

*Pauline R. Hall v. Rita Shiff, et al.* - Affirmation of *Kelvey v. Coughlin*  
Decision Allows Broader Inquiry Into Opinions of Experts



By:



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A recent decision by the Rhode Island Superior Court potentially broadens the range of questions that may be posed to an expert witness at deposition. In [Hall v. Shiff, et al.](#), (C.A. No. PC 08-2420, Gibney, J., February 17, 2015) the Court ruled that an attorney may question a medical expert as to whether he/she disagrees with the disclosed opinions of an opposing expert. The Court determined that under the Rhode Island Supreme Court decision of [Kelvey v. Coughlin](#), 625 A.2d 775 (R.I. 1993), an expert is obligated to answer questions regarding the opinions of other experts for two reasons: (1) because they are relevant to the case; and (2) because there is no privilege upon which an attorney can rely as a basis for instructing his/her expert not to testify, as required by [Kelvey](#). The decision in [Hall v. Shiff](#) may increase the practice of pitting opposing experts against each other at deposition.

[Hall](#) involved the allegedly negligent performance and processing of laboratory testing ordered after the plaintiff presented to Brown University Health Services (“Brown”) in May of 2006. At that time, Quest Diagnostics, LLC (“Quest”), provided laboratory testing services for Brown. The plaintiff sued Brown and Quest. Brown filed a cross-complaint against Quest including allegations of negligence. Brown retained Daniel J. Sullivan, M.D., as an expert in internal medicine and Quest retained Mark D. Aronson, M.D. as its internal medicine expert. During discovery, Brown and Quest disclosed their experts and their respective opinions.

During the subsequent deposition of Dr. Sullivan, the attorney for Quest inquired

whether Dr. Sullivan disagreed with the disclosed opinions of Brown's expert, Dr. Aronson. The attorney for Brown, representing Dr. Sullivan at the deposition, objected and instructed Dr. Sullivan not to answer questions related to Dr. Aronson's disclosed opinions. The attorney asserted that it was not appropriate for Dr. Sullivan to critique the expert testimony of Dr. Aronson. Brown's counsel later argued that it was unduly burdensome for Dr. Sullivan to critique the opinions of Dr. Aronson, because Dr. Sullivan was subordinate to Dr. Aronson at their mutual places of employment (Beth Israel Deaconess Medical Center and Harvard University).

Upon Quest's motion to compel deposition testimony, the Court, citing Kelvey, found that Brown's attorney was not justified in instructing Dr. Sullivan not to answer questions relating to Dr. Aronson's opinions. The Court noted that an inquiry into any subject that is relevant to the subject matter of a suit is permitted under Rule 26 of the Rhode Island Rules of Civil Procedure and that the admissibility of such information does not represent an appropriate limit on discovery. The Court then explained that the Kelvey decision held that counsel may instruct a deponent not to answer a relevant question **only** if the question called for privileged information. Based on this, the Court found that questions related to the opinions of other experts were allowable. Such questions were relevant to the subject matter of the lawsuit and did not call for privileged information. Consequently, the Court determined that although counsel for Brown could object to such questions, he could not instruct the deponent not to answer them. The Court then ordered that Dr. Sullivan be produced for further deposition at Brown's expense.

Although the Court merely affirmed the ruling in *Kelvey* and did not expand it, the application of *Kelvey* in this circumstance likely will encourage attorneys to question experts about the opinions of opposing experts. The decision also leaves counsel representing the expert being deposed with little recourse to address inappropriate and burdensome questioning in this line. Thus, experts may now suffer the burden of being pitted against each other, expected to critique each others' opinions rather than merely offering divergent opinions on the underlying facts of the case.

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