

PROFESSIONAL BIOGRAPHY OF BROOKS L. HILLIARD CMC® CCP

Brooks Hilliard, President of Business Automation Associates, Inc., is one of fewer than 15 professionals in the world who is both a Certified Management Consultant™ (CMC), an International Standards Organization ISO/IEC 17024:2003 accredited certification, and a Certified Computing Professional (CCP). Business Automation is 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 more than 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 half 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 37 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.

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 member of the national Board of

Directors and Chairman of the Ethics Committee for the Institute of Management Consultants, USA.

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 Consultant 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, Maryland 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 50 computer-related cases, and has been engaged as a testifying and/or consulting expert in dozens of others in more than 37 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. Attorney references and case captions are available on request.

Computer system functionality, software implementation and service issues:

Brooks Hilliard has been a consulting and testifying expert, for both buyers' and vendors' counsel, in more than 50 cases involving computer systems that were alleged¹ not to have performed as promised.

- Testified for a regional wholesale distributor of construction products that was sold a manufacturing ERP system that failed to perform crucial distribution functions including multi-warehouse inventory management, over-the-counter sales, etc. (favorable jury verdict).
- Testified for a developer of ERP software regarding its culpability for an unsuccessful software implementation done by a third party (favorable jury verdict).
- Testified for a medical products manufacturer against a major erp software developer regarding a version of its software that was represented as having been fully tested and operational, but which was so defective and unreliable that it was ultimately withdrawn from the market (favorable arbitration decision).
- Testified for a maintenance management software developer relating to a service management system that passed all buyer-specified acceptance tests but the buyer refused payment (settled favorably after deposition).
- Testified for an electronics manufacturer against a major erp software developer and its implementation firm, relating to manufacturing software that failed to maintain accurate inventory records and failed to comply with generally accepted accounting principles (settled favorably during arbitration hearing).
- Testified for a hospital administration software developer alleged to have

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.

- delivered faulty record-keeping software (settled favorably after deposition).
- Testified for a truck dealership against a major ERP software developer regarding software that was represented as being “fully integrated”, but showed obvious software defects when passing critical data between its own modules (settled favorably after deposition).

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.

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 (Patent, Copyright and Trade Secret):

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. Examples include:

- Testified in two software patent cases for SCM (Supply Chain Management) software regarding defending against invalidity allegations relating to anticipation and obviousness assertions, including more than 50 systems and methods claims for eight alleged prior art systems (one favorable jury verdict, one favorable settlement after hung jury).
- Tested and analyzed functionality of two software packages performing military equipment logistics applications, to determine whether one was derived from the other (settled prior to testimony).
- Testified in a hardware 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 (favorable jury verdict).
- Analyzed issues in a software copyright matter relating to whether one company had misappropriated the Internet web site code of another (settled prior to testimony).
- Testified in copyright matter regarding alleged misuse of licensed software to provide independent third-party support for ERP software.

These engagements have involved the complete range of copyright, patent and trade secret issues. Project efforts have included forensic investigation, production of opinion letters, deposition testimony, trial and arbitration testimony and assistance in settlement negotiations. References are available on request.

Business Automation Associates, Inc.

11811 North Tatum Boulevard; Suite 3031; Phoenix, Arizona 85028-1632

Office: (602) 264-9263 On the web: <http://www.ComputerExpertWitness.com> FAX: (602) 532-7244

Software Licensing and Systems Contracting:

As a consulting and testifying expert, he has been engaged in numerous litigation projects where the understanding of computer industry terms of art and/or the common industry usage of such terms in the context of a computer system or software acquisition or the provision of computer-based services was a primary factor or a significant contributing factor to the understanding of the issue in dispute. Examples include:

- Testified regarding developer and customer compliance with terms of an OEM software development agreement (settled favorably after deposition testimony).
- Testified regarding software license fees, specific issue dealt with whether licensee's implementation of software violated contract terms (settled favorably after deposition testimony).
- Testified in Defense procurement matter, regarding conformance of licensed software to terms of procurement contract (favorable ruling by Armed Services Board of Contract Appeals).
- Testimony ruled admissible after Daubert Challenge regarding the application of specialized knowledge and review of contract terms to software functionality, quality and implementation issues (case in Federal District Court settled favorably subsequent to Daubert ruling, copy of ruling available on request).
- Testified regarding meaning of disputed computer industry terms used in contracts and contract-related documents in vendor-customer litigation (multiple matters, including one where AAA panel's award, relying primarily on Mr. Hilliard's opinion, was confirmed in Federal District Court).
- Testified regarding applicability of services fees, specific issue dealt with whether specific billings were (uncovered) development services or (covered) implementation services (favorable AAA panel ruling).
- Testified regarding whether system implementation was completed consistent with contractual commitments (favorable Federal District Court jury verdict).
- Testified numerous times regarding normal and customary meaning of computer industry terms of art in contracts where such terms were not included among the contract's defined terms (many matters, most settled after deposition testimony).

Opinions in these engagements were based on Brooks Hilliard's industry knowledge and experience negotiating and reviewing hundreds of software licenses, computer systems and services contracts as an information technology consultant and, prior to founding Business Automation, as an industry executive. Because he is not an attorney, Mr. Hilliard is careful to confine his opinions to normal and customary understanding of the terms of art in the contract rather than expressing opinions on the meaning of the contract itself. References available on request.

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

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:

- Numerous matters involving the discovery/recovery of documents and other evidence — including missing or deleted documents — on opposing litigants' hard drives, servers, e-mail records and/or backup media.
- Several assignments dealing with questions of whether key computer documents have had their dates and/or contents altered after the fact, or whether their purported creation date is consistent with the evidence on the computer hard drive where they are stored.

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.

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:

- Protest of a governmental procurement.
- A utility rate-setting calculation.
- “Whistle-blower” termination cases.
- Immigration status of a computer professional.
- Rescission of a computer contract signed under suspicious circumstances.

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

What's Behind the "CMC"

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 The CMC® is a certification mark registered with the U.S. Patent and Trademark Office. The CMC® is recognized worldwide by the International Council of Managing Consulting Institutes (ICMCI) (www.ICMCI.org). Certification by the Institute of Management Consultants is the mark of excellence among management consulting professionals. In selecting management consultants, it is good practice to seek individuals who meet the profession's standards of competence and ethics.





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:

- 35+ 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.
- Achieved "Certified Computing Professional" certification issued by the largest international certification body independent of vendor affiliations.
- 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 Engineering from MIT, with Deans' List academic honors.
- M.B.A. degree from Harvard Business School.
- Daubert-qualified to testify 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:

- Methodology follows all industry-accepted guidelines.
- Same basic methodology used with legal clients as those used 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.]
- The most respected and accepted computer forensics tools and procedures for electronic evidence discovery assignments.
- Reliance only on factors that are generally relied up and considered reliable by experts in the 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.