



Writing a Bulletproof Expert Report

By Kevin Quinley
CPCU ARM, AIC, AIM, Are, RPA

One core competency that expert witnesses need to continually hone and improve is writing. In federal cases, you will be submitting a Rule 26 report. Even in some state cases, your report will have the flavor of a Rule 26 report. In other cases, counsel may only need or want a brief bullet point disclosure of your opinions.

Regardless of the form that it takes, your written report will manifest your thought process on the case and is the source document opposing counsel uses to question you at a deposition and trial. It represents the distillation of your opinions and reinforces to the client the value you add as a subject matter expert. Thus, whether experts view themselves this way or not, they are professional writers. You get paid for writing! Skill at writing is a core pillar underlying a successful expert witness practice. Here are twelve tips and strategies for upping your game and written work product:

#1. Renegotiate tight deadlines. Maximize the length of your runway. Clients are notorious for approaching experts at the proverbial 11th hour:

Attorney at 5:17 PM phone call: “There are 3000 pages to review and report is due in 10 days. Can you do it?”

Expert: “Umm.... No thanks!”

Renegotiate unrealistic, compressed deadlines unless you’re willing to spend 24/7 on the case. Often, if you diplomatically push back, counsel can get the opposing side and the Court to agree to extensions of a Scheduling Order. In some cases, they can’t. If they can’t, be willing to “just say no” and walk away. “Hot takes” are for sportscasters and TV news network talking heads. Your report should be more than a “hot take.” Ultimately, you’ll be the one on the hot seat at deposition or trial, trying to defend your opinions and your report.

Reports should be reflective, not reactive. Never sacrifice responsiveness for quality. It’s your name on the report. It’s your professional reputation on the line. If you render half-baked opinions, that becomes part of your permanent record as an expert witness. It can compromise your credibility on downstream assignments and hurt your odds of

(continued on page 4)

Writing a Bulletproof Expert Report (continued)

getting subsequent assignments, due to the hurried quality of the report you scrambled to complete by an unrealistic deadline.

#2. Give yourself permission to write a crappy first draft. Ease the pressure on yourself by considering your first draft a “beta version” of opinions. Take off your Editor Hat. Don your “Crazy Madman” hat. Psychologically, this frees you to break the deadlock and get words on paper (or on the computer screen). We procrastinate, in part, because we want to write the Perfect Report. Remove that psychological burden. Tell yourself it’s okay to write an imperfect first draft.

#3. Eat the elephant one bite at a time. You can be frozen into inactivity and procrastination by wondering, “Where the world to even begin?” Compartmentalize. Break the project down into specific, manageable steps. One writing session will be devoted to facts of the case. Another devoted to your background and qualifications. Another session devoted to your methodology.

The core of your report will be your opinions. Break those down into individual writing sessions or modules. How do you eat an elephant? One bite at a time! Shrink the size of your world to just you and the computer screen in front of you.

#4. Create subfolders for each opinion. Part of eating an elephant “a bite at a time” involves creating individual files for each opinion. This keeps the separate ideas discrete. Your report may have five or six major opinions. Maybe more. Maybe less. Create a Word document for each one of them, using abbreviations as appropriate. Each day, each writing session, attack one of these opinions to get thoughts on paper. You can always merge them, edit them, change them, reword them and polish them later. Don’t think about writing a report. Write modules!

#5. Get clear on exactly what your report must include and collaborate with retaining counsel. Clarify with retaining counsel whether he or she needs a Rule 26 report or a pithy bullet-point disclosure. If the case is in federal court, Rule 26 will likely apply. If the case is in state court, retaining counsel may still want you to do a Rule 26-type report. Others will want more of a bullet point disclosure of your opinions. Don’t waste time on a detailed report if a bare-bones disclosure is needed. On the other hand, avoid situations where you assume that the lawyer only needs a bare-bones disclosure and you come to learn that a detailed federal type report is desired.

These twelve tips are quality control steps in producing the best possible written work product and optimizing the process.

Writing a Bulletproof Expert Report (continued)

#6. Proofread! Use spell-check but don't rely upon it solely. Run the report through a spellchecker, but realize that it will not catch all bloopers. This is why it helps to have another person read your draft with a red pencil or pen.

#7. Speak, don't write. For at least 20 years, most of my "writing" has consisted of dictating into a speech to text software tool, Dragon Naturally Speaking (<https://tinyurl.com/93tk4umu>) . (I "wrote" this article using dictation software.) Although many people complain of Writer's Block, I've never heard of anyone afflicted with "Talker's Block." Proficient typists can keyboard 60-70 words per minute. Speaking at an average pace, however, puts you around 130-140 words per minute. You can get much more text on the page by speaking into a microphone than by typing. Still proofread carefully, just as you would even if you were typing. Get comfortable with speech-to-text software and turbocharge your report writing productivity!

#8. Consider editing software such as Word Rake or Grammarly. Once you have a draft, run it through word editing software. Word Rake (<https://www.wordrake.com/editing-software-for-writing-professionals-about>) identifies unnecessary verbiage and suggests changes. Grammarly (<https://www.grammarly.com/>) is like having your own private editor. It flags grammatical mistakes which are much better for you to catch before a report goes "live." Errors in spelling and grammar detract from substantive opinions.

#9. Look sharp! Appearances count. Your report needs to be buttoned down, lucid and well documented. The manuscript should also look tight. Report typography is beyond the scope of this article, but I enthusiastically recommend *Typography for Lawyers: Essential Tools for Polished and Persuasive Documents* by Matthew Butterick.

#10. Read it aloud and see what it sounds like. This alerts you to poorly worded sentences, lack of transitions between paragraphs, or possible internal contradictions in the draft report. Use this as a quality control step to enhance the readability of your report.

#11. Get someone who knows nothing about the case and ask them to proof it. Often, after finishing a report draft, I will hand it to my wife with a red pen and ask her to read it and mark it up with a critical eye. I am so close to the manuscript, I mentally insert omitted words in the draft or make other shifts and leaps that don't make sense. She catches spelling errors, grammar errors, sentence fragments and other mechanical imperfections. She also alerts me to sentences, conclusions or transitions that just don't make sense. Whether you use your spouse or significant other, find somebody who knows nothing about the case and ask them to flag mistakes, be ruthless about it, and ask, "Does this report make sense?"

(continued on page 6)

Writing a Bulletproof Expert Report (continued)



#12. Get clear with counsel about what he or she does or does not want to see in the way of drafts. Different attorneys have different philosophies. Another impactful factor is whether the case is in state or federal court and whether drafts circulated between the testifying expert and retaining counsel are or are not considered privileged. Some attorneys do not want to see drafts. Others are fine with doing so. Some don't want to see the draft but may ask you to read the report over the phone (a tedious exercise). Others will ask you to distill verbally over the phone the report's highlights. Others may want to screen-share the draft via Zoom. Before sending a draft to counsel, ask him or her about preferences on this issue.

These twelve tips are quality control steps in producing the best possible written work product and optimizing the process. Now that you've finished the report, pat yourself on the back and taken deep breath. Savor the interlude because, before you know it, the time will come to prepare for . . . your deposition!

About the Author

Kevin Quinley CPCU, ARM, AIC, AIM, Are, RPA is President of Quinley Risk Associates in the Richmond, VA area. A CLEW IG member, he maintains an active nationwide expert witness and claim consulting practice on issues of claim-handling, bad faith, extracontractual liability and adjuster standard of care. You can reach him at kevin@kevinquinley.com.

CPCU Society Mission

We are committed to providing resources, educational programs and leadership opportunities that attract talent and enable individuals to expand their technical insurance skills and business capabilities in order to improve the overall performance of the insurance industry while adhering to the highest ethical standards.