and four by the respondents, and preparation prior to trial was the fifth most frequently selected choice.

The respondents selected five important traits of an effective expert witness. Credibility was the first choice which indicates that the respondents felt the expert witness must be credible to be effective. Credibility is defined as the quality of being believable or trustworthy, a very important characteristic of expert witnesses. If they are not believable or trustworthy, their testimony will not be believed and they will not help the trier of fact in the decision process, which is the purpose of the expert's job. Objectivity, honesty, and trustworthiness are the next three items that were selected most often. Overwhelmingly, these traits are consistent with credibility. Basically, the expert witness must be believable. They can have considerable education and advanced degrees, but if they are not seen as believable, they will not be considered effective.

The fifth choice was preparation for trial. This is a very important choice as preparation can aid in the credibility process. If experts are not prepared and have to search through their notes or answer haphazardly because they do not remember the facts of the case, they lose credibility.

Respondent Questions

Respondents were asked to complete three questions in the Rehabilitation Counseling Survey. These three questions were free answer, the only part of the survey that allowed freedom of expression.

Question 1

The first question asked respondents to answer the question that stated, "If you do consider yourself to be an effective expert witness, in your own words, please describe what makes you effective."

The majority of responses to this question related to speaking ability. The respondents reported that speaking effectively at a trial or deposition is what makes them effective and explaining issues in a way that the judge can understand also makes them effective. According to Bank and Poythress (1982), testimony is likely to be most effective if the following three rules are followed when responding to questions:

1. Listen to the entire question and answer only that question.
2. Answer truthfully and carefully.
3. If a question is not understood, don't answer it.

It is recommended that expert witnesses take their time, not be rushed, and pause before answering questions. The pause helps expert witnesses to form their thoughts correctly. Therefore, the literature and responses are consistent on this question.

The second area reported by the respondents was objectivity. Faherty (1995) reported that expert witnesses are viewed as impartial, disinterested parties who are simply trying to explain to a judge or jury why and how things happened. Quigley (1991) suggested that expert witnesses must be experts for either the plaintiff or for the defense. However, it is very important that expert witnesses be objective in formulating their opinions. The respondents reported that objectivity was one characteristic that made them an effective expert witness.

Question 2

The respondents were asked the following question: "What do you consider to be traits of individuals who are ineffective expert witnesses?" The majority of respondents identified lack of objectivity as the primary reason an individual would be identified as an ineffective expert witness. This finding is consistent with question 1, as objectivity was a

characteristic that identified experts as effective. Therefore, it is possible the lack of this characteristic might make them ineffective.

Another area of response to this question related to speaking ability. Responses such as “beating around the bush” and “contradict themselves and try to back peddle” were given as reasons a vocational expert would be ineffective. Therefore the two highest responses for characteristics that make an individual an effective expert witnesses mirror the two most frequent responses on lack of characteristics that make an individual an ineffective expert witness. It can be concluded from responses to these two items in this study that speaking ability and objectivity are believed to be very important characteristics of an effective expert witness.

Question 3

The final question asked of the respondents was the following: “If you were advising a person who wanted to become an effective expert witness, what recommendations would you offer?” The most important advice as indicated by the responses was preparation of the vocational expert. Berry (1990) indicated that expert witnesses are prepared to present objective, unbiased renderings of information and their opinion. Vocational expert witnesses should prepare the rationale that led to the opinions they will express. Matson (1999) postulated that trial preparation is the time when opinions can be practiced and perfected for presentation. The literature supports the responses on this question.

Education was the second area of recommendation for individuals who desire to be expert witnesses. An expert witness is any person who has the special knowledge, skills, experience, training, or education necessary to become an expert in the field

(Crawford, 2001). The literature suggests a number of characteristics that may be associated with effective expert witnesses such as gender, age, teaching ability, specialized knowledge, education, credentials, experience, honesty, credibility, objectivity, and dress (Blackwell, 1992; Brodsky, 1999; Isaac & Sognaes, 1983; Poynter, 1997; Warren, 1997). Therefore, it appears that the responses to questions 1, 2, and 3 in the Rehabilitation Counselor Survey were consistent with the findings in this study and current literature on this topic.

Significant Predictors of Expert Witness Characteristics

The purpose of this study was to identify the characteristics of an effective expert witness so that these characteristics could be taught to other vocational rehabilitation counselors. According to Weikel and Hughes (1993), rehabilitation counselors can realize a significant income supplementation to their practice or other wages by testifying as vocational expert witnesses. Therefore, a financial benefit can be obtained by learning these skills.

Characteristics of an effective expert witness have been identified in this study. These characteristics are important to identify to give potential expert witnesses information on what it takes to be an effective expert witness. Because many of the identified characteristics are obtained through experience, this may be a welcomed finding to many new expert witnesses. Over time they can improve their skills and abilities if they choose to provide this service. They will be able to obtain education and experience to assure that they have the professional certifications needed to be an effective expert witness. They may also consider taking courses such as speech and debate, which may help them develop the communication skills to be an effective expert

witness. It would be expected that the confidence level of expert witnesses would improve with additional education and training. The potential expert witness must understand that conducting research and administering tests are important functions of an expert witness. Potential expert witnesses could be taught proper file review techniques and advanced testing tools and procedures. Knowledge in these areas would also increase confidence level. Effective expert witnesses also consider themselves more objective, and objectivity could be learned once proper investigative and testing techniques are taught to the potential expert witnesses. Overall, many of the characteristics of an effective expert witness can be taught and developed over time, which can be beneficial to vocational rehabilitation counselors desiring to provide vocational expert witness testimony.

Examination of Demographic Information of Participants

The demographic information provided by the respondents was utilized in the final analysis of this study. The results of the demographic information are discussed in this section.

Gender

Overall, the majority of respondents were female; however, the majority of nominated expert witnesses were male. Male certified rehabilitation counselors were nominated to a greater degree than female certified rehabilitation counselors. Male certified rehabilitation counselors who were nominated responded to the survey in greater numbers than did the female certified rehabilitation counselors who were nominated. Overall there were 190 female respondents and 156 male respondents; however, the number of males nominated as effective expert witnesses and the number of nominated respondents to the survey were primarily male (54.7%).

Age

The ages of the non-nominated and nominated rehabilitation counselors were requested. There were more respondents in the 51-60 year range for both groups than in the other age groups (45% in non-nominated and 60% in nominated). The second age group for both the non-nominated and nominated was the 41-50 (24.3% in non-nominated and 25.3% in nominated). The third age category (61 and over) was consistent among groups (12% in non-nominated and 9.5% in nominated). The fourth category (31-40) among respondents was also consistent in ranking (12% for non-nominated to 4.2% for nominated). The non-nominated respondents reported having 6 (2.4%) respondents in the 20-30 age categories. The nominated respondents had no one in this age category. Overall, 81.3% of the non-nominated respondents were 41 or older and 94.8% of the nominated respondents were 41 or older. The nominated experts were older as a group. This is consistent with the literature. According to Faherty (1995) and Matson (1999), the desired attributes for an expert are that of a middle-aged person who wears glasses, dresses in a dark, three-piece suit, and carries a briefcase.

Education

The education level of the respondents was requested. The majority of respondents in both categories held master's degrees (64.5% in the non-nominated group to 55.8% in the nominated group). The second nomination group, post-master's credits, was also consistent (19.5% for non-nominated and 20% for nominated). The third category (Ph.D.) was consistent among the groups (6.0% for the non-nominated group to 18.9% for the nominated group). As a group, the nominated respondents possessed more doctoral degrees than did the non-nominated respondents (15 in the non-nominated group

of 251 respondents to 18 in the nominated group of 95 respondents). Matson (1999) postulated that experts are persons who are thoroughly knowledgeable in their subject area with a high degree of academic training and experience. Wilkerson (1997) stated that traits of expert witnesses include training or education and sufficient knowledge in their area of expertise to satisfy a judge that the opinion will be helpful in assisting the trier of fact. The demographic information on education supported the literature in this area.

Experience

The number of years in the rehabilitation field was consistent among groups. The most frequently reported category was in excess of 20 years for both groups (63.7% for non-nominated and 84.2% for nominated). The second highest category was 16 to 20 years (13.5% for non-nominated and 9.5% for nominated). Overall, 77.2% of the non-nominated respondents possessed 16 or more years in the rehabilitation profession. In the nominated respondent group, 93.7% were in the rehabilitation profession in excess of 16 years. Matkin (1983) stated that possession of a significant numbers of years experience is vital for expert witnesses. The expertise developed through experience can assist the non-expert members of a court and jury in understanding a subject matter not known by common experience or knowledge. This degree of expertise may be based upon training or experience acquired by expert witnesses.

Testimony

The number of times testimony is provided each year was reviewed. In the non-nominated category, 50.6% reported testifying 0-5 times per year. This was the highest category of response for the non-nominated category. The second highest response was

in excess of 20 times per year at 23.5 percent. Overall, 47.9% of non-nominated respondents reported testifying 6 or more times per year.

In the nominated category, the highest response level was in the greater than 20 area. Forty two percent of nominated respondents reported testifying in excess of 20 times per year. Overall, 79% of nominated respondents reported testifying in excess of 6 times per year.

Organizations

Respondents were asked to identify the professional organizations and memberships they held. The respondents could check more than one choice on this item. Overall, nominated respondents were members of more professional organizations than non-nominated respondents.

Certification/Licensure

Respondents were asked to provide information about their certification and licensure. The respondents could check more than one choice on this item. As a group, nominated respondents had more licenses and certifications than non-nominated respondents.

Findings Related to the Conceptual Framework

Social influence implies that an individual or collection of individuals affect another individual or collection of individuals in some manner (King, 1975). According to King (1975), the social influence concept includes instances in which the behavior of one person encourages change in the behavior of another person. Cohen (1964) indicated that it is possible to say things that one disbelieves to be in compliance with the beliefs of

others. It is also possible to accept someone else's belief as evidence of reality even though one does not have a specific motivation to conform to the expectations.

Many factors contribute to an individual being influenced (King, 1975). There are two major areas of social influence and persuasion when discussing expert testimony. One such area is logical appeal (Bank & Poythress, 1982). With logical appeal, the expert presents a series of inductive or deductive arguments that invite reasoning toward the conclusion of the expert (Bank & Poythress). Logical area of appeal is the factual information that can influence the listener.

The second area of social influence and persuasion is emotional appeal (Bank & Poythress, 1982). Effective expert characteristics of speaking styles, consistent testimony, and physical attractiveness are all in the emotional appeal area of social influence. These areas are deemed emotional appeal because they are not as factual and logical as the logical appeal area.

The findings of this study fit into the conceptual framework of the social influence theory. Logical and emotional areas of social influence were identified in this study. Logical and emotional areas of social influence emerged as being predictors of effectiveness. For example, number of times testimony is provided, holding a state license, and extensive experience in the field are all logical areas of social influence. These items can be identified and reported, which influences the listener. Areas of emotional influence were also identified. These areas include increased self confidence; enjoyment in debating, conducting research, administering tests and providing testimony; utilization of subjective information to formulate opinions; speaking ability; and lack of anxiety in giving testimony. The emotional areas of social influence present themselves

in the overall presentation of the expert, but cannot be measured as easily as logical influence.

Summary of Results

The best predictors when identifying effective expert witnesses from vocational rehabilitation counselors in general are

1. A high number of court appearances annually
2. Holding a state license as a counselor
3. Having been a rehabilitation counselor for a long time.

The counselors nominated as effective expert witnesses are significantly different from counselors who were not nominated in the following areas listed below. Counselors nominated as effective expert witnesses reported they

1. have more self confidence
2. enjoy debating more
3. enjoy conducting research more
4. enjoy administering tests more
5. utilize subjective sources more often, other than test findings, in forming opinions
6. are more comfortable speaking generally or before a judge or jury
7. more often identify providing expert testimony as one of their favorite tasks
8. get anxious less often before they testify

Nominated counselors are not significantly different in 17 areas from non-nominated counselors. Both counselors nominated as effective expert witnesses and those not nominated report that to the same degree, they

1. have an orientation to detail
2. enjoy analyzing tests
3. form opinions after reviewing information that was collected
4. formulate opinions following a consistent method of review
5. give opinions to please the source paying the fee
6. are truthful
7. avoid telling the truth to avoid hurting feelings
8. provide honest professional opinions
9. are uneasy when not able to tell the complete truth
10. are good at teaching others and explaining difficult concepts
11. are great at explaining technical data in an understandable manner
12. have trouble explaining technical data in an understandable manner
13. consider themselves to be physically attractive
14. dress in an attractive, business-like manner
15. are comfortable marketing their services
16. are organized
17. believe there is a right or wrong answer for most questions

Those nominated as effective experts believe strongly that they

1. are truthful

2. there is a right or wrong answer for most questions
3. formulate opinions based on information rather than who hired them
4. develop opinions based on what the employer is looking for

Implications for Certified Rehabilitation Counselors

Rehabilitation counselors receive education as counselors and specialized training that allows them to provide counseling to individuals with disabilities. Because rehabilitation counselors work with injured and disabled individuals, litigation may occur and rehabilitation counselors may be required to testify in a court of law.

The litigation process differentiates rehabilitation practice in the heavily litigated private sector from the traditional non-litigated public rehabilitation programs and services arena (Cottone, 1982). If CRCs know that they will be required to testify at trials or depositions, they can benefit from learning the characteristics of effective expert witnesses. CRCs can review the characteristics in which effective experts differ and determine if they have the skills required to excel in this area. They can determine if they possess the characteristics, if they want to possess the characteristics, and if they want to incorporate this activity into their practice. Ultimately they will be able to determine if they belong or do not belong in a litigation setting.

The results of this study will assist vocational rehabilitation counselors to identify various characteristics of effective expert witnesses in their field. For those who are trying to be expert witnesses in their practice or jobs, this information will encourage them to emphasize this activity or avoid it altogether. The prediction results demonstrate

they will become more effective over time, so they should not expect to be effective as they begin.

If the characteristics of effective vocational expert witnesses are taught to rehabilitation counseling students, they will have a better idea of what is required of expert witnesses and can be more intentional in their choice of work areas for internship and employment. If students do not want to be involved in expert witness testimony, they may choose to enter an area of rehabilitation that does not require this task, such as state rehabilitation agencies or work adjustment facilities. Overall, this study will benefit the vocational rehabilitation profession by identifying the characteristics of effective expert witnesses in the rehabilitation counseling field.

Implications for Vocational Expert Witnesses

Effective expert witnesses may not know why they are effective in their work. They may not be aware of the characteristics that they possess that make them effective expert witnesses. This study identified characteristics of effective expert witness. These characteristics allow expert witnesses to compare themselves to the characteristics noted. Based on the outline of characteristics, vocational rehabilitation counselors can assess their skills and areas that they may need improvement prior to performing this task. Additionally, expert witnesses who perform this task and do not necessarily enjoy it, may gain greater enjoyment by learning the characteristics of an effective expert witness. They may be missing one or two of the characteristics and this study has identified these characteristics for them. For example, an individual may want to provide expert witness testimony but the thought of being on the stand and going through cross examination is frightening. If they understood that the skill of debating is a characteristic of an effective

expert witness and they do not possess this skill, they now have an option to do something to obtain the skill, based on this study. For example, they can take a speech and debate class at a local college. They may choose to join their local area Toastmasters Club to get some experience in public speaking. Regardless of what they choose to do, they now have options to take to improve their skill and ability.

Additionally, some expert witnesses are thrust into the litigation arena based on a specific case in which they were involved. These expert witnesses can research and review the characteristics prior to providing testimony which may help them be more effective.

Implications for Future Research

Future research would be beneficial to the field of rehabilitation counseling on this topic. Studies that might be appropriate for the future are discussed below. One future study could further investigate the characteristics of effective expert witnesses. Identified effective expert witnesses could complete objective instruments that further identify characteristics of an effective expert witness. For example, the Tennessee Self Concept test measures a construct associated with self confidence, which was identified as a characteristic of an effective expert witness. Once the instruments were identified and completed by effective expert witnesses, the results could be compared to the results of this study. This would provide more objective information because the responses from the nominated experts would not be as obvious in some instances as they were in this study.

Another study could involve sending a similar study anonymously to the American Board of Vocational Expert members and developing a profile of an effective

expert witness from the responses. If the responses were completely anonymous the researcher would have a greater chance of obtaining true answers to the questions asked.

Future study could involve an experimental design in which a sample of rehabilitation counselors are taught expert testimony skills and a control group are not. The results could then be compared to determine whether training was helpful. Also, a phenomenological study could be performed in which the lived experience of effective expert witnesses are studied to see if themes emerge that are not currently mentioned in the literature.

A future study could involve selecting effective expert witnesses based on objective factors rather than peer nominations. Examples of such factors include number of times testimony is provide in trials or depositions each year; amount of income per year derived from expert testimony fees; percentage of cases settled favorably or won by the side employing the expert. Once they were selected based on these factors, they could be surveyed to determine significant factors of the group.

Personality tests could be administered to rehabilitation counseling students. In five years the researcher could follow up with the students to see which students entered the private rehabilitation field to determine if the test results were different from the students who did not enter the private rehabilitation field or left the area.

Questionnaires could be sent to workers' compensation attorneys and request anonymous nominations of effective vocational experts. These experts could be tested and to determine if the profile identified in this study is consistent with the profile presented in the updated research.

Limitations

A weakness or handicap that potentially limits the validity of the results of a study is called a limitation (Pyrzczak & Bruce, 2000). A limitation of this study is the limited generalizability of the results of this study to other populations. The characteristics identified in the study of the sample population tested were assumed to be those characteristics that make rehabilitation counselors effective vocational expert witnesses.

This study was limited to the responses of Certified Rehabilitation Counselors and vocational expert witnesses. Sampling bias was a limitation in this study as non-respondents and vocational expert witnesses who were not contacted may have had additional information to add to this topic. Therefore, responses were representative of the sample population only.

Honesty is another factor to be taken into consideration as a limitation. The participants in this study were asked to complete a survey and questionnaire. Honesty was requested. The participants may have felt intimidated by some questions or questionnaire issues and may not have answered honestly. Participants' honesty is vital for accurate results.

Sample size may have been a limitation of this study. This study focuses on vocational expert witnesses as its population and sample size may have been limited due to the specificity of the population.

Conclusion

In conclusion, characteristics of effective expert witnesses were identified in this study that are consistent with the literature on this subject. The characteristics can be taught to others who may be required to provide expert witness testimony or desire to add

this function to their practice. Although these characteristics would be relevant primarily for the rehabilitation counselor in the private for profit sector of rehabilitation, others working in the rehabilitation counseling field may benefit as well. A subpoena can be issued to anyone, regardless of work or actions surrounding return to work after an injury. Having information about the procedures and expectations of the vocational expert once a subpoena is issued will be beneficial to rehabilitation counseling professionals.

The findings in this study can be reported to vocational rehabilitation counselors at conferences and seminars. Although this is an area that affects vocational rehabilitation counselors, especially those in the private for profit work area, it is not something that is taught in college, or at national or state conferences. The International Association of Rehabilitation Professionals, Private Sector (IARP) has a forensic section and offers a one-day seminar each year to review forensic issues in the private rehabilitation counseling industry. This association also presents pre-conference classes prior to the yearly national conference. Because specific characteristics of an effective expert witness in the vocational rehabilitation counseling field have not been identified through empirical research prior to this study, it would be appropriate to report these findings to individuals involved in the field who desire to learn more about this area. A large number of respondents in this study requested a summary of the findings, which indicates that there is an interest in learning more about this topic in the field of rehabilitation counseling.

Based on the responses of participants in this study, this area is of great interest to the private for profit vocational rehabilitation field. It would appear that seminars and classes on this subject would be a popular choice for attendants of national and local

conferences related to private vocational rehabilitation counseling, such as IARP. There is a need for further information and education in this area and this study has aided the field of vocational rehabilitation by identifying the characteristics and making an ambiguous and unreachable area, such as expert testimony, more attainable for many in the field.

Findings from this study provide interesting insights into the beliefs of experts nominated by their peers as effective, when compared to rehabilitation counselors who were not nominated as effective experts. These insights offer new information to the field of rehabilitation counseling.

CHAPTER SIX

MANUSCRIPT FOR JOURNAL SUBMISSION

This manuscript in this chapter will be submitted for review to the *Journal of Rehabilitation Counseling*.

Characteristics of Effective Expert Witnesses

Vocational expert witnesses are retained to perform vocational assessments and provide vocational rehabilitation counseling services to disabled individuals. They are often required to testify as expert witnesses at trials on cases in which they have evaluated disabled individuals or provided rehabilitation counseling services to disabled clients. The purpose of this study was to identify characteristics of effective vocational expert witnesses. Certified Rehabilitation Counselors (CRCs) who were members of the International Association of Rehabilitation Professionals (IARP) were asked to complete the Rehabilitation Counselor Questionnaire and Survey and nominate effective vocational expert witnesses for this study. A total of 346 certified rehabilitation counselors participated. Ninety five of the 346 respondents were nominated by their peers as effective vocational expert witnesses. Results of the questionnaire and survey yielded characteristics of effective vocational expert witnesses. The authors discuss these characteristics and offer advice for rehabilitation counselors who wish to become effective vocational expert witnesses.

Vocational expert witnesses are often required to testify at trials on cases in which they have provided assessments or rehabilitation counseling services to disabled clients, especially clients who were disabled as a result of injury. Involvement in litigation may require a rehabilitation counselor to testify in a trial as a vocational expert witness.

The litigation process differentiates rehabilitation practice in the heavily litigated private sector from the traditional non-litigated public rehabilitation programs and services arena (Cottone, 1982). The nature of the litigation process inherently involves the rehabilitation counselor, the plaintiff, the defendant, attorneys for the plaintiff, and the insurance carrier representative for the defendant. The presence of third parties can

complicate the traditional confidential dyadic counseling relationship. Everything the client involved in litigation discloses to a rehabilitation counselor will be, in most instances, relayed back to others. Individuals receiving such personal information on clients include attorneys for the plaintiff or defense, insurance carrier representatives, or third-party payers. Vocational expert witnesses report on work issues, specifically how the disability has an impact on the ability of disabled individuals to work and earn income over the remainder of their lives. Since the assessment of the vocational expert witnesses can have a significant monetary impact, the vocational expert's opinion can come under attack by individuals who oppose the opinion of the expert.

Rehabilitation counselors could benefit by learning skills to provide effective vocational expert witness testimony. There are benefits to becoming a vocational expert witness if an individual chooses to pursue this line of work. According to Weikel and Hughes (1993), rehabilitation counselors can realize a significant income supplementation to their practice or other wages by testifying as vocational expert witnesses. Rehabilitation counselors who provide vocational expert testimony can become more visible in the community, thus adding to their professional status and increasing their referral prospects.

In many situations, rehabilitation counselors may be pressed into expert witness roles unexpectedly or unwillingly. Rehabilitation counselors who have provided rehabilitation services to a client may be subpoenaed to testify as a vocational expert, although they did not offer this as a service that they provided. Additionally, when an individual has a third party legal case, the rehabilitation counselor who was working the case for the worker's compensation provider may be subpoenaed to testify on the third

party case, although their rehabilitation counseling case is closed and services have been completed. The rehabilitation counselor may also be required to testify years after the case management file has been closed and services completed.

The population served by vocational expert witnesses is customarily broader than that of traditional rehabilitation counselors. Vocational expert witnesses work with a variety of individuals with various disabilities who might have any number of problems associated with their disabilities. As expert witnesses, vocational experts have the opportunity to work with a variety of clients not typically seen in routine practice (Blackwell, 1992).

Rehabilitation counselors are not immune to the increasing litigation aspects of practicing as a rehabilitation counselor. In some states, rehabilitation counselors can be sued if injured workers believe they have been treated unfairly or have been injured as a result of the case management services provided. As a professional, it is not uncommon for rehabilitation counselors to find themselves in hostile litigated situations, such as testifying at a deposition or in a courtroom, or having a conversation with an opposing attorney. If a rehabilitation counselor is unprepared to navigate the legal arena, they can suffer negative consequences, both personally and professionally.

Numerous books, professional journal articles, and trade magazine articles define and explain the functions of expert witnesses based on the professional experiences of the authors. However, no empirical research has been located that has identified and studied the characteristics of effective vocational expert witnesses, until this study.

METHOD

Participants

The participants in this study were Certified Rehabilitation Counselors (CRC) who were members of the International Association of Rehabilitation Professionals Private Sector (IARP). Nine hundred and thirty five IARP members who were Certified Rehabilitation Counselors were asked to participate in this study. Three hundred and forty six responded by completing and returning survey instruments. Of the three hundred and forty six respondents, 95 were nominated by their peers as effective vocational expert witnesses. The majority of the 251 non-nominated certified rehabilitation counselor respondents were female (58.6%). The majority of the 95 nominated expert vocational respondents were male (54.7%). The majority of respondents, non-nominated and nominated, were between the ages of 51-60. Ninety two point eight percent (92.8%), of the non-nominated group possessed a master's degree or higher and 96.8% of the nominated experts possessed a master's degree or higher. Seventy-seven point two percent (77.2%) of the non-nominated respondents reported having 16 and over years experience in the rehabilitation field. On the other hand, 93.7% of the nominated respondents reported having over 16 years experience in the rehabilitation field. Twenty-seven point five percent (27.5%) of non-nominated respondents reported testifying 16 or more times per year. Nominated respondents reported testifying 16 or more times per year at a rate of 51.6%. Overall, nominated respondents had a higher number of organizational memberships than non-nominated respondents. Nominated respondents also had more certifications and licenses than non-nominated respondents. The results of

the non-nominated and the nominated certified rehabilitation counselors were reviewed for this study.

Instruments and procedures

Participants were sent the Rehabilitation Counselor Questionnaire and Survey by mail. Enclosed was a letter of introduction explaining the study and a nomination form to nominate effective expert witnesses. A description of an effective expert witness was provided on the nomination form. Participants were asked to complete the Rehabilitation Counselor Questionnaire, which requested demographic information such as age, education, and years of experience. The participants were also asked to complete the Rehabilitation Counselor Survey. Respondents were instructed to rate the degree to which each item was like them. A 5 point Likert scale was used for each question (1 = Not Like Me At All and 5 = Very Much Like Me).

RESULTS

The data from the responses to the Rehabilitation Counselor Survey were analyzed using Discriminate Functional Analysis, MANOVA and post hoc ANOVAs to determine which dependent measure accounted for the significant lambda. See Table 1 for the mean of each question on the survey.

The results of the Discriminate Functional Analysis determined that three traits predicted the rehabilitation counselors who were nominated as effective expert witnesses.

These traits were:

1. A high number of court appearances annually
2. Holding a state license as a counselor
3. Having been a rehabilitation counselor for a long time.

The results also indicated that the following characteristics were significantly different when the responses of the non-nominated group were compared to the responses of the nominated group. The counselors who were nominated as effective expert witnesses were different from the non-nominated group in that the nominated group provided expert testimony more times each year; had more often attained Licensed Professional Counselor (LPC) status; had more years of experience in the field of vocational rehabilitation counseling; had more self confidence; enjoyed debating more; enjoyed administering tests more; enjoyed conducting research more; considered themselves to be more objective; and perceived themselves to have more public speaking ability.

DISCUSSION

The purpose of this study was to identify characteristics of effective vocational expert witnesses. These characteristics were important to identify because knowing them will give potential expert witnesses information on what it takes to be effective. Many of the characteristics that predicted effective expert witnesses and differentiated those who were nominated as effective expert witnesses from those who were not nominated are obtained through experience. Knowing that effectiveness in the area of providing expert testimony may come from experience may be a relief to many new expert witnesses, realizing that in time they can improve their skills and abilities if they chose to provide this service.

The result of this study suggest that rehabilitation counselors should obtain education and experience to assure that they have the professional certifications and licenses that are held by effective expert witnesses. They may also consider taking

courses such as speech and debate, which may help them develop the communication skills to be effective expert witnesses. It would be expected that the confidence level of rehabilitation counselors who perform expert testimony would improve over time with additional education and training. Potential expert witnesses must understand that those who are effective in this arena enjoy conducting research and administering tests.

Potential expert witnesses could be taught proper file review techniques and testing tools and procedures. Knowledge in these areas would also increase confidence level.

Effective expert witnesses also consider themselves to be objective, and objectivity could be learned once proper investigative and testing techniques are taught to potential expert witnesses. Overall, many of the characteristics of effective expert witnesses can be taught and obtained over time, which can be beneficial to vocational rehabilitation counselors desiring to prepare themselves to provide expert witness testimony.

Traits associated with effective vocational expert witnesses in rehabilitation counseling were identified in this study, which is the first step in developing a training model for educational purposes. Rehabilitation counselors who currently chose to provide expert witness testimony will benefit from learning these skills. Rehabilitation counselors who are subpoenaed to be an expert or fact witness will benefit from learning the characteristics associated with effective vocational expert witnesses in rehabilitation counseling which will help prepare for testimony.

REFERENCES

- Blackwell, T. L. (1992). *The vocational expert primer*. Athens, GA: Elliott and Fitzpatrick.
- Cottone, R. R. (1982). Ethical issues in private-for-profit rehabilitation. *Journal of Applied Rehabilitation Counseling, 13*, 14-17, 24.
- Weikel, W. J., & Hughes, P. R. (1993). *The counselor as expert witness*. ACA Legal Series, Vol. 5. Alexandria, VA: American Counseling Association.

Table 1***Mean and Standard Deviations for Questions A-W on the Rehabilitation Counselor Survey by Respondent Category***

	Non-nom.	Non-nom.	Non-Nom.	Nom.	Nom.	Nom.
	N	Mean	SD	N	Mean	SD
A. I have self-confidence.	247	4.15	.740	94	4.35	.667
B. I enjoy debating with others.	247	3.47	1.050	94	3.73	.894
C. I am more oriented toward the “big picture” than I am toward details; I need few details to come to an understanding of an issue or concept.	247	3.31	1.149	94	3.13	1.220
D. I enjoy conducting research.	247	3.37	1.212	94	3.71	.991
E. I enjoy administering tests.	247	3.16	1.199	94	3.51	1.034
F. I enjoy analyzing tests.	247	3.52	1.143	94	3.71	1.053
G. I am great at explaining concepts in ways that people can understand and learn.	247	4.20	.761	94	4.31	.659
H. My opinion is not formed until I have reviewed all collected relevant information.	209	4.27	.813	89	4.35	.725
I. I sometimes avoid telling the truth if another person’s feelings will be hurt.	208	3.54	1.111	89	3.80	1.013
J. I always provide professional information that is truthful and reflects my honest opinion.	208	4.68	.602	89	4.76	.477

K. I have trouble explaining technical data in a way that is easily understood by others.	209	3.83	1.008	89	3.88	.902
L. I formulate my opinions following a consistent method of review of information, regardless of the case or reason for referral.	208	4.47	.680	89	4.57	.689
M. I believe I am physically attractive.	207	3.55	.828	89	3.45	.723
N. I dress in an attractive business-like manner.	208	4.20	.835	89	4.25	.758
O. Being in front of a judge or a jury and providing expert witness testimony is one of the favorite tasks of my job.	208	2.89	1.205	89	3.28	1.177
P. I am uncomfortable marketing myself and discussing my professional qualities with potential referral sources.	247	3.23	1.218	94	3.32	1.280
Q. I get anxious before I testify.	246	2.57	1.151	94	3.26	1.126
R. My opinion tends to vary depending on the referral source. I find out what the referral source is looking for and try to provide that to the best of my ability.	246	4.21	1.067	94	4.49	.744
S. I am not very organized.	247	4.06	1.026	94	4.06	.993
T. I do not believe that there is a right or a wrong answer for most questions.	246	2.68	1.062	93	2.78	1.091

U. It makes me uneasy to be in a situation where I can't tell the complete truth.	245	4.26	.974	94	4.15	1.004
V. I feel comfortable speaking in public.	247	3.64	1.163	94	3.86	1.169
W. Subjective sources, other than test finding and documentation, often affect my opinion.	244	2.80	1.046	94	3.02	1.005

REFERENCES

- Allport, F. H. (1967). *Social psychology*. Boston: Houghton Mifflin Company.
- Anderson, R. H. (1979). *Vocational expert testimony: The new frontier for the rehabilitation professional*. *Journal of Rehabilitation*, 45(3), 39-40, 74.
- Bank, S. C. (2001). From mental health professional to expert witness: Testifying in court. *New Directions for Mental Health Services*, 91, 57-66.
- Bank, S. C., & Poythress, N. G. (1982). The elements of persuasion in expert testimony. *The Journal of Psychiatry & Law*, 10, 173-204.
- Berry, G. C. (1990). The legal system and the expert witness. *Cognitive Rehabilitation*, May/June, 14-16.
- Bitter, J. A. (1979). *Introduction to rehabilitation*. St. Louis, MO: C. V. Mosby.
- Black, H. C. (1990). *Black's law dictionary* (6th ed.). St. Paul, MN: West Publishing.
- Blackwell, T. L. (1992). *The vocational expert primer*. Athens, GA: Elliott and Fitzpatrick.
- Blackwell, T., Field, T., & Field, J. (1992). *The vocational expert under social security*. Athens, GA: Elliott & Fitzpatrick.
- Brodsky, S. L. (1991). *Testifying in court: Guidelines and maxims for the expert witness*. Washington, DC: American Psychological Association.
- Brodsky, S. L. (1999). *The expert expert witness: More maxims and guidelines for testifying in court*. Washington, D.C.: American Psychological Association.
- Bronstein, D. (1999). *Law for the expert witness* (2nd ed.). Boca Raton, FL: CRC Press.
- Carter, J. W., & Saxon, J. P. (1977). The role of the expert witness in social security administrative hearings. *Journal of Applied Rehabilitation Counseling*, 8, 247-250.
- Chick, J. M. (1972). A decennial perception of the vocational expert's role and function in hearing procedures. In R. B. Hannings (Ed.), *Forensic psychology in disability adjudication: A decade of experience. Vocational experts in the Bureau of Hearings and Appeals* (DHEW Publication No. SSA 72-10284), (pp. 31-39). Washington, D.C.: Bureau of Hearings and Appeals. (ERIC Document Reproduction Service No. ED 073 397).

- Cohen, A. (1964). *Attitude change and social influence*. New York: Basic Books.
- Conley, J., O'Barr, W., & Lind, E. (1978). The power of language presentation style in the courtroom. *Duke Law Journal*, 6, 1375-1399.
- Copeland, J. D. (1993). How to be an effective expert witness. *Veterinary Clinics of North America: Small Animal Practice*, 23, 1007-1017.
- Cottone, R. R. (1982). Ethical issues in private-for-profit rehabilitation. *Journal of Applied Rehabilitation Counseling*, 13, 14-17, 24.
- Crawford, R. J. (2001). *The expert witness: A manual for experts*. Bloomington, IN: 1st Books.
- Daubert, William, et ux., et al v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).
- Deutsch, M., & Gerard, H. (1955). A study of normative and informational social influences upon individual judgment. *Journal of Abnormal Social Psychology*, 51, 629-630.
- Deutsch, P. M., & Sawyer, H. W. (1990). *A guide to rehabilitation* (5th ed.). New York: Matthew Bender.
- Faherty, B. (1995). The nuts and bolts of testifying. *Nursing Connections*, 8, 27-35.
- Feder, H. A. (1991). *Succeeding as an expert witness: Increasing your impact and income*. New York: Van Nostrand Reinhold.
- Field, T. F., Choppa, T., Dillman, E. G., Garner, D., Grimes, J. W., Jayne, K., Kelsay, E., et al. (2000). *A resource for the rehabilitation consultant on the Daubert and Kumho rulings*. Athens, GA: Elliott & Fitzpatrick.
- Frye v. United States*, 293 Fed. 1013 at 1014 (D.C. Cir.1923).
- Gandy, G. L., Martin, E. D., Jr., & Hardy, R. E. (1999). *Counseling in the rehabilitation process: Community services for mental and physical disabilities* (2nd ed.). Springfield, IL: Charles C. Thomas.
- Havranek, J. E. (1997). *Forensic rehabilitation: A resource for vocational experts*. Athens, GA: Elliott & Fitzpatrick.
- Isacc, G., & Sognaes, R. (1983). General discussion of effective expert testimony. *Journal of Forensic Sciences*, 28, 537-539.
- Iyer, P. (1993). Mastering the expert witness role. *Journal of Nursing Law*, 1, 35-45.

- Janes, M. W. (1985). The value of functional competencies and personal characteristics of vocational expert witnesses in the social security hearings and appeals process. (Doctoral dissertation, Southern Illinois University at Carbondale.) *Dissertation Abstracts International*, 46, 3506.
- Johnson, P. E., Johnson, M. E., & Little, R. K. (1994). Expertise in trial advocacy: Some considerations for inquiry into its nature and development. *Campbell Law Review*, 7, 25.
- King, S. W. (1975). *Communication and social influence*. Reading, MA: Addison-Wesley Publishing.
- Kumho Tire Company, Ltd, et al v. Patrick Carmichael, etc., et al*, 119 S.Ct. 1167 (March 23, 1999).
- Lambert, W., & Lambert, W. E. (1964). *Social psychology*. Englewood Cliffs, NJ: Prentice Hall.
- Leahy, M. J., & Szymanski, E. M. (1995). Rehabilitation counseling: Evolution and current status. *Journal of Counseling & Development*, 74, 163-166.
- Lenihan, J. (1977). Disabled Americans: A history. *Performance*, 27, 5-7. Bicentennial issue. Washington, D.C.: The President's Committee on Employment of the Handicapped.
- Matkin, R. E. (1980). The rehabilitation counselor in private practice: Perspectives for education and preparation. *Journal of Rehabilitation*, 46, 60-62.
- Matkin, R. E. (1983). The roles and functions of rehabilitation specialists in the private sector. *Journal of Applied Rehabilitation Counseling*, 14, 14-27.
- Matson, J. V. (1999). *Effective expert witnessing* (3rd ed.). New York: CRC Press.
- May, V. R. (1983). The vocational expert witness: Expanding the market place. *Vocational Evaluation and Work Adjustment Bulletin*, 16, 100-102.
- McWilliams, R. (1990). Reflections on being an expert witness. *Today's O.R. Nurse*, 12(1), 17-19.
- Mertler, C. A., & Vanatta, R. A. (2002). *Advanced and multivariate statistical methods* (2nd ed.). Los Angeles, CA: Pyrczak Publishing.
- Merenbach, D. G., & Stephens A. (1993). *How to be an expert witness*. Santa Barbara, CA: Fithian Press.

- Miller, G. R., & Bolster, F. J. (1977). Three images of the trial: Their implications for psychological research. In B. D. Sales (Ed.), *Psychology in the legal process*. New York: Spectrum.
- Miller, G., & Kaplan, B. (1996). Testifying in court. *Psychotherapy in Private Practice*, 15, 15-32.
- Murphy, J. (1993). Expert testimony. *Maryland evidence handbook* (2nd ed.). Charlottesville, VA: Michie Company.
- Neff, W. J. (1982). Testifying as a competent and credible witness. *The Journal of the College & University Personnel Association*, 33, 5-8.
- Paradise, L. V., Conway, B. S., & Zweig, J. (1986). Effects of expert and referent influence, physical attractiveness, and gender on perceptions of counselor attributes. *Journal of Counseling Psychology*, 33, 16-22.
- Perry, S., & Vogel, J. (1993). The business of being an expert witness and legal consultant. *Clinical Nurse Specialist*, 7, 154-161.
- Pinder, F. A. (1996). How to choose and use a vocational expert. *Journal of Legal Nurse Consultants*, 7, 8-10.
- Poynter, D. (1997). *Expert witness handbook: Tips and techniques for the litigation consultant*. Santa Barbara, CA: Para Publishing.
- Pyrczak, F., & Bruce, R. R. (2000). *Writing empirical research reports: A basic guide for students of the social and behavioral sciences* (3rd ed.). Los Angeles, CA: Pyrczak Publishing.
- Quigley, F. M. (1991). Responsibilities of the consultant and expert witness. *Focus on Critical Care*, 18, 238-239.
- Roessler, R. T., & Rubin, S. E. (1998). *Case management and rehabilitation counseling: Procedures and techniques* (3rd ed.). Austin, TX: Pro-Ed.
- Rubin, S. E., & Roessler, R. T. (1978). *Foundations of the vocational rehabilitation process* (3rd ed.). Austin, TX: Pro-Ed.
- Rubin, S. E., & Roessler, R. T. (2001). *Foundations of the vocational rehabilitation process* (5th ed.). Austin, TX: Pro-Ed.
- Ruppel, G., & Kaul, T. J. (1982). Investigations of social influence theory's conception of client resistance. *Journal of Counseling Psychology*, 29, 232-239.
- Saks, M. J., & Wissler, R. L. (1984). Legal and psychological bases of expert testimony:

- Surveys of the law and of jurors. *Behavioral Sciences & the Law*, 2, 435-449.
- Satinder, K. (1993). Nursing and the law. *Nurse Advocate*, March, 76-77.
- Scully P. (1982). Are you expert enough to be an expert witness? *Nursing Life July/August*, 34-35.
- Sleister, S. L. (2000). Separating the wheat from the chaff: The role of the vocational expert in forensic vocational rehabilitation. *Journal of Vocational Rehabilitation*, 14, 119-129.
- Smith, F. C., & Bace, R. G. (2003). *A guide to forensic testimony: The art and practice of presenting testimony as an expert technical witness*. Boston: Addison-Wesley.
- Stokes, L. S. (1998). Predicting return to work in litigated personal injury cases. (Doctoral dissertation, University of New Orleans, 1998). *Dissertation Abstracts International*, AAT 9900970.
- Strong, S. R. (1968). Counseling: An interpersonal influence process. *Journal of Counseling Psychology*, 15, 215-224.
- Swenson, L. C. (1993). Psychology and law for the helping professions. In G. Miller & B. Kaplan (1996). Testifying in court. *Psychotherapy in Private Practice*, 15, 15-32.
- U. S. Department of Labor Employment and Training Administration (1991). *Dictionary of occupational titles* (4th ed.). Washington, D.C.: U. S. Government Printing Office.
- Vallario, J. P., & Emener, W. G. (1991). Rehabilitation counseling and the law: Critical considerations of confidentiality and privilege, malpractice, and forensics. *Journal of Applied Rehabilitation Counseling*, 22, 7-13.
- Vogelsang, J. (2001). *The witness stand: A guide for clinical social workers in the courtroom*. New York: The Haworth Social Work Practice Press.
- Warren, R. A. (1997). *The effective expert witness: Proven strategies for successful court testimony*. Lightfoot, VA: Gaynor Publishing.
- Weed, R., & Field, T. (1990). *The rehabilitation consultant's handbook*. Athens, GA: Elliott & Fitzpatrick, Inc.
- Weed, R., & Field, T. (2000). *The rehabilitation consultant's handbook* (3rd ed.). Athens, GA: Elliott & Fitzpatrick, Inc.

- Wehmer, G., & Izard, C. E. (1962). *The effect of self-esteem and induced affect on interpersonal perception and intellectual functioning* (Technical Report No. 10, Contract No. NONR21409-03, Office of Naval Research). Nashville, TN: Vanderbilt University.
- Weikel, W. J., & Hughes, P. R. (1993). *The counselor as expert witness*. ACA Legal Series, Vol. 5. Alexandria, VA: American Counseling Association.
- Wilkerson, A. P. (1997). Forensic psychiatry: The making and breaking of expert opinion testimony. *The Journal of Psychiatry and Law, Spring*, 51-112.
- Wright, G. N. (1980). *Total rehabilitation*. Boston: Little, Brown & Company.

Appendix A

Introduction Letter to Participants
University of New Orleans letterhead

Date

Name

Address

Re: Characteristics of an Effective Vocational Expert Witness in Rehabilitation Counseling

Dear Fellow IARP member:

Because you are a recognized professional in the field of rehabilitation, your opinion is being sought in this important study. We are attempting to assist rehabilitation professionals by identifying characteristics associated with effective vocational expert witnesses. We believe this study will help IARP members who provide or plan to provide vocational expert testimony as part of their practice.

We need your assistance in completing the survey, questionnaire, and nomination form. It will take approximately 20 minutes to complete the enclosed forms and return them in the self-addressed, stamped envelope. I have enclosed the following materials for your completion:

The Rehabilitation Counselor Survey

The Rehabilitation Counselor Questionnaire

Vocational Expert Nomination Form

A self-addressed stamped envelope to return completed test packet materials

This is a confidential survey in which each participant is assigned a numerical code for identification. Only the researcher knows the code associated with your name. Following completion of the study, all identifying information will be destroyed. Once the study is complete, the results will be submitted for consideration for publication. Confidentiality of participants is guaranteed.

We realize your time is valuable and sincerely hope you will agree to participate. Your participation is entirely voluntary and you may withdraw consent and terminate participation at any time without consequence. The potential risks to the subject may be frustration due to time spent completing the instruments and returning the packet of information to the researcher.

Please complete and return the enclosed material by January 31, 2005. If you prefer, you may complete the enclosed information online at <http://www.surveymonkey.com/s.asp?u=85526686173>. Survey monkey has the following statement on their website regarding confidentiality "We will not use the information

collected from your surveys in any way, shape, or form. In addition, any other material you provide us (including images, email addresses, etc.) will be held in the strictest confidence.”

Your consent to participate in this study is reflected by completing the survey. If you have any questions, Crystal Younger can be reached at 1-800-203-0220 ext. 302 or by e-mail at cdyounge@uno.edu. Dr. Theodore Remley can be reached by phone at 504-280-6661 or by email at tremley@uno.edu. Your participation is necessary to complete this important study. We look forward to receiving your response.

Sincerely,

Crystal D. Younger, M.S., CRC, LRC, CCM, LPC
Doctoral Candidate
Counseling Graduate Program

Theodore P. Remley, Jr., J.D., Ph.D., LPC, LMFT, NCC
Professor and Department Chair

Appendix B

Vocational Expert Nomination Form

Please list below up to 5 local and 5 national rehabilitation counselors who provide vocational expert witness testimony as a part of or the entirety of their practice. According to the literature, “effective” is defined as knowledge, education and training; experience; investigative orientation; ability to formulate an objective opinion; credibility; and ability to provide consistent testimony.

Please provide as much information as you have related to address or location. You may nominate yourself if appropriate. An individual may be listed as both a local area and national effective vocational expert witness.

Local Area Vocational Expert Witnesses:

Name (please print)	Address or Location
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____
4) _____	_____

National Vocational Expert Witnesses:

Name (please print)	Address or Location
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____
5) _____	_____

Please complete this form by _____ and return it to me in the enclosed self-addressed, stamped envelope to the following address:

Crystal D. Younger
P.O. Box 1181
Mandeville, LA 70470-1181

If you prefer you may email your selections to cdyounge@uno.edu or fax your list to 1-985-893-2616. If you prefer, you may complete the enclosed information online at the following Internet website, <http://www.surveymonkey.com/s.asp?u=85526686173>.

Appendix C

Introduction Letter to Nominees
University of New Orleans Letterhead

Date

Participant

Re: Characteristics of an Effective Vocational Expert Witness in Rehabilitation

Counseling

Dear _____ :

Certified Rehabilitation Counselors who are members of IARP were asked to identify rehabilitation professionals who are considered to be effective vocational expert witnesses from both the local and national levels. Your peers have nominated you as an effective vocational expert witness. Since you have been nominated, we would greatly appreciate your agreement to participate in this study we are conducting regarding characteristics associated with effective vocational expert witnesses.

We are attempting to assist rehabilitation professionals by identifying characteristics associated with effective vocational expert witnesses. We believe this study will help vocational rehabilitation counselors who provide or plan to provide vocational expert testimony as part of their practice.

We need your assistance in completing the survey, questionnaire, and nomination form. It will take approximately 20 minutes to complete the enclosed forms and return them in the self-addressed, stamped envelope. I have enclosed the following materials for your completion:

The Rehabilitation Counselor Survey
The Rehabilitation Counselor Questionnaire
Vocational Expert Nomination Form
A self-addressed stamped envelope to return completed test packet materials

This is a confidential survey in which each participant is assigned a numerical code for identification. Only the researcher knows the code associated with your name. Following completion of the study, all identifying information will be destroyed. Once the study is complete, the results will be submitted for consideration for publication. Confidentiality of participants is guaranteed.

We realize your time is valuable and sincerely hope you will agree to participate. Your participation is entirely voluntary and you may withdraw consent and terminate participation at any time without consequence. The potential risks to the subject may be frustration due to time spent completing the instruments and returning the packet of information to the researcher.

Please complete and return the enclosed material by January 31, 2005. If you prefer, you may complete the enclosed information online at <http://www.surveymonkey.com/s.asp?u=85526686173>. Survey monkey has the following statement on their website regarding confidentiality “We will not use the information collected from your surveys in any way, shape, or form. In addition, any other material you provide us (including images, email addresses, etc.) will be held in the strictest confidence.”

Your consent to participate in this study is reflected by completing the survey. If you have any questions, Crystal Younger can be reached at 1-800-203-0220 ext. 302 or by e-mail at cdyounge@uno.edu. Dr. Theodore Remley can be reached by phone at 504-280-6661 or by email at tremley@uno.edu. Your participation is necessary to complete this important study. We look forward to receiving your response.

Sincerely,

Crystal D. Younger, M.S., CRC, LRC CCM, LPC
Doctoral Candidate
Counseling Graduate Program

Theodore P. Remley, Jr., J.D., Ph.D., LPC, LMFT, NCC
Professor and Department Chair

Appendix D

Rehabilitation Counselor Questionnaire

Gender: Male Female

Age: 20-30

51-60

31-40

61 and over

41-50

Highest level of education completed (Check one, please):

High School

60 or more credits earned

Associate's Degree

Bachelor's Degree

15 or more graduate credits earned

Masters Degree

15 or more post-Master's credits earned

Doctoral Degree

Post Doctoral Degree Credits earned

Number of years in the rehabilitation profession:

0-5, 6-10, 11-15, 16-20, more than 20

Approximate number of times you testify each year:

0-5, 6-10, 11-15, 16-20, more than 20

Professional Organization Membership: (Check all that apply)

IARP, International Association of Rehabilitation Professionals, Private Sector

ARCA, American Rehabilitation Counseling Association

ACA, American Counseling Association

VEWA, Vocational Evaluation Work Adjustment Association

NRCA, National Rehabilitation Counseling Association

NRA, National Rehabilitation Association

Other: _____

Certifications and Licenses: (Check all that apply)

Licensed Professional Counselor (or similar license in your state)

Licensed Rehabilitation Counselor (by state)

Licensed Marriage and Family Therapist (by state)

Licensed Psychologist (by state)

Certified Rehabilitation Counselor

Certified Case Manager

Certified Vocational Evaluator

Certified Vocational Specialist

Certified Insurance Rehabilitation Specialist

Other (please specify): _____

Appendix E
Rehabilitation Counselor Survey

Please rate yourself using the scale below for each item. Circle the number that applies:

1	2	3	4	5
Not Like Me At All				Very Much Like Me

A. I have a great deal of self-confidence.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

B. I enjoy debating with others.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

C. I am more oriented toward the “big picture” than I am toward details; I need few details to come to an understanding of an issue or concept.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

D. I enjoy conducting research.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

E. I enjoy administering tests.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

F. I enjoy analyzing test results.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

G. I am great at explaining concepts in ways that people can understand and learn.

1	2	3	4	5
Not Like Me At All				Very Much Like Me

H. My opinion is not formed until I have reviewed all collected relevant information.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

I. I sometimes avoid telling the truth if another person's feelings will be hurt.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

J. I always provide professional information that is truthful and reflects my honest opinion.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

K. I have trouble explaining technical data in a way that is easily understood by others.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

L. I formulate my opinions following a consistent method of review of information, regardless of the case or reason for referral.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

M. I believe I am physically attractive.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

N. I dress in an attractive, business-like manner.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

O. Being in front of a judge or a jury and providing expert witness testimony is one of my favorite tasks of my job.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

P. I am uncomfortable marketing myself and discussing my professional qualities with potential referral sources.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

Q. I get anxious before I testify.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

R. My opinion tends to vary depending on the referral source. I find out what the referral source is looking for and try to provide that to the best of my ability.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

S. I am not very organized.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

T. I do not believe that there is a right or a wrong answer for most questions.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

U. It makes me uneasy to be in a situation where I can't tell the complete truth.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

V. I feel comfortable speaking in public.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

W. Subjective sources, other than test findings and documentation, often affect my opinion.

1	2	3	4	5
Not Like				Very Much
Me At All				Like Me

X. Please rank order the items below that you believe contribute to your obtaining referrals as a rehabilitation counselor:

(Use numbers 1-5, with 1 representing highest order of importance):

- Listing in a Professional Organization
- Marketing referral sources
- Previous experience in providing expert witness testimony
- Word of Mouth
- Other (specify) _____

Y. In your opinion, what are the 5 most important traits of an effective expert witness? (Use numbers 1-5, with 1 representing highest order of importance):

- Ability to persuade others
- Analytical ability
- Consistency in testimony
- Credibility
- Education
- Honesty
- Integrity
- Investigative ability
- Objectivity in testimony
- Physical attractiveness
- Preparation prior to trial
- Prior experience
- Public speaking ability
- Teaching ability
- Writing ability

Z. If you do consider yourself to be an effective expert witness, in your own words, please describe what makes you effective.

a. What do you consider to be traits of individuals who are ineffective expert witnesses?

b. If you were advising a person who wanted to become an effective expert witness, what recommendations would you offer?

VITA

Crystal D. Younger earned a Bachelor of Science in Rehabilitation Counseling from Louisiana State University Medical Center in 1987. She earned a Master of Science in Rehabilitation Counseling from Georgia State University in 1991. She is a Licensed Rehabilitation Counselor (LRC), Certified Rehabilitation Counselor (CRC), Certified Vocational Specialist (CVS), Certified Case Manager (CCM), and Licensed Professional Counselor (LPC). Crystal is a member of the National Rehabilitation Association (NRA), the International Association of Rehabilitation Professionals (IARP), and the Louisiana Association of Rehabilitation Professionals (LARP).

Since 1993, Crystal has been working as a private for-profit rehabilitation counselor with Younger and Associates in Mandeville, Louisiana. She manages the medical and vocational aspects of workers' compensation and liability cases; works with injured federal and longshore employees on rehabilitation plans and training programs and return to work proposals; and completes rehabilitation plans to return injured workers to gainful employment through on the job training, educational training, or placement with new employers. She is certified to work with federal government and longshore employees. Crystal supervises a staff of 14 professional and non-professional employees. She has presented on topics related to workers' compensation, rehabilitation counseling, and training at local and regional seminars and conferences.