

Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to [nskaye@aol.com](mailto:nskaye@aol.com).

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Q. How do I handle redacted records and pretrial stipulations that exclude what I consider to be important and relevant information?

A. Sadoff: You have a number of options: first, you can politely refuse to become involved if you feel your professional integrity is compromised. Second, you can put on the record that you requested all relevant material and have been limited to the redacted material and stipulations that limit your opinions and conclusions. Third, you can accept the assignment and send in the report with the limitations imposed. You can testify that you have a limited opinion inasmuch as the court has limited the information available for evaluation.

Recall, it is the court that sets the rules. We are guests in the house of the law and must either abide by its rules or refrain from participating. If we choose to participate, we can express our opinions that some of the material withheld is relevant and you cannot give a full opinion without it. The judge may then excuse you from participating, but you have made your point. Be sure to discuss this with your retaining attorney in advance and obtain her/his approval for your expression of opinion. Good luck, keep the faith and maintain your professional integrity.

A. Kaye: This is a not uncommon situation, and one that always makes me uncomfortable. While we clearly have an affirmative duty to disclose on what our opinion is based, it is not clear that we have any such affirmative duty to disclose what was missing or omitted due to legal machinations over which an expert has no control. Further, an expert risks setting up a mistrial by referring to information that has been “banned” through pretrial motions.

It is also important to be aware as to whether the material has been put off limits before or after you entered the case. Did you get redacted records originally? Do you know or would you want to know what is in the actual complete record or do you find it easier to work from the agreed upon redacted data base? Did you formulate your opinion based on material in a record that has now been put off limits, making it impossible for you to reference your “evidence base?”

It is important to address your concerns with the retaining lawyer. Frequently, the lawyer will want something redacted that you as an expert feel is important and further, you can explain to the lawyer why from a psychiatric perspective it might not be harmful material at all. If you feel you cannot proceed based on the limited database, it is your responsibility to inform the lawyer.

In court, if I feel that a lawyer is getting too close to material that would require I address redacted material, I will look to the judge and ask for guidance. That usually solves the problem rather quickly.

Sadoff/Kaye: Take home point: Redacted records and legal stipulations place an additional burden on experts that require even greater vigilance. However, we are invited guests in the courtroom and we must respect the legal agreements reached by the parties as conditions to the litigation. Consultation with the referring attorney is critical. An expert should always feel comfortable recusing herself/himself at any point, if the conditions change to the degree that the expert feels pressure to act unethically.