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THE GRAPHOSCOPY REPORT AND THE REQUIREMENT FOR CONCLUSIVE EXPERTISE IN ARTICLE 465, §5 OF THE CODE OF CIVIL PROCEDURE

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INTRODUCTION

Article 465, §5 of the Code of Civil Procedure (Law 13,105/2015) provides that when the expert opinion is inconclusive or deficient, the judge may reduce the remuneration initially arbitrated for the work, that is, the remuneration approved after the presentation of the proposal of fees and the due statement of the parties as provided for in article 465 in its 2nd and 3rd paragraphs. Subsequently, the Code provides that the expert report must contain a conclusive answer to all questions presented by the judge, the parties and the Public Prosecutor's Office (art. 473, IV Law 13,105/2015).

It is said that the Code of Civil Procedure does not specify what an inconclusive or deficient expertise is, nor does it work with the fact that there are fields, such as graphoscopy, in which the objectivity of results and the analysis technique are not is of the same nature as in other more "mathematical" areas, so to speak.

Although "forensic document analysis is the study of physical evidence and physical evidence does not lie" [1], it is certain that the analysis of elements of falsity, especially signatures, is strongly influenced by the human factor. This is because it is not a spectrometer, a scanner or a computer that determines the elements present in a given signature. He is, above all equipment, an expert.

Even the contemporary graphokinetic technique still relies on the division of general elements into subjective and objective, with "the former being appreciated or felt, however, it is not possible to demonstrate them adequately" [2]. It is only the human action characteristic of graphoscopic expertise that allows the aforementioned subjective elements to be, in fact, felt, rather than demonstrated.

Even with regard to objective elements, it must be taken into account that writing is subject to modifying causes that can render samples unusable and prevent a conclusion, not before, however, the expert's work has been carried out.

With this in mind, the most appropriate presentation of conclusions in a graphoscopy report, as understood today by the state of the art, is made at five levels, namely: 1 – the graphic release was written by the supplier of the graphic standard; 2 – there is moderate support for the proposition that the questioned manuscript was written by the supplier of the graphic standard; 3 – An opinion cannot be expressed as to whether or not the questioned entry was written by the graphic standard supplier; 4 – There is moderate support for the proposition that the questioned manuscript was not written by the supplier of the graphic standard; and 5 – the questioned release was not written by the graphic standard supplier [1].

Especially with regard to levels 2 and 4, but also with regard to level 3, of the scale presented above, there is a problem regarding the legal provision of articles 465, § 5 and 473, IV of the Code of Civil Procedure (Law. 13,105/2015). This is because all levels of presentation of conclusions require the expert to carry out all studies of graphic habits of patterns provided and the documents questioned. Therefore, it is not a case of poor work, lack of diligence or any type of negligence on the part of the expert. Yes, these are results possible, given the nature of graphoscopic science and the elements of writing analysis.

Still other examples that may result in the expert choosing due to the impossibility of issuing an opinion at levels 1 and 5 of the scale that also do not imply, or must not imply, a deficient or inconclusive report involve the finding of inadequacy of paradigm samples – due to causes modifying the writing, for

example, as mentioned previously -, or even a questioned document available only in copy.

These questions are the objects of the present study, a research still under development, which will be addressed in the following topics.

INADEQUATE STANDARDS AND INCONCLUSIVE REPORT: A RELEVANT ASSOCIATION?

Signature analysis is a science that faces challenges inherent to the human condition that permeates it. Not only with regard to the expert, but also to the subjects of the writing. As is known, “various illnesses, fevers or weakness, which follow or precede them, cause variations in writing” [2]. A very significant example is the presence of diseases that compromise neurological functions, such as Parkinson’s disease. When carrying out relevant studies to identify the characteristics and writing habits of a given subject, the expert finds himself faced with a case in which some elements point to authorship, or veracity, but others suggest that the writing was, in fact, altered. in some way. In a practical example, Fig. 1, below, shows an authentic signature provided, as it appears in the image, in 2017. Fig. 2 shows an authentic signature provided in 2022, after approximately two years of diagnosis of suspected Mal de Parkinson’s:

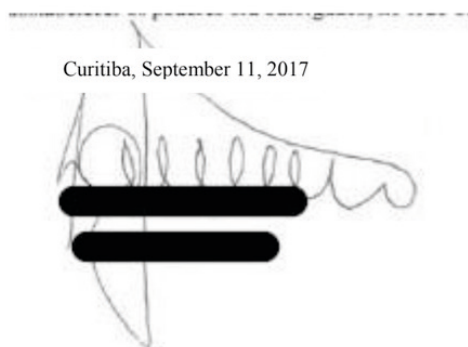


Figure 1. Authentic signature provided in 2017. Approximately three years before diagnosis of suspected Parkinson’s disease.

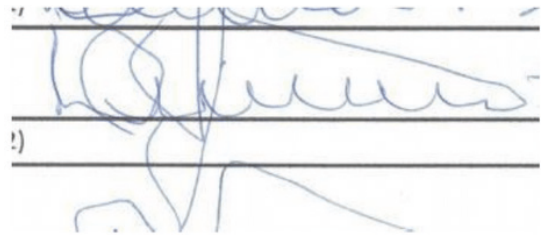


Figure 2. Authentic signature provided in 2022. Approximately two years after diagnosis of suspected Parkinson’s disease.

It is evident that subjective elements, such as line quality, degree of writing skill and speed, for example, differ between both samples which, as noted, are known to be authentic. Even some objective elements, such as graphic spacing and proportionality relationships, were affected by the modifying cause of writing in a very evident way.

When the questioned sample is compared with writings known to be authentic, the subjective and objective elements present in each paradigm signature can also result in different conclusions. Fig. 3, below, presents precisely the sample questioned:

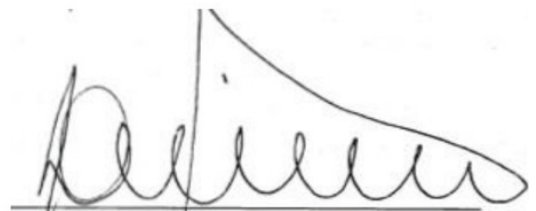


Figure 3. Questioned signature provided, supposedly, by the writer who provided the paradigm signatures. The date of the questioned signature is 2011, around six years before the first sample known to be authentic.

Even if we ignore the intervals between samples and accept that six years between the questioned sample and the first paradigm sample are acceptable, given the facts that this is an adult person and mature writing, it is still quite evident that the advancement of the pathology detected from 2020 makes it unfeasible to compare confrontation and

question patterns with regard to samples from 2022, collected in the presence of the expert and three years after diagnosis.

In this case, let's assume, for study purposes, that the professional has required additional steps such as signature cards at notary offices, contracts prior to the diagnosis and preferably contemporary to the questioned standard and any other documents that may meet minimum contemporary requirements. We will also assume that the steps were unsuccessful.

Given the fact that the 2017 sample is unique, it is clear that the report must be prepared informing the court and the parties about the impossibility of concluding the falsity or authenticity of the questioned samples. It is also clear that it is not possible to use the intermediate conclusions of the scale presented above. In other words, the only prudent, or even possible, conclusion is that 3- An opinion cannot be expressed as to whether or not the questioned release was written by the supplier of the graphic standard [1].

If this is the necessary conclusion of the report, then it is also quite likely that the answers to any questions prepared by the parties and their respective technical assistants will follow the same line.

The fundamental question of this article is, however, whether this report is inconclusive or deficient and, if so, it may result in a reduction in the remuneration initially arbitrated for the work – in accordance with the provisions of article 465, § 5 of the Code of Civil Procedure.

For an outline of a reasoned response to be possible, we must observe in the quick description of the specific case whether the path of expertise is, in any way, deficient, incomplete, or whether there is negligence on the part of the expert in the search for possible conclusions within the field of science. graphoscopic.

What can be easily seen is that work began and signatures were collected, paradigm and

questioned samples were analyzed, additional steps were required and, finally, a report was drawn up presenting possible conclusions.

There are no elements that suggest in this case, which is true for all similar cases, a lack of conclusion due to a deficiency in the process, or in the path that must be followed by the professional appointed to the task. What there is, in fact, is a scientific reason that prevents a conclusion other than that presented in the report.

With regard to current legislation, the expert carried out his duties exactly as provided for in article 466 of the same Civil Procedure Code (Law 13,105/2015), that is, he scrupulously fulfilled the task assigned to him.

It is necessary, so that distortions in the application of the legal text whose consequences are the inadequate remuneration of professionals specialized in graphoscopy are not committed, that the idea that “a graphoscopic conclusion would be limited to authenticity/falseness/inconclusiveness” [3] is overcome.

The conclusion that it is impossible to determine authorship or non-authorship of a given release is, therefore, valid in graphoscopic science without configuring a deficiency.

Having carried out this perfunctory analysis and constructed the example, it is possible that some conclusions can be drawn.

CONCLUSIONS

The provisions on expertise and expert work contained in the Code of Civil Procedure – Law 13,105 of 2015 – are generic and their uniform application to all areas of expertise would be a mistake. As demonstrated, graphoscopic science is endowed with peculiarities that must be taken into account when analyzing the expert's work. The possible conclusion, taking into account the methodology and limits

of the science in question, will not always be the authenticity or falsity of the graphic release. In fact, the inadequate understanding that the graphoscopy report must indicate authenticity, falsity or be inconclusive can lead to hasty conclusions and, consequently, increase the number of errors especially in borderline cases, or *hard cases*, as is the case

of self-forgeries.

Experts are responsible for informing judges about the peculiar nature of their work and the inevitable human condition that permeates graphoscopic science so that these elements are taken into consideration when reading and understanding the reports.

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