

Hourly Rates and the Perception of a Hired Gun

Despite all the changes in the legal industry in the last few years, a few things have stayed the same. Cases still need experts. Experts still charge for their services. And juries still judge experts based on their rates.

Duke Energy Corp. has been receiving a lot of news coverage recently regarding the claim that it failed to contain costs on the construction of its \$3.3 billion Edwardsport power plant in Indiana. Along with articles on the power plant expenses are similar articles discussing the exorbitant amount the company is spending on their expert witness.

Duke has already paid more than \$3 million dollars to expert Patricia Galloway, CEO of Pegasus Global Holdings, and she provided a favorable report to the Indiana Utility Regulatory Commission last week. With the huge fees Duke paid their expert compared to the rates of their opposition's experts, [many](#) are calling into question the independent nature of Duke's expert.

Opinion for Hire

Expert fees can vary greatly, and many highly qualified experts in niche fields legitimately charge higher rates. The issue arises when experts are seen as an opinion for hire.

According to three experiments published in *Law and Human Behavior*, expert witnesses are perceived by juries as "hired guns" when they testify frequently and are highly paid for their time in court. Galloway's \$3 million price tag easily places her in this category.

A partner at Baker Botts LLP, Paul Ragusa, told another blog that high expert billing rates can call an expert's credibility into question. "The other side can elicit billing rates through cross-examination and make the expert out to be a hired gun."

Standard Variations

Everything from an expert's testimony experience, education, geographic location and experience can affect how much an expert may charge. Even within a project, experts often charge differing rates.

Many experts charge a higher rate for deposition and trial due to the inconvenience of traveling to trial locations and the increased stress of testimony. According to a [survey](#) conducted in 2010, nearly 60% of experts increase their hourly rates for trial and deposition testimony. The same survey revealed that nearly 40% of experts decrease their hourly rates for travel time while another 10% increase their rates.

These variations in rates are understandable as long as they stay within a reasonable range. But what is reasonable? When does an expert's rate go from being a valid fee for his high quality services to being a sign of a hired gun?

Earlier this year, the United States District Court for the Northern District of California used the “manifest injustice” standard, from Rule 26 of the Federal Rules of Civil Procedure, to [reduce the hourly rates](#) charged by two experts. On the issue of reasonableness, the court ultimately reduced one expert’s hourly rate from \$1,600 to \$800 and another expert’s hourly rate from \$950 to \$750.

There is no hard and fast rule for when an expert’s rate reaches a level that juries won’t find credible. Instead, attorneys should focus on hiring talent and avoid paying for opinions by having open, honest conversations with experts before retaining them.

Tell us: Have you ever experienced an expert’s hourly rate being an issue for a jury?

This article was originally posted on [BullsEye](#), a legal blog published by [IMS ExpertServices](#).