

LEGAL CORNER

Competent or Not?

By Harvey Mars, Esq.

My column this month may seem a little unrelated to the day-to-day art of music, but there is a chance it may relate to the business or legal angle of your career. It's about mental competency.

If you've ever been involved legally with someone who may be mentally ill, you have been affected by the legal definition of competency.

To explore this issue further, we have to look at where law and psychiatry come together. It's a fascinating field known as forensic psychiatry.

Forensic psychiatry is a subspecialty of psychiatry involving physicians who are practicing psychiatrists. They've either earned law degrees or completed a specialized certification to qualify them to offer legal opinions.

These psychiatrists apply their legal expertise to render opinions involving an individual's mental status and capacity. Most often they are employed as expert witnesses to educate and persuade either a judge or jury.

Quite recently, I retained one of the most well-respected members of this field, Dr. Robert L. Goldstein, M.D., J.D., to offer an expert opinion in litigation I was handling involving a psychiatric hospital's improper disclosure of confidential patient information.

Dr. Goldstein is presently a clinical professor of psychiatry at Columbia University Medical School and was the former medical director of the Forensic Psychiatry Clinic of the New York City Criminal Court.

As a result of my experience with Dr. Goldstein, I thought it might be beneficial for union members to

learn more about this field.

One area where a forensic psychiatrist's expertise is necessary is where a criminal defendant's counsel as-

pendants who will contest their competency to stand trial, roughly 75 percent will be found to be competent.

In the law, there are many levels of

capacity and often requires a factual hearing. It is not uncommon for a forensic psychiatrist to offer an expert opinion on whether a guardian is necessary at such hearings.

It is a well-established legal precept that individuals are presumed to be competent unless and until there is a formal judicial declaration that they are incompetent. *Weed v. Mutual Benefit Life Insurance Co.*, 70 N.Y. 561 (1877).

This concept is in accord with the great value our democracy places upon individual's constitutionally protected right to liberty. Before an individual's liberty is impaired, there must be due process.

Likewise, it is well established that a person who suffers from mental illness but who is not declared judicially incompetent may sue or be sued and obtain the assistance of counsel in the same manner as any other person. *Sengstack v. Stengstack*, 4 N.Y. 2d 502, 151 N.E. 2d 887, 176 N.Y.S. 2d 337 (1956); *Bryant v. Riddle*, 259 A.D. 2d 399, 687 N.Y.S. 2d 108 (1st Dept. 1999).

See also "Litigious Paranoids and the Legal System: The Role of the Forensic Psychiatrist", *Journal of Forensic Sciences*, Vol. 32 No. 4, July 1987, Robert Lloyd Goldstein, M.D., J.D. ("The mere existence of a paranoid illness without more should not bar an individual from bringing a claim, leveling an accusation, or proceeding with his legal case.")

Denying a mentally ill, or any other handicapped individual, access to court when they have a arguable legal claim to assert is antithetical to the idea that all individuals may seek relief through legal proceedings.

However, once a guardian is appointed, the individual will lose all his or her rights to act independently, including the right to bring suit in his own name.

Prior to such a determination, it is thus essential that a forensic psychiatrist be consulted with to formulate an expert opinion regarding whether a guardian is actually legally necessary. □

Harvey Mars is one of Local 802's lawyers. Legal questions are welcome from 802 members. E-mail them to Jur-Mars566@aol.com. Past columns are available at www.Local802afm.org; click on "Local 802 News," then "Publications and Press Releases," then use the drop-down search menu to look up "Legal Column." Nothing in this article should be construed as formal legal advice given in the context of an attorney-client relationship.



serts that their client is not competent to stand trial.

If a criminal defendant is found not to be competent to stand trial, then he or she is immune from prosecution.

Often the determination whether a criminal defendant is competent involves conflicting expert opinions concerning the issue. The trial judge is the final arbiter of this issue.

Of the total amount of criminal de-

competency, each requiring a varying degree of mental capacity. It is possible that an individual may be deemed competent for one purpose but not another.

For instance, to execute a will, you must have "testamentary capacity." That is, you must be able to understand the nature of your property and be able to understand the relationships among the people to whom you are bequeathing your estate. During the will writing process, it is imperative that there be witnesses present who can observe whether or not the person writing the will has testamentary capacity.

Another area where mental status determinations are required is where an individual is determined to be "non compos mentis," or, in other words, not having the mental capacity to manage their own affairs.

This often becomes an issue for elderly individuals who may suffer from senility or dementia. It is also an issue with individuals who suffer from severe mental illness.

The determination whether an individual is legally incompetent and requires a legal guardian depends upon the individual's functional ca-

Harvey S. Mars, Esq.

(Local 802 member)

LAW OFFICE OF HARVEY S. MARS LLC
Attorney at Law

322 West 48th Street, 6th floor
New York, NY 10036
(212) 765-4300

Providing a full range of legal services concerning employment issues, civil rights and discrimination claims, contractual disputes and general litigation.