



## Jurisprudence Section – 2009

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### E12 It's a Rough World Out There for Experts

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The goal of this presentation is to instruct consulting and testifying experts on issues germane to the rights and responsibilities of persons involved in the litigation process. This will include relationships with hiring and opposing attorneys and the court. Conflicts of interest, contractual relationships, trial preparation, and testimony will be discussed.

This presentation will impact the forensic community by providing experts involved in difficult situations relative to litigation useful information to help them in situations where they are confronted with confounding ethical, pecuniary, and employment situations.

These issues will be discussed in the context of a fact-based scenario in which an academic researching environmental factors is solicited for expert testimony by a prominent plaintiff's lawyer in a lawsuit involving a prominent defendant. Not being familiar with litigation practices, the prospective expert witness disregarded advice to send a retainer letter setting compensation for preparation and testimony (in and out of court), and set an amount for a retainer. Instead the prospective expert proceeded on the project without receiving a retainer and, upon completion of the analysis, was fired by the plaintiff's lawyer who now also refused to pay for the expert analysis. Subsequently, the prospective expert was contacted by the defense to set up a deposition; after the plaintiff's lawyer had included the prospective expert on the list of plaintiff's witness. The prospective expert advised the defense lawyer that the expert had been fired by the plaintiff's lawyer. Concurrently, the plaintiff's lawyer sent the prospective expert a letter informing the expert that all of the expert's work in the case was the property of the plaintiff's lawyer as "work product", and that if the expert released the report or talked to anyone about the analysis the plaintiff's lawyer would destroy the expert's reputation; file a complaint with the professional licensing board and with the expert's employing academic institution; and would sue the expert.

In the adversarial system, play is sometimes rough. Experts may become caught in the middle of two very committed and nasty warring sides. Not being lawyers, not all experts know their rights in difficult situations. This presentation will attempt to answer most of the questions posed by the factual situation outlined above and provide practical advice for consulting and testifying experts.

**Experts, Litigation, Testimony**