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# Forensic Genealogy News

**Council for the Advancement of Forensic Genealogy**

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## New professional business league

On July 19, 2011, President Leslie Brinkley Lawson announced a new organization to advance professionalism in forensic genealogy. The Council for the Advancement of Forensic Genealogy (CAFG) was chartered in Texas in May and launched its web presence this July 19, [www.forensicgenealogists.org](http://www.forensicgenealogists.org).

CAFG is a business league with a professional membership. Its objectives are:

- Advance public awareness and understanding of the profession.
- Encourage broader use of the services of qualified forensic genealogists.
- Promote and maintain high standards of professional and ethical conduct.
- Encourage best practices in client services and business models.
- Promote interchange of information among members through electronic forums, trade publications, meetings, and seminars.
- Provide education and training for professional advancement of membership.
- Assist fellow members in professional development through mentorship, full membership, credentialing, and awarding of fellowships.
- Influence legislation that impacts the profession or the ability to access public records.

CAFG offers career ladder opportunities including a mentor program, full membership status for qualified, approved practitioners, plus the Fellowship award and optional credential component that are in development. Both the Advanced and Junior membership levels have minimum qualifications for education and experience. The mentor program also has minimum standards for enrollment. All members and mentor program enrollees agree to abide by the CAFG [Standards of Practice and Conduct](#).

Seeds of this association were planted in 2007 when a small group of forensic genealogists collaborated in filling the gap that other genealogical groups did not meet in this relatively new field. At that time there were no accepted definitions for heir searcher and forensic genealogist nor was it widely known what the differences between the two were. In addition, there were few forensic genealogy educational opportunities, mentor programs, specialty credentials, or organizations dedicated to forensic genealogy.

In 2008, members of list-serves for professional genealogists engaged in lengthy discussions in an attempt to define the profession and its specialties. A core group formed from these discussions to explore the idea of a professional business league dedicated to forensic genealogy. In May 2011, these explorations and efforts culminated in the registration in the State of Texas of the Council for the Advancement of Forensic Genealogy.

Serving on the organizing Board of Directors are President [Leslie Brinkley Lawson](#), Vice President [Michael S. Ramage](#), J.D., CG<sup>SM</sup>,<sup>1</sup> Secretary - Treasurer [Dee Dee King](#), CG<sup>SM</sup>, Registered Agent [Kelvin L. Meyers](#), and Mentor Program Representative [Catherine Desmarais](#), CG<sup>SM</sup>.

## Press release campaign a success

Within forty-eight hours of the press release hitting the internet, almost 600 visitors found their way to [www.forensicgenealogists.org](http://www.forensicgenealogists.org). Visitors logged in from forty-four states and fourteen countries. The average site visit was two to four minutes with five to seven page views. Visitors arrived via links in email, news messages, blogs, Facebook and Twitter, Cyndi's list, and other sites. Dick Eastman's [blog](#) generated an astounding one-fifth of all visits. CAFG wishes to express its appreciation to all who helped us "go viral."

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<sup>1</sup> CG, Certified Genealogist, CGL, and Certified Genealogical Lecturer are service marks of the [Board for Certification of Genealogists](#), used under license by board certificants after periodic evaluation, and the board name is registered in the US Patent & Trademark Office.

# Forensic Genealogy

by Dee Dee King, Certified Genealogist<sup>SM</sup>

(Adapted from a two-part article originally published September 2009 and January 2010 in *OnBoard*, the newsletter of the Board for Certification of Genealogists.)

Forensic genealogy is an emerging specialty of importance to both the genealogical and legal fields. However, our profession has yet to reach consensus in defining it or the standards that should guide its practitioners. At present, there is only a general recognition that forensic genealogy offers unique work opportunities with additional responsibilities and liabilities distinguishing it from research without legal implications. At a minimum, as with any specialty, the practitioner should possess advanced education, experience, and skills. The complexity of this specialty is not suited to those just entering the profession of genealogy.

## Define forensic genealogy

If forensic genealogy is to earn appropriate respect within our profession and among the non-genealogical professions we serve, we must define this specialty. That definition should use terminology familiar and applicable to target consumers, as it also sets standards of experience, education, and performance.

The American Academy of Forensic Sciences (AAFS) offers this definition of forensic sciences:

The word forensic comes from the Latin word *forensis*: public; to the forum or public discussion; argumentative, rhetorical, belonging to debate or discussion. From there it is a small step to the modern definition of forensic as belonging to, used in or suitable to courts of judicature, or to public discussion or debate. Forensic science is science used in public, in a court or in the justice system. Any science, used for the purposes of the law, is a forensic science."<sup>2</sup>

AAFS further states, "The forensic scientist's goal is the evenhanded use of all available information to determine the facts and, subsequently, the truth."<sup>3</sup>

How does this apply to forensic genealogists? "Evenhanded" suggests unbiased. As in science, the law also relies upon research, documentation, and reporting by unbiased third-party witnesses and experts. Professional genealogists accept that their role is to research, document, and report their findings from an unbiased position. Forensic genealogists should rely upon methods and ethics consistent with the [Genealogical Proof Standard](#):

- reasonably exhaustive research;
- complete and accurate source citations;
- analysis and correlation of the collected information;
- resolution of any conflicting evidence;
- and a soundly reasoned, coherently written conclusion.<sup>4</sup>

Considering all these points, I propose that a forensic genealogist is one who:

- is qualified through a combination of education, training, and work experience;
- is employed or retained by attorneys, law firms, estates, courts, corporations, governmental agencies, or other entities;

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<sup>2</sup> "Resources> Choosing a Career," American Academy of Forensic Science ([http://www.aafs.org/default.asp?section\\_id=resources&page\\_id=choosing\\_a\\_career#Bookmark1](http://www.aafs.org/default.asp?section_id=resources&page_id=choosing_a_career#Bookmark1) : accessed 28 July 2009).

<sup>3</sup> *Ibid.*

<sup>4</sup> "Genealogical Proof Standard," Board for Certification of Genealogists (<http://www.bcgcertification.org/resources/standard.html> : accessed 6 July 2009).

- performs kinship determination in legal issues as an independent third-party researcher, analyst, reporter, and witness; and
- uses methods and ethics consistent with the highest professional standards.<sup>5</sup>

### **How can one qualify as an expert?**

Some states use *Daubert* or *Frye* standards to test for reliability of "expert witnesses."<sup>6</sup> Some jurisdictions use other standards. The judge serves as the gatekeeper in assessing whether an expert witness is qualified, and whether the expert's testimony is relevant and based upon a reliable foundation. The following are some general indicia of reliability, drawn from *Daubert* and *Frye*:

The witness possesses:

- specialized education and training beyond that of the normal lay person,
- relevant experience with both research and court appearances;
- and appropriate credentials.

The work product:

- uses methodology standard for the field, outside as well as inside of litigation;
- and has been peer reviewed.

The opinion is:

- reasonably based on the proper types of evidence,
- a sound deductive process; and
- is presented in a rational form.

The results can be:

- tested by reproducing the research path.

### **Fee Issues**

Forensic genealogy is most frequently associated with heir searching. The traditional role of heir searcher involves contacting possible heirs and contracting for a percentage or some other portion of the assets due them. Although the heir searcher may employ the same research, analysis, and reporting standards as the family history researcher, there is a key difference. The heir searcher who bases any portion of his remuneration on the outcome of the legal proceedings is no longer the unbiased scientist and or disinterested third-party. The heir searcher becomes a stake holder in the outcome of the legal issue.

According to Michael S. Ramage, JD, CG:

A forensic genealogist has an inherent conflict of interest when he or she takes a case on a contingent fee basis. This is because in such cases our human nature creates a bias or self-interest in favor of the outcome that will assure that the contingent fee will be paid to us. As one court aptly put it, an expert's contingent fee agreement "furnished a powerful motive for exaggeration, suppression, and misrepresentation..."<sup>7</sup> The legal rules of most states prohibit lawyers from hiring expert witnesses on a contingent fee basis (e.g., Pa. Rules of Professional Conduct 3.4(b)).

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<sup>5</sup> Dee Dee King, Forensic Genealogy Services, LLC ([www.forensicgenealogyvservices.com](http://www.forensicgenealogyvservices.com)) and other copyrighted marketing material.

<sup>6</sup> *Frye v. United States* (D.C. Cir. 1923) and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311 (9th Cir. 1995) set standards for admissibility of expert witness testimony in Federal legal proceedings. Overviews of each are available as "Scientific Evidence: Frye v. United States," and "Daubert Test: Further Reading," Law Library: American Law and Legal Information (<http://law.jrank.org>) : last accessed 27 August 2009).

<sup>7</sup> *Sherman v. Burton*, 165 Mich. 293, 297, 130 N.W. 667, 668 (1911).

Furthermore, such a witness would be subject to impeachment (discrediting) if testifying in court as to the expert's conclusions due to such bias or interest in the outcome of the case.<sup>8</sup> Therefore, the proper, ethical fee structure is an hourly fee plus costs.<sup>9</sup>

### **Business Opportunities**

Probate and heir work varies widely by jurisdiction. In some circumstances, standards and procedures may differ among courts within the same legal jurisdiction. Texas and New York provide good examples of varying requirements.

In Texas, settlement of some intestacies is based upon heirship affidavits made by neighbors or friends who may testify as disinterested witnesses<sup>10</sup> about the decedent's marriages, children or heirs. Hiring professional genealogists for probate work is much rarer in Texas than in some other states. Texas judges exercise wide leeway in deciding whether certified copies of documentation are required or if photocopies and derivative sources are allowable.

New York has two distinct procedures. Intestacies require kinship determinations and strict standards of evidence, including certified documentation. On the other hand, even an ironclad will may not preclude the need for a genealogist.

### **Other types of work**

Forensic genealogy is not limited to probate or heir searches. Recent high profile cases, for example, have exposed holocaust literary frauds perpetrated by authors Misha Defonseca, author of *Misha: A Mémoire of the Holocaust Years* and *Surviving with Wolves*,<sup>11</sup> and Herman Rosenblat, author of *Angel at the Fence*.<sup>12</sup>

Immigration and citizenship proceedings present opportunities for the forensic genealogist to work for either the U.S. Citizenship and Immigration Services (USCIS) to disprove citizenship eligibility, or for attorneys attempting to establish legal rights of their immigrant clients. Individuals seeking civil pensions, Social Security, veteran or other benefits may require kinship determination as evidence in their cases. Trust and insurance companies occasionally require assistance in identifying and locating beneficiaries of trust accounts or insurance policies.

Kinship determination may be necessary in land issues involving title inquiries, adverse possession, rights of way, *lis pendens*,<sup>13</sup> or muniment of title.<sup>14</sup> Production companies and lease holders may need assistance in identifying and locating missing or unknown heirs to distribute oil, gas, and mineral royalties. Conversely, some oil-rich states have seen increased numbers of cases initiated by those seeking royalties through claims of descent and heirship from original land grantees.

Branches of the military, medical examiners, and coroners rely upon forensic genealogists to identify DNA donors or next of kin of unclaimed decedents. Other governmental agencies have retained forensic genealogists

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<sup>8</sup> United States v. Abel, 469 U.S. 45 (1945).

<sup>9</sup> Michael S. Ramage, J.D., CG is a licensed attorney based in Wynnewood, Pennsylvania.

<sup>10</sup> "A witness who has no personal interest in the case." *Nolo* (<http://www.nolo.com/dictionary/disinterested-witness-term.html> : accessed 22 July 2011.)

<sup>11</sup> Misha Defonseca, *Misha: A Mémoire of the Holocaust Years* (Bluebell, Penna.: Mt. Ivy Press, 1997).

Misha Defonseca, *Surviving with Wolves: The Most Extraordinary Story of WWII*, with the collaboration of Vera Lee and Marie-Thérèse Cuny (London: Portrait, 2005).

<sup>12</sup> Herman Rosenblat, *Angel at the Fence: The True Story of a Love That Survived* (New York: Berkley Books, 2008).

<sup>13</sup> "Jurisdiction, power, or control which courts acquire over property in litigation pending action and until final judgment." Black's Law Dictionary, 932.

<sup>14</sup> "Documentary evidence of title." *Ibid.*, 1019.

to research and identify next of kin for notification prior to cemetery removals. Capital mitigation<sup>15</sup> in death sentence cases requires investigation of at least three generations, offering experienced forensic genealogists the opportunity to work with defenders and mitigation specialists attempting to spare a life.<sup>16</sup>

### **Required skills**

Integrity, self-direction, the discipline to work under tight deadlines, exceptional data management, and public speaking are among the necessary attributes. Forensic genealogists need exceptional research and analytical skills; the ability to write comprehensive, yet understandable reports suitable for submission to courts; the ability to research and understand laws applicable to the case across many jurisdictions and time periods; understanding of descent and distribution formulas in determining relevant kinship; and the ability to testify in court and under cross examination.

### **Unique risks and liabilities**

Most genealogists are never placed in situations where their reports and conclusions find their way into a legal venue. Virtually all of the work conducted by forensic genealogists has the potential—at the least—to become part of a legal record. At the other extreme, their work could be challenged and tested by adversaries in court. The forensic genealogist must be confident in findings that may come under question or attack in contentious legal proceedings. Adversarial strategy may extend not only to discrediting the genealogist's report, but also to discrediting the professional integrity of the genealogist.

Unlike genealogists who conduct family ancestral research or prepare lineage societies applications, forensic genealogists seldom have the opportunity for “do-overs.” There is no easy solution when a court ruling is overturned or assets must be retrieved that were distributed to the wrong beneficiaries based on errors in a genealogical report. Situations like these leave the forensic genealogist open to liabilities beyond those to which family history researchers are exposed.

The practitioner should give special consideration to business structure and tax issues. Consultations with attorneys and tax advisors about the most advantageous business structures are prudent. Incorporating as a Limited Liability Corporation (LLC) may offer some protection of personal assets as well as tax advantages. Some forensic genealogists maintain errors-and-omissions insurance policies ranging in coverage from a minimum of \$100,000 to \$2,000,000. Careful consideration should also be given to terms of the client retention agreement, including such items as arbitration and indemnification clauses.

Increased recognition and use of forensic genealogy provides growth potential in this specialty. It is not for beginners or the faint of heart. However, forensic genealogy offers the practitioner with advanced skills and experience new opportunities for challenging cases in expanding markets.

### **Council for the Advancement of Forensic Genealogy**

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<sup>15</sup> “Alleviation, reduction, abatement or diminution of a penalty or punishment imposed by law.” *Ibid.*, 1002.

<sup>16</sup> *American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty* (<http://www.abanet.org/legalservices/downloads/sclaid/indigent-defense/deathpenaltyguidelines2003.PDF> : accessed 8 July 2009).