

Three Questions to Ask Early and Often

By Melinda Starbird, J.D.

I have heard it said that litigation is recession proof. It may be more accurate to say that while litigation can thrive in both good times and bad, litigation still feels the pressures of a bad economy. And experts would be wise to pay attention to those pressures to avoid problems.

The past two years have highlighted this point and created new concerns for expert witnesses.

In this economy, corporations and in-house counsel are extremely cost sensitive. Legal fees, including expert fees, are under intense scrutiny. More than ever, experts are dealing with past due invoices and questioned or disputed invoices.

For example, we recently had a conversation with one attorney who avoided paying invoices because he and the expert failed to set, or even discuss, expectations. Long after the case was settled, he forced the expert to retroactively justify his time.

There is one way, and only one way, to win an argument against even the best attorney. Don't have the argument.

I have discussed the importance of setting expectations with top experts dozens, if not hundreds of times and they always agree with me. Too often these same experts go back to work only to plow headlong into the next invoice dispute. I suspect that this happens because people either assume that they have an understanding (need I repeat what happens when one assumes?) or that they prefer to avoid what could be a negative conversation.

I also want to point out that an early discussion of expectations is far less disagreeable than that which follows a disputed invoice.

I encourage every litigation support consultant to recognize that times have changed and outside counsel no longer has carte blanche to spend on litigation. The simplest way to avoid billing disputes is to ask three simple questions, but they must be asked early and repeatedly.

- What is it you need from me? (Deliverables)
- When do you need it? (Deadlines)
- How many billed hours do you anticipate it should take? (Costs)

These questions force the client and the expert to confront the next set of tasks and hopefully agree on both costs and delivery deadlines. If they do not agree on either hours or timing, the expert is in a much better position to control the conversation (and outcome) before he has expended the hours. Without an upfront discussion and agreement, the expert has few options when a client simply refuses to pay an invoice.

I also caution that it is not enough to have a discussion of expectations only once at the beginning of the case. As the case moves forward, the expectations must be revisited and revised. I remind you that times have changed and I encourage each of you to use these simple questions to add a layer of protection to your consulting process.

Editor's note: This is part one of a five-part series on making sure you get paid as an expert witness. To make sure you get the other four parts, [subscribe](#) to the Expert Library.