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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,
v.
Bernard B. KERIK, et al., Defendants.

No. 75 CIV. 3073 HB. | March 14, 2000.

Opinion

Memorandum and Order

BAER, District J.

I. BACKGROUND

***1** The defendants moved on February 4, 2000 by letter motion to preclude the testimony of Russell Neufeld at hearings in the instant case. *See* Defendant's Letter. The plaintiffs sought to call Russell Neufeld to testify "to the importance of attorney-client meetings in providing criminal defense representation, the burdensome practices and procedures of the New York City Department of Correction for conducting attorney-client meetings, and the effect of these burdensome procedures on the criminal representation provided." *See* Plaintiff's Letter.

II. DISCUSSION

The defendants presented three reasons to exclude Mr. Neufeld's testimony. First, defendants argued that Mr. Neufeld's testimony was inadmissible because it was within the competence of the trier of fact. The defendants submitted that the Court was perfectly capable of reaching conclusions regarding the impact that the alleged obstacles have had on legal representation provided to pre-trial detainees. The plaintiffs pointed out that the defendants did not suggest that Mr. Neufeld is not a qualified expert on the subject of attorney access to pre-trial detainees in New York City. The plaintiffs argued that "the fact that an expert is testifying in his capacity as a lawyer does not obviate the need for expert testimony." *See* Plaintiff's Letter. This Court allowed Mr. Neufeld's testimony because it found that the "specialized knowledge" of this seasoned practitioner could "assist" the Court in its desire to more fully "understand the evidence or to determine a fact in issue." *See* Rule 702 of the Federal Rules of Evidence.

Secondly, the defendants argued that Mr. Neufeld had failed to employ objective or testable methodology in reaching his conclusions, and charged that his testimony was inadmissible under Rule 702. The defendants noted that Mr. Neufeld had not attempted to compare cases where defense counsel faced obstacles to cases where defense cousnel did not encounter obstacles. However, after a determination that expertise existed on the issue of access to representation for pre-trial detainees in New York City, this Court found that Mr. Neufeld's testimony met the reliability requirements of Rule 702. I found persuasive the plaintiffs' argument that obstacles that delay or prevent attorney-client meetings bear on the quality of legal representation and cannot be quantified. Though one cannot quantify such effects, I found that the assesments of Mr. Neufeld could prove reliable if his testimony "employ[ed] in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *See Kumho Tire Company, Ltd. v. Carmichael,* 119 S.Ct. 1167, 1176 (1999). The plaintiffs pointed out that *Kumho* clarifies the standards in cases reviewing the reliability of expert testimony based upon "other specialized knowledge"-i.e., not scientific knowledge-under Rule 702. *See id.* The Court in *Kumho* wrote "where such testimony's factual basis, data, principles, methods, or their application are called sufficiently into question, ... the trial judge must determine whether the testimony has 'a reliable basis in the knowledge and experience of [the relevant] discipline." ' *Id.* at 1175. The *Kumho* Court announced that a district court "may" consider the *Daubert* factors, i.e., whether an expert's theory has been subjected to peer review, or whether an expert's theory can be tested, "where [such considerations] are reasonable measures of the reliability of expert testimony." *Id.* at 1176 citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993). This implies that in some cases, the *Daubert* factors will not be the measure of reliability. In this case, I cannot conclude that the reliability of Mr. Neufeld's methodology rests on whether or not he has completed a scientific survey of the obstacles to attorney-client meetings. The *Kumho* Court noted that "the law grants a district court the same broad latitude when it decides how to determine reliability as it enjoys in respect to its ultimate reliability determination." 119 S.Ct. at 1171.

***2** Finally, the defendants argued that even if this Court certified Mr. Neufeld as an expert, it should disallow any testimony regarding hearsay statements of other attorneys because plaintiffs had not demonstrated that such evidence is relied on by other experts in the field. Plaintiffs proposed that Mr. Neufeld would testify

regarding the complaints of his fellow criminal defense attorneys who have faced obstacles in gaining access to pre-trial detainees. Having determined that Mr. Neufeld qualified as an expert on the topic of criminal defense attorney access to pre-trial detainees in New York City, this Court decided not to preclude any opinion testimony which relied upon hearsay or otherwise inadmissible evidence. In this case, as is the case with most expert testimony, Rule 703 permits admission of such otherwise inadmissible evidence because an expert on this topic would reasonably rely on the statements of other attorneys regarding delays in visits to the pre-trial detainees and the effect of those delays on adequate representation.

III. CONCLUSION

For the reasons discussed above, the Court DENIED defendants' motion in limine.

SO ORDERED.