

PROFESSIONAL BIOGRAPHY OF BROOKS L. HILLIARD CMC CCP

Brooks Hilliard is a Certified Management Consultant (CMC) and a Certified Computing Professional (CCP), and is president of Business Automation Associates, Inc., an independent consulting firm based in Scottsdale, Arizona and specializing in computer system selection and problem resolution. In his consulting capacity, Mr. Hilliard has been engaged by over 200 firms in a wide variety of industries and professions. Although it has no affiliation with any supplier of computer products or services, Business Automation has recommended systems incorporating products from nearly every major hardware manufacturer and software developer. In order to maintain its objectivity and avoid any possibility of conflict of interest, Business Automation does not do software development, implement computer software or systems, or sell any computer products or services.

Approximately a third of Business Automation's engagements have been expert witness/consultant projects. Mr. Hilliard has testified more than 30 times and has been engaged for several dozen expert assignments in more than 25 states, including matters relating to computer system non-performance (both software and hardware), recovery of missing and deleted data, the use of fraudulent computer evidence, intellectual property and computer security. His activities have included assistance with case evaluation, development of pre-trial and deposition strategies, evaluation of damages, development of expert opinions and deposition/courtroom testimony. He has been successfully Daubert tested and qualified as an expert in both state and federal jurisdictions. Prior to founding Business Automation in the 1980s, Mr. Hilliard worked for several computer companies where his responsibilities included positions in software development, sales, marketing, field service, contract negotiations and general management.

Brooks Hilliard is the only actively practicing expert witness in the world who is both a Certified Management Consultant (CMC) and a Certified Computing Professional (CCP). The CMC designation is awarded by the Institute of Management Consultants, USA, the US chapter of the only world-wide certifying body for management consultants. The CCP designation is awarded by the Institute for the Certification of Computer Professionals, an international certifying authority sponsored by more than twenty domestic and international computer professional associations. To achieve these certifications, Mr. Hilliard has undergone peer reviews, client audits, competency tests and oral interviews; he has complied with continuing education requirements and has pledged to uphold the Codes of Ethics for both organizations. He has also served as a national board member for the Institute of Management Consultants, USA and currently serves as the National Chairman of its Ethics Committee.

In addition to his consulting activities, Mr. Hilliard has served as an officer or board member for the Arizona Chapter of the Institute of Management Consultants, the Arizona Harvard Business School Association, MIT Alumni Club of Phoenix, the Arizona Chapter of the National Conference of Christians and Jews (NCCJ), Devereux Foundation Arizona Advisory Board and the Phoenix 100 Rotary. He has also been an active participant in the Arizona State Bar Technology Task Force, the Arizona Technology Council, the Independent Computer Consultants Association, the Forensic Expert Witness Association and the Institute of Electrical and Electronics Engineers (IEEE). He has done commentary for Public Radio International's nationally-syndicated MARKETPLACE news program, led seminars for the American Management Association and spoken professionally at numerous computer, management, professional, corporate and trade association meetings.

Mr. Hilliard has also authored a book, "Buying a Computer for Your Growing Business, An Insider's Guide", which was published by Dow Jones.

Mr. Hilliard's educational background includes an M.B.A. from Harvard Business School with emphasis on small business management and marketing. He also holds a Baccalaureate degree in mechanical engineering with Deans' List academic honors from the Massachusetts Institute of Technology. In addition, Mr. Hilliard has served as a Faculty Associate with the Arizona State University School of Business.

Born and raised in Los Angeles, Mr. Hilliard has lived in Arizona, California, Massachusetts and Washington, D.C. (where he served as an officer in the U.S. Coast Guard).

BROOKS HILLIARD'S EXPERT WITNESS ENGAGEMENTS

Brooks Hilliard has testified in more than 30 computer-related cases, and has been engaged as a testifying and/or consulting expert in dozens of others in more than 25 states that settled before testimony was required. He has been qualified as an expert and testified in both state and federal courts, as well as giving testimony in arbitrations, mediations and formal governmental hearings. He has also served as a neutral expert where he was retained by all parties to the litigation. Attorney references and case captions are available on request.

Issues related to performance of computer system and/or services:

Brooks Hilliard has been a consulting and testifying expert, *for both buyers' and vendors' counsel*, in more than 35 cases involving computer systems that were alleged not to have performed as promised.

- Testified in Federal Court for plaintiff relating to a manufacturing ERP system (without significant inventory management capability) sold to a stocking distributor of construction products.
- Testified for defendant relating to a service management system that passed all buyer-specified acceptance tests but the buyer refused payment.
- Produced a rebuttal report for defendant relating to insurance agency software that did not do functions the software developer had warned the licensee (plaintiff) it would not do (plaintiff's expert was subsequently withdrawn, eliminating need for rebuttal testimony).
- Produced an expert report for plaintiff relating to CRM software package in the medical reimbursement industry that "crashed" several times a day (settled prior to testimony).
- Produced expert report for plaintiff relating to an ongoing implementation of an ERP system attempting to add high-tech manufacturing functions that were promised as part of the standard software (settled prior to testimony).
- Testified for plaintiff relating to an outsourced software conversion project stopped by the customer when it appeared it would not be completed in time to meet a government deadline.
- Testified for plaintiff relating to improperly programmed industrial machine that crushed a worker.
- Produced expert reports and testified in several matters (on both sides) relating to problems allegedly caused by the conversion of ERP software from one operating system to another, or to run as an Internet application.

Most of these projects involve allegations of fraud, misrepresentation, negligence, ineffective or nonexistent quality control (including failure to adhere to ISO 9000

certified procedures), inadequate testing, flawed development and/or service performance below industry standards.¹

Actions have included review of actions, documents and issues; production of opinion letters and affidavits; assistance in case strategy; preparation of interrogatories and deposition questions; deposition testimony, trial testimony and assistance in settlement negotiations. References are available on request.

Intellectual property:

Brooks Hilliard has been involved as a consulting and testifying witness in more than a dozen matters relating to the ownership and/or alleged misappropriation of intellectual property. These matters have involved computer software, computer hardware and confidential business knowledge/information.

- Testified for plaintiff in a software patent matter rebutting defendant's anticipation and obviousness assertions relating to eight alleged prior art systems (Supply Chain Management software).
- Produced a report analyzing "look and feel" and databases structure similarities to determine whether one business software system was derived from a competing system written in a different programming language. A court-ordered neutral assignment engaged by and reporting jointly to all parties to the dispute (settled, no testimony required).
- Testified for plaintiff in a trade secret matter relating to whether a hardware manufacturer had created a product itself, or copied the design disclosed to it by an inventor under an agreement prohibiting such copying.
- Analyzed issues in a trade secret matter relating to whether allegedly proprietary information used by an equipment maintenance company to train technicians was publicly-available (settled prior to testimony).
- Analyzed issues in a copyright matter relating to whether one company had misappropriated the Internet web site code of another (settled prior to testimony).

These engagements have involved the complete range of copyright, patent and trade secret issues. Project efforts have included forensic investigation, production of opinion

¹ The term "alleged" is used purposely to emphasize the fact that, prior to forming an opinion, Mr. Hilliard begins every assignment — whether plaintiff or defense — with no preconceived ideas of which party was responsible for the problem at issue. He believes that no opinion can be fairly rendered or effectively advocated unless the expert begins his review from an unbiased starting point.

letters, deposition testimony, trial and arbitration testimony and assistance in settlement negotiations. References are available on request.

Missing, destroyed and/or fraudulently created data (Computer Forensics):

Mr. Hilliard has performed as a consulting and testifying expert in more than 35 matters involving the recovery and/or authentication of computer-generated data. The majority of these matters have dealt areas of practice other than high technology, with the electronic discovery being the only computer issue in the litigation. Examples include:

- Testified for defense in state court regarding whether plaintiff's request to conduct forensic investigation was warranted by evidence and likelihood of finding reliable evidence.
- Testified for defense in state court in an insurance bad faith matter relating to whether an insurer or its agent had tampered with policy records to avoid payment of a claim.
- Analyzed computer forensic evidence to determine whether the wording of a crucial letter was exactly as claimed on or before a specific prior date (settled prior to testimony).
- Analyzed computer forensic evidence in a class action matter relating the to claimed tampering with payroll records, alleged to have reduced hours worked (and pay) for thousands of hourly workers over a multi-year period (settled prior to testimony).
- Analyzed computer forensic evidence to determine whether a "whistle-blower" had discovered an incriminating memo or fabricated it himself. Testimony in state court by associate.
- Discovered that an opposing expert had omitted important facts from a computer forensic report and assisted defense counsel in preparing to take opposing expert's deposition (settled, no testimony required).
- Found and removed trade secret data from a laptop computer owned by an employee going from one employer to a competitor in a joint engagement by both sides of an employment matter (settled, no testimony required).
- Conducted eDiscovery investigations in multiple matters (on both sides) determining whether former employees took technical specifications, customer lists or other company confidential computer files when they left.

Engagements have dealt with employment matters relating to documents that may have been taken by departing employees, intellectual property, insurance bad faith, corporate/partnership dissolution and suspected embezzlement of funds.

Business Automation utilizes the same forensic techniques and software used by law enforcement and governmental agencies (not available through common retail distribution channels) to recover missing data, determine whether data has been purged abnormally and/or to authenticate document dating. Assignments have included forensic investigation, production of opinion letters, deposition, hearing and trial testimony and assistance in settlement negotiations. References are available on request.

Computer equipment and software valuation:

Mr. Hilliard's assignments have included liquidation and "fair market" valuation of computer systems, software and related equipment for matters dealing with business dissolutions, insurance, bankruptcies and allegations of arson. He has prepared written opinions and given depositions and courtroom/arbitration testimony. References are available on request.

- Testified for plaintiff in arbitration regarding ratio of fees attributable to development compared to fees attributable to implementation services.
- Testified for plaintiff in arbitration regarding replacement cost for non-functioning software.
- Prepared expert report on valuation of the inventory of a computer store after a fire (settled prior to testimony).
- Prepared expert report on valuation of systems and networks in dispute after the breakup of a professional services firm (settled prior to testimony).

Criminal:

Brooks Hilliard assisted with pre-trial discovery as an expert consultant in multiple matters involved alleged fraud. Issues have related to computer security and unauthorized electronic funds transfer. Reference available on request. [Note: Business Automation does not accept assignments relating to allegations of pornography or child abuse.]

Regulatory and procurement irregularity issues:

Mr. Hilliard has performed as a consulting and testifying expert in several matters involving governmental regulation and allegedly flawed commercial and governmental procurement of computer equipment and other regulatory issues. These plaintiff and defense matters have involved such subject areas as:

- Testified for plaintiff at state government hearing regarding protest of a

governmental procurement.

- Prepared expert report regarding rescision of a computer contract signed under suspicious circumstances (settled prior to testimony).
- Prepared expert report in matter related to utility rate-setting calculation (settled prior to testimony).
- Prepared expert report in matter relating to immigration status of a computer professional (settled prior to testimony).

Brooks Hilliard's efforts have included the production of opinion letters and affidavits, assistance with settlement negotiations, deposition testimony and public testimony at a regulatory agency hearing. References are available on request.



**Certified
Management Consultant**

Certification When you see the initials “CMC” following a consultant’s name, it means that he or she is a Certified Management Consultant and has met the strict certification requirements of the Institute of Management Consultants. The Institute was founded in 1968 by the principal associations in the consulting field to establish publicly recognized standards of competence and professional conduct for the individual management consultant. Applicants for certification undergo a thorough investigation of their consulting experience: A panel of senior consultants interviews them to verify their technical competence, and they must pass a written examination demonstrating their familiarity with the Institute’s Code of Ethics.

A Code of Ethics CMCs pledge in writing to abide by the Institute’s Code of Ethics. Their adherence to the Code signifies voluntary assumption of self-discipline above and beyond the requirements of law. Key provisions of the Code require that CMCs:

- Safeguard confidential information.
- Render impartial, independent advice.
- Accept only those client engagements they are qualified to perform.
- Agree with the client in advance on the basis for professional charges.
- Develop realistic and practical solutions to client problems.

The Institute enforces the Code by receiving and investigating complaints of violations and by taking disciplinary action, including revocation of certification against any member who is found guilty of Code violation.

Standards of Competence Every step leading to the CMC designation has been designed to verify the candidate’s professional competence. A Certified Management Consultant has:

- At least five years of experience in the full-time practice of management consulting, with major responsibility for client projects during at least one of those years.
- Multiple references, most of them officers or executives of client organizations. These references have been investigated to assure that the consulting relationships were satisfactory.
- Provided written summaries of five client assignments (disguised to protect client identity).
- Passed a qualifying interview by senior CMCs, demonstrating professional competence, currency in areas of specialization, application of experience, and understanding of the management consulting process.

The Mark of Excellence In selecting management consultants, managers are well advised to seek individuals who meet the profession’s standards of competence and ethics. The CMC designation is a valuable aid in this quest. Certification by the Institute of Management Consultants is the mark of excellence among management consulting professionals.





The world relies heavily on technology to perform vital personal, public and business functions. It is imperative that the individuals involved in the design and delivery of the systems behind that technology

- Uphold ethical practices in their day to day activities
- Master the body of knowledge of the profession
- Ensure that access to computerized information remains confidential
- Provide open and complete communications to clients, employers and the public
- Act to ensure that information technology serves and benefits society at large

The CCP designation ensures that its holder is committed to these principles. It also helps consumers to identify superior suppliers of Information and Communications Technologies' (ICT) products and services that can help enhance the effectiveness of their organizations.

1. BENEFITS OF THE CCP TO PURCHASERS OF ICT SERVICES AND EQUIPMENT:

- Reduce risk: CCP holders undergo rigorous admission criteria
- Improve quality: CCP holders must complete ongoing professional development to remain current with technologies and techniques
- Identify superior service providers: Reduce time spent searching for qualified service
- Obtain recourse for unprofessional activity: CCP holders are accountable to the Certification Council and panels of peer evaluations

2. BENEFITS OF THE CCP TO INFORMATION SYSTEMS MANAGERS:

- Improve service: CCP certified staff ensure timely and proper delivery to clients
- Control costs: 65000 certified holders ensure needs can be met at the highest levels of professional work
- Maintain industry knowledge: CCP holders have increased access to educational and professional development opportunities and often at lower costs
- Streamline recruiting: Narrow candidate searches and identify candidates quickly
- Enhance confidentiality: ICCP Code of Ethics guarantees confidentiality at all times
- Develop staff: Ensure ongoing professional development and tracking for existing staff through ICCP's transcript system

3. BENEFITS OF THE CCP TO HUMAN RESOURCE PROFESSIONALS:

- Narrow candidate searches: CCP as a base requirement for applications reduces total number of applicant candidates to those fully qualified
- Deeper evaluation of selected/qualified applicants: The ICCP HR assessment system allows you to assess, externally & impartially, the strength of knowledge and skills of individual applicants for specific technology areas
- Simplify application screening: CCP helps identify qualified applicants quickly
- Control costs: large base of CCP holders ensures that your needs can be met
- Enhance company marketability: CCP holders enhance an organization's image
- Develop staff: Ensure ongoing commitment by staff towards maintaining the currency of their knowledge and skills

4. FINDING A CCP HOLDER IN YOUR COMMUNITY

- The public may request a search for a registered CCP holder(s) in your state or province. Contact the ICCP office through email at office@iccp.org to request this service.
- Please note there is a fee for service for this activity.

ICCP, 2350 East Devon Ave, Suite 115, Des Plaines, Illinois 60018- 4610, USA
phone:847-299-4227 or 800-843-8227 fax: 847-299-4280 email: office@iccp.org
web site: www.iccp.org

Brooks Hilliard's Expert Qualifications

I am *qualified to express the opinions* I express. In addition to my expert analyses and opinions in over 90 matters throughout the United States, I have:

- 30+ years as a professional in the computer industry.
- Consulted professionally to over 200 businesses on the selection and implementation of computer systems used for enterprise-wide business functions.
- Worked as a professional in nearly every area of the computer industry other than electronic component design (as both a vendor and a buyer).
- Achieved "Certified Management Consultant" certification issued by the largest management consultant's professional association in the world.
- No affiliations or conflicts of interest with any computer or software firm.
- Written a book: "Buying a Computer For Your Growing Business: An Insider's Guide", published by Dow-Jones Irwin.
- Expertise in both general business management and computer industry.
- S.B. degree in Mechanical Engineering from the Massachusetts Institute of Technology with Deans' List academic honors.
- M.B.A. degree from Harvard Business School.
- Testified in both federal and state courts, as well as AAA and other arbitration and mediation.

I use a *rigorous and standardized methodology* to reach my opinions:

- My methodology follows all industry-accepted guidelines.
- I use the same basic methodology with legal clients for assignments related to computer system quality and acceptability that I use with consulting clients for computer system selection. [Note: Because expert assignments occur after the fact, some adjustments are made to accommodate the difference in the information and other resources that are available.]
- I use the most respected and accepted computer forensics tools and procedures for electronic evidence discovery assignments.
- I rely only on factors that are generally relied up and considered reliable by experts in my field.

My opinions address areas that requires *specialized knowledge that is both necessary and useful to juries, judges and arbitrators*:

- I understand and can explain critical computer industry terms of art.
- I am knowledgeable about and, in many cases, have been directly involved in the computer industry customs and practices and accepted standards of care that are relevant to the types of matters where I accept expert engagements.
- I have testified for both customers and vendors and have no predisposition for, nor conflict of interest with, either type of litigant.