

# Help This Expert – Getting Paid for Preparation Time for Deposition and Trial

Copyright 2009 by Expert Communications

The most common complaints we hear from experts are about getting paid. This one concerns getting paid for preparation time for deposition or trial. As usual, our Expert News readers rallied with responses and advice for this expert.

The question is posted first, followed by the many responses.

Best wishes,  
Meredith

## Question

---

“From time to time, you print questions from experts asking advice on problematic situations many of us have also experienced, and I have responded to some of these in the past. Now it's my turn to ask for advice. When I testify at deposition or trial, I charge a flat fee for the testimony itself, plus an hourly rate for preparation and pre-testimony conference time. Perhaps it's the economy, or perhaps it's just the nature of some attorneys, but a few of them will either not pay for prep time, or will limit the prep time to something far less than I would ordinarily do myself, in order to prepare for cross-examination adequately.

As an expert medical witness, I average at least 5.0 hours' prep time before depositions, and 10.0 hours before trial testimony, including review of medical records, legal documents and pleadings, deposition transcripts of the opposing parties and other experts, plus pertinent medical literature.

Testimony, of course, is discoverable, and we experts not only want to do the best job possible for the attorneys who have retained us, we also know that our testimony is on the record for future discovery, and the attorneys know this just as well.

Some attorneys seem to think that if they don't pay us for adequate preparation time (i.e., as much preparation as we experts think we need to do) we are going to do it anyway, on our own time, to preserve our credibility and expertise for discovery in future cases - and so we don't look like idiots on the stand - which then allows the present attorney to benefit from our preparation time without paying for it themselves.

I had one attorney actually tell me his case "wasn't worth" the cost of 5.0 hours prep time, so I did no prep for him whatsoever. At the time of the pre-trial conference - that was supposed to last no more than 30 minutes, he produced hundreds of pages of new documents, which he then sat and read to me over the next 3.0 hours! Of course this delayed the start of my videotaped testimony by 3.0 hours, infuriating the other attorney, court reporter, and videographer, but this guy just didn't care. And of course, he never paid me for the additional 3.0 hours of prep time I put in, involuntarily. Needless to say, I never worked for this shyster

again. Filing a complaint against him with an out-of-state bar association would have been a further waste of my time.

At this point, when I am faced with this kind of situation, I advise the attorney, in advance, that if their restrictions on my ability to prepare adequately appears to me, during the course of my testimony, that it might affect my credibility as an expert, and might be used to impeach me in future cases, I will make a statement on the record, during the course of my testimony, that the retaining attorney deliberately and knowingly instructed me not to put in as much time preparing for testimony as I thought necessary. And I threaten to blame the attorney, on the record, for anything I might not know, that I otherwise should know.

I can't say that this has worked to dissuade any such attorney from this kind of behavior, and of course, this does not endear me to such attorneys, but what's the downside? I like to get repeat business, but in my experience, once an attorney has pulled this scenario on me, he or she will do it again, the next time I agree to work for them, and I don't need that kind of repeat business.

What is the experience of your other experts, and how do they handle this situation?"

## Responses

---

It is best to handle this matter in the initial engagement letter you ask the attorney to sign. Clarify that you will need adequate preparation time for depositions and trial and you will need to determine what is adequate. Also get an adequate retainer.

-----

My solution to this problem is quite simple. I tell the attorney involved how many hours of prep time I require and what the cost will be and that I require to be paid at least one week before the deposition or trial.

If I do not receive the payment along with the payment for the deposition or trial, I will not attend. It's important to make clear to them that this is simply a hard and fast, non-negotiable policy. I've never had a problem with this since, I believe, it is reasonable and clear and leaves no room for confusion, misunderstanding or 'gaming'.

-----

My main response is to not submit a report or testify until you are all paid up.

Some attorneys tend to be slow, but push come to shove, if they need a report or an appearance, they will pay. Just be firm on this point. It helps to comment on such in your retainer (if you have one) just so everyone is clear.

Remember, they are in business also, and are in it for a profit. They can't, shouldn't and don't expect any different from you.

-----

First of all, you need a good engagement letter with wording that describes that you will not do anything to compromise your professional integrity.

Then you need an understanding with the attorney up front that you charge by the hour and that you cannot put a limit on the time you may need, and if an estimate is requested of the time needed for document review + prep time - give them a very high estimate. If they balk, you can explain that a definite estimate of time is impossible. And if they continue to balk, Walk Away from the engagement, least you encounter what you have already encountered.

Finally, I take an up-front retainer which is held until the final invoice after trial or after settlement, that way they have pre-paid for some of your time and/or travel expenses and have some "skin in the game."

-----

I have rarely, if ever, been stiffed by an attorney. (The "if ever" refers to a possible legitimate miscommunication.)

I have, however, waited a long time for some attorneys to pay (the worse being an attorney who waited to pay me until, after a full year, he was paid by an insurance company that hired him).

-----

Yes. Make sure your consulting/expert witness services contract specifies you will be paid for preparation time at the same hourly rate as the rest of your services. If you want to get specific, you can include examples of preparation time to include such things as review of pleadings and discovery material (including depositions of all witnesses), meetings and telephone conferences with your attorney in preparation for the deposition or trial, inspections of accident scenes and vehicles, equipment, or other physical items involved in the case, research regarding the specific type of defect or negligence issue involved in the case, research regarding the opposing expert and his publications and former testimony, and so forth.

-----

Yes. Make sure your consulting/expert witness services contract specifies you will be paid for preparation time at the same hourly rate as the rest of your services. If you want to get specific, you can include examples of preparation time to include such things as review of pleadings and discovery material (including depositions of all witnesses), meetings and telephone conferences with your attorney in preparation for the deposition or trial, inspections of accident scenes and vehicles, equipment, or other physical items involved in the case, research regarding the specific type of defect or negligence issue involved in the case, research regarding the opposing expert and his publications and former testimony, and so forth.

-----

First, I charge a flat hourly rate for all time including deposition or trial testimony and preparation time, rather than a flat fee for depositions. Second, I have found that a very strong contract is extremely important. I developed a contract with the assistance of my own attorney and refuse to do any work on a project until I have both a signed contract and a retainer check. The contract spells out that I will charge my normal rate for preparation time and also spells out the

procedure for collection, including a clause that requires the client to pay any collection costs in addition to my fees and substantial interest charges for late payment. In most cases, reminding the client of this contract has been enough to get payment. In a few cases, I have had to have my attorney remind the client of the contract -- thus far, this has resulted in full payment (including interest and collection fees) 100% of the time. The key is letting the client know your billing policies before you are retained and insisting that he sign off on a contract with these policies before you do any work.

---

Perhaps this is more about managing expectations from the get go?

A contract and retainer system might keep these issues at bay.

And in the event there are people out there who simply don't intend to pay, as the judge offered in one of my cases, "That's the cost of doing business."

---

Tell your expert to get a better control of the attorney client as the case progresses and get to the point sooner. I can't comment on the number of hours to prepare, but as long as it's efficient...if not, bill what is fair and appropriate but be prepared for both deposition and trial. His progress billing needs to retain enough for depo prep and the expert must have enough of a relationship not to ever allow any attorney to tell an expert how much to allow for preparation.

And finally, file the complaint...it put the attorney on notice...I'm doing it now, first time that I've ever had to do it since working as expert from 1992

---

I have faced the same situation with some unscrupulous attorneys, those who depend upon the good nature or work ethic of an expert rather than consider the time spent by the expert. These same attorneys would not work for 20 seconds without a fee agreement. That considered, I treat everything the way that Mr. Spock would. By that, I mean without emotion while employing pure logic. Get a fee agreement before you do anything. If the attorney doesn't want to deal with that, you have been given a perfect reason to walk away from him. If work ever gets so bad that you are forced to deal with these vermin on their terms, you will not be very happy and you will not continue to produce your best work. That is human nature.

If an attorney refuses to extend the proper respect to a fellow professional, then you simply do not want to do business with him. I have had some of these shysters try to skirt an agreement after they had signed a fee agreement letter. In those cases, I don't let my emotions get the best of me, because every bone in my body wants to choke someone who is trying to steal from me. I just refer the matter to an attorney friend and that is that. Fairly soon, the word will get around that you are a pure professional and you will be in *more* demand.

---

The "Good Guys" are going to be Good Guys regardless and understand your being up front about money. First Red Flag – whimpering about money. Take it or leave it!!

#1 – Retainer for "ALL" Plaintiff's work. (in town=one days worth of work, out of town or state= twice that amount or more)

#2 - Terms of Sale sent with CV - with all of the verbiage in it to protect yourself in and out of state. Make them come to you if you have to file!!!

-----

I've practiced as a forensic architect for nearly 20 years, with 30 prior years experience in construction and architecture. Your scenario happened to me a few times, and I suggested to the attorney that he/she retain another expert. All you need is confidence that attorneys need your work -- if you're worth it -- and they'll agree to your professional standards. And, they'll respect you in the morning.

-----

Frankly, if an attorney refuses to allow me to prepare or he refuses to prep me, then I refuse to testify and withdraw from the case. Repeat business from abusive attorneys is not worth it. I must say, however, that I am fortunate in not having to face this often.

-----

I have had similar problems with attorneys not wanting to pay for enough preparation time for depo and trial. This is especially aggravating when they allege that they read the same records in x amount of time, which is shorter than what it took me. First of all, this is highly unlikely, unless they were doing a very sloppy job, and second of all, I am not just reading it, but analyzing it. One of my favorite statements to such attorneys, when they claim, "X pages shouldn't take you so long," is, "I'm not reading a novel! I'm analyzing it and making notes." Of course, this rarely dissuades them from trying to get me to take far shorter to prepare.

If an attorney starts grumbling about preparation time (and I take more like 15-50 hours of preparation, depending upon the case), I give him a MINIMUM estimate, and stress that it is only a MINIMUM estimate of how much time I will need. I have found that it always takes longer than what the attorney or I, myself, would wish. If the attorney is not willing to accept this, I tell him that I will not ruin my reputation by testifying at depo or trial without being prepared and give him notice that I am resigning from the case. This is all spelled out in my retainer agreement from the beginning.

What's interesting is that the attorneys don't believe I will actually carry through on this, even though I tell them, "I don't work for free." So far, I have only had to go through with this and not show up for a few cases. The other attorneys, finally realizing that I did mean it, somehow came up with the money that was due.

What is important is to inform attorneys, way ahead of time, that you will not testify at depo or trial unless you are paid in full for ALL the work you have done up to that point, including preparation and your fee for testifying at trial. I have also found it helpful to include in my

retainer agreement that the retaining attorney is responsible for any depo fees that are not paid by the opposing attorney. You will be amazed at how much help you get collecting the balance of your depo fees from the opposing attorney, since your retaining attorney does not want to pay it.

Collecting money from attorneys is the part of expert witness work that I dislike. But, I try to remind myself that for them, it's all about the money - getting more for their clients and themselves - and that this is how they measure their success. For me, as an expert witness, it's all about the intellectual fulfillment and the satisfaction of a job well done; but, I do want to get paid for my time - the hours of my life that I dedicated to their case!

-----

I have an agreement and policy (A&P) sent and signed by the hiring attorney at the time I receive my advance to start work on the case. The A&P states if the hiring attorney does not sign the A&P he agrees to the terms in the A&P by him sending the advance check to me. The prep for dep and trial is clearly spelled out in the A&P and if the hiring attorney does not pay my fee 7days in advance for dep/trial prep, testimony and travel, etc I advise the hiring attorney I will not be there. Also I don't hold any date and time open for the dep or trial until I receive the advance 7 days before the dep /trial date. In the past 32 yrs I have never had a problem with this A&P canceling my appearance at a dep/trial; of course the attorney has to settle the case without my testimony. There are times when the judge orders my dep time fee to be paid, by the attorney calling for my dep, at the close of my dep which is fine but I ask the opposing attorney to show me the check before the dep starts, if he does not have the check I walk out. Also if the court orders my fee to be reduced my hiring attorney must makeup the difference ( this is spelled out in my A&P before I accept the case. Of course these attorneys don't call me back but of course I don't care for their business.

When I started my business I accepted cases and billed for them but quickly I found out that I spent 40% of my time being a bill collector. I also had to suit several attorneys to strengthen my reputation as a no-nonsense expert. I must say it has worked for me over the years.

-----

I offer a budget prior to doing my review. I then ask if this is reasonable and fits in to the lawyers thinking. At this point they might tell me what they think. This has helped me in most cases.

-----

It has been my experience that there are some attorneys who misbehave in the manner this expert describes. There are a few things with which I arm myself to deal with "shyster" attorneys:

1. In my retention agreement I make clear that I am to be paid in advance for depositions and trials and will not appear at either unless I receive payment at least 5 days in advance.
2. I ask for and maintain a retainer large enough to cover non-payment for my services.

3. I have withdrawn from case prior to trial for exactly the issue described - following my deposition the attorney refused to pay me for prep time (even though I had been out of the case for over a year). My retainer covered about 90% of the unpaid invoice. I never heard a word from the attorney.

4. What is most important is to protect yourself in your retention agreement - I just had a new one that appears to be bulletproof drawn up by an attorney.

Good luck

-----

Never ever give trial or depo testimony until AFTER you have been paid. No tickey. No laundry. I have sat in the hallway outside the courtroom refusing to take the stand until the att'y's sec'y gets there with the check. Lawyers are experts on leverage. Before you give testimony, you have the leverage and they will do whatever you say, including pay what is fair. After you give testimony, they have the leverage and you can wait to get paid until hell freezes over. - AN EXPERIENCED EXPERT WHO ALWAYS GETS PAID

-----

Well, I think that this is something that most of us have experienced from time-to-time, and the answer(s) are something like the following:

1. If you think 5 or 10 hours (or whatever) of prep time are needed, then that's your professional judgment, and stick to it. Failure to prepare properly exposes you (and the litigant) to disaster at deposition or trial and simply shouldn't be permitted, just as the attorney would not accept a direction from the client to limit his or her pre-trial prep. time to something less than what's appropriate.

Maybe the appropriate analogy is the patient who wants an appendectomy but tells the physician to do the job in 30 minutes so as to save on costs, irrespective of what she finds when she gets in there!

If you cannot obtain agreement to allow for adequate preparation time (and the 5 and 10 hours you cite seem reasonable to me, although medical is not my field - I do franchising exclusively), then you should decline the assignment.

Under no circumstances should your professional standards be compromised.

2. I will often do a very quick (1/2 hour) review of documents and then give an estimate of the time to properly prepare, but it's no more than an estimate. In my field, you really don't know what time will be actually required until you've dived into the documents.

3. With **very** rare exceptions (e.g. attorney or firm I know personally and have worked with over many years, etc.) an up-front retainer (typically \$15,000) is **always** required and all work stops (including any appearance at deposition or trial) when the retainer reaches a minimum

level and resumes only when the retainer has been replenished - any unused portion of the retainer is, of course, returned.

Hard nosed? Yes.

Lessons learned through unfortunate experience? Absolutely.

If you decide to share this, that's fine, but you might wish to add that I'm both an expert witness and a retired attorney (although not a litigator - I was a transactional or "deal guy" when I was practicing.)

-----

I have been in private practice as a forensic document examiner since November 1988 and have encountered all the same problems regarding payment for preparation, depositions and testimony.

I have a simple solution that requires some explanation.

1. Most of us depend heavily on attorneys for our case work involving litigation,
2. Attorneys either work off a budget and/or have to account for their expenses to the client,
3. Some attorneys are better than others at calculating the costs of an expert and are willing to pay for such services,
4. Some attorneys also can do the same calculations but are better at playing the "moneysport" game than the expert,
5. Many experts are concerned about not offending, or at least, not upsetting the attorney so the expert caves in on costs and retainers,
6. The expert must conduct a self-examination of his/her skills and a cost-benefit-analysis of his/her fees for the attorney/client,
7. If you are an expert in a field with six other experts in your area and have only testified once or twice, then you may be at a disadvantage and have to negotiate your fees and "eat" a few hours work in order to keep the job from your competition,
8. If you truly present superior expertise, honesty, integrity, veracity, and testimony skills to your client, then you must stand you own ground regarding the cost of your services,
9. Some experts are great experts but not good business people. They are worth the money but they do not know how to ask for it,
10. Be upfront with your costs. Contrary to most websites in my field, I have my fees published for two reasons: (1) when someone calls s/he already know my fees and (2) there is no haggling by the caller. I may lose some business since my fees are not cheap but I feel better doing it this way,



11. Once you get an assignment and have reviewed the work, email the client with any cost differences immediately. In other words, once they decide to use you, get the money issues out of the way so you can concentrate on the work at hand,

12. How many of us have been in the middle of a project and wondering, "Am I sure I'm going to get paid?" It's not a good feeling. From experience, if there is a money issue that was not resolved from the beginning, I have invariably lost the argument,

13. I do not use a contract. I will sign the attorney's contract if asked for one but that happens very very seldom. But I do have the costs documented ahead of time,

14. Work from a retainer with your client. Make it crystal clear you require the retainer prior to a deposition. I made a mistake January 2007 and participated in a deposition without the money upfront. "My" side had deposed their expert and paid her in a few days time. I did not get paid for 53 weeks and only after I contacted a senior partner at that law firm. Never again,

15. Do not be bashful when discussing your fees with a new client/attorney. I can assure you that s/he is not bashful about his/her fees with his clients and unless they have an ongoing working relationship, the attorney works from a retainer too,

16. Keep in mind your fee is not just for the actual hours you are working. You are being paid for the years of college, other training and work experience you have dedicated to become an expert. It sounds a little silly, but I am proud of my relatively high rate because I know it is a value for the client. If that is true in your case, then you must reflect that confidence (of course, not arrogance!),

17. Remember most attorneys know a value when they see one. If the value is you, then you will have a good working relationship. The number of attorneys who try to rip you off is very small, but one or two can adversely affect your bottom line. Why work on a case if you have to worry about getting paid?

That's all I can think of off the top right now. I hope it gives you some ideas. I'm just one person and everything I said may not apply to you and I may not be correct on every issue. Good luck.

-- One more thought: I charge for the trial date being reserved, not for the testimony. If the trial date is changed, that is fine. But if the trial is settled after I have reserved the date and sent the invoice (which is usually about one month or so before the actual date) the fee is not refundable, but the travel costs are refunded. Here is the reasoning behind this: If my testimony was an important key in the case, the odds are my written opinion was used as a settlement tool just as though I had testified. How many times have you been scheduled for a trial on Thursday only to have it canceled on Tuesday because the case was "just" settled. Is your Thursday now messed up? Did you turn down other work than can not be rescheduled? Did you lose money by setting aside Thursday for a trial that will not happen? You might consider employing this technique. Exception: For a trial set well into the future that is settled, then the case is closed.

-----

The Expert Witness marches to the beat of "professional standards," not the beat of the employing lawyer. My engagement letter speaks to the requirement of ". . . performing analytical procedures and other services which may be required. We will perform the services requested or otherwise required unless we advise to the contrary."

If I were told that the case wasn't worth required preparation time, I would advise the lawyer that he had hired the wrong expert, and walk. Having spent 30 years building my reputation for professional integrity, which one devious lawyer can easily destroy as discussed in the case presented, I would walk. Ours is a long term profession, not a client driven expedience. This is particularly true in the current economic climate.

In the case presented, tell the lawyer what you require, get paid up front, or walk.

-----

I have now gotten so fed up with this sort of behavior that I stop work without a check. If somehow they don't pay me enough, which is usually the case, I now report them for deliberate deception to their state bar. They will pay you when they have to go explain to their bar that they didn't know you were supposed to be paid and that they weren't engaging in deception to get your expert opinion for free. I also suggest that we experts get together and start a list of these guys because I have discovered that they go from expert to expert pulling the same routine. I remind them that they are asking me to break the law when I get a letter waiting for them to collect so that I can collect. They have effectively stopped the letters of promise and our boards do not let us have an investment in the outcome so we can only get our hourly earned wages. They make ten million, we get a thousand so there is no reason to wait for the outcome. Their mechanic keeps the car if they don't pay. Also it is unethical to predicate our outcome on their outcome or their ability to collect. Darn straight you need to file a complaint. If all of us did it, they'd try to scam experts less.

-----

Our company requires the client (attorney) to sign a consulting agreement of which our current fee schedule forms a part and includes an initial retainer requirement as well as outlining that additional amounts are due prior to deposition and prior to trial. Our consulting agreement allows us to withdraw services if the additional amounts are not paid X business days prior to either deposition and trial in order that our consultants may be properly prepared. Any unused portion of the additional deposits are refunded. We also charge per hour for trial as our experts may be on the stand anywhere from 1 to 3 days.

In our experience and as Expert Communications has frequently pointed out the only leverage you have is to receive money up front. You NEED adequate time to prepare and if the case is not worth it that is the attorney's problem. It was his decision to take the case and hire an expert. Keep in mind that while this may be only one case for the attorney, it is your credibility for the remainder of your career. Expert Communications has very good advice regarding this and I found on reading their book and material that it confirmed our experience and practices that we have developed over the past 30 years.

1) In our engagement letter, we have a clause that says:

**We shall provide general consulting support as requested by you or deemed necessary by us in the course of the engagement and, if necessary, expert representation and testimony.**

Once they sign on to the general engagement letter, this means you get to determine if you've done the work needed. I put this in because of limitations that some attorneys have wanted to put on my thought processes and what I consider, and since I'm supposed to be giving an independent review, I want to be clear about maintaining my independence.

2) In Cairo (Egypt), you get in a cab and ask to go somewhere. They tell you what it costs. You get out of the cab. They then revise their cost and invite you back in the cab, which you agree to reluctantly. What kept you in your seat for 3 hours while he read to you? Didn't have something else to do that was worth more than being defrauded by an attorney? Get out of the cab!

-----  
I prepare and testify on an hourly rate. (PERIOD)

-----  
The only solution is to get estimated costs up front. If they don't want to pay in advance, NO WORKY!!!!.

-----  
Get enough money up front to cover your time before agreeing to prepare or to testify. If the attorney wishes to use your expertise he/she ought to pay up front.

-----  
The problem starts with the notion of charging a "flat fee". I have found that only "small time" attorneys with "small time" cases even ask for a flat fee. I have learned the hard way that I never agree to any kind of flat fee until after I have received all the documentation and can make a reasonable estimate of the time and effort required. I have also learned the hard way that I get my flat fee in advance because any request for a flat fee or reduced fee of any kind, is a sure sign of an amateur or marginal lawyer with a weak or small case with a client of limited means.

Right now I am facing a similar situation. Fortunately I am in a position of having used up my entire "flat fee retainer" which was estimated to cover the Report and entire pre and actual deposition process, BEFORE I show up for the Deposition. I had made it clear originally that my flat fee retainer was just an estimate and am now demanding an additional retainer before I agree to show up for the dep. I am having trouble with payment due to the limited size of the possible award and the limited ability of the client to front more money due to a divorce. The attorney suddenly realizes that they took a lousy case and even if they win, after putting in their enormous preparation hours, their 1/3 of the award will probably net them no more than \$10.00 per hour and they resent me getting more out of the case than they will make.

As to the matter of repeat business, I can only say that I have found it very rare to ever get any repeat business even after being told by the attorney that I did an outstanding job. Several times I have been hired by the same law firm several years after helping a member of the firm win a big case, only to find out that the new attorney had no knowledge of my prior service and came to me by way of some other recommendation.

If anyone out there knows any secret means of getting into a large firm's "data base" I would love to hear about it. I have found that very few firms even bother to keep a record of the Experts that have been most helpful because it is so rare that they ever handle more than one case that needs the exact same expertise as a prior case.

-----

I have received very similar treatment in two cases in the past six months. Both problems occurred because I was not notified of the deposition dates until a few days before and therefore did not receive a retainer in advance...a new trick by attorneys I had not encountered before. I am an appraiser of medical and scientific equipment, so I often provide services, including reports, and then learn much later that there will be litigation and I will be needed as an expert.

The was a bankruptcy case in which I had done a report for a bank and was later called to testify at deposition (on short notice). I had trouble collecting my fee for the appraisal report, and should have refused to testify, but incorrectly thought payment for my deposition would be automatic because I might be needed at trial. I charged for preparation time, as six months had elapsed prior to my deposition and I needed to prepare. My fee was for three hours, although it took me a full day to prepare and discuss the case with the attorneys prior to my deposition. I also charged only a half-day deposition fee, where my normal minimum is a full day, due to the fee sensitivity of the bank.

It took six months to collect for that reduced fee, and when the banker called to tell me he was paying the fee and I thanked him, he said he still thought I was cheating him but paid only because he would need me to testify at trial!

The second case is an on-going damage case for an insurance company and actually started 12 years ago. I again did an appraisal report, but was promptly paid (in advance) for that appraisal. However, six months ago I got a call from a new attorney regarding the case asking if I could be the expert on my appraisal report. After dusting off the cob webs, I reviewed the file and spent several hours discussing the case. Finally, the attorney said he wanted me to show up at deposition (I received subpoenas from both sides, which I've never seen before) and I showed up without my usual one-day retainer, although I did have a signed engagement letter. Since that deposition, I sent my invoice and have been given many excuses for non-payment, including breaking out the deposition fee for the opposing attorneys to pay, breaking my fee down into minute detail and other stall tactics. The last email I received alerted me to a potential trial date and advised me to reserve two weeks for that trial (out of town)! So, now I'm expected to reserve two weeks to prepare for and testify in a case that is months in arrears? I don't think I'll be able to respond to that subpoena!

I don't know if this kind of treatment is due to the economy or just luck that I've run into two bad clients with equally bad attorneys back-to-back. But it's time to consider drastic measures, like refusing to appear on short notice, demanding payment in advance and possibly firing some bad clients!

Or maybe it's just a full moon...

-----  
I tell them up front that they must pay for all prep time. If they limit me or will not do that, I do not take the case.

-----  
I can say that in nearly one hundred cases, this has only happened to me once and then I was compensated for it.

Two comments - it is not an axiom that repeat business is good business. This is particularly true when a law firm hires you frequently and asks you to "trust" them as to the facts of the matter. I have seen experts opposite me opine without benefit of the materials I had available and, consequently, take outrageous positions. My feeling is that when an attorney hires you too often, he may be tempted to take advantage of the economic situation and attempt to influence your thinking. If you fall into that trap, the chance that you will compromise yourself as an expert increases and the value of your work decreases.

Secondly, once you discern that an attorney is withholding information you need in an attempt either to save money or influence your opinions, you should resign or qualify your opinions to the extent you feel they rest on incomplete facts.

I agree that chasing fees in court is a losing proposition even if you win.

-----  
One possible solution: in future engagement letters, make it clear that you will need to spend time preparing for a deposition and that such time is billable at your regular hourly rate. If they agree, fine. If they don't, "pass" on the engagement. Consider some verbiage in the engagement letter such as ...

"Given the time lag often occurring between the opinion report and testimony, to prepare for deposition or trial, there may be a need to review materials that were analyzed earlier for the written opinion. Such time will be billed."

-----  
1) These are problems you have to accept with flat fee charge systems. Flat fee only really helps you if the attorney you are working with reliably does not use up all the time, giving you the bonus of whatever is left.

2) Charge an hourly rate for testimony and everything else.

3) Make sure you type up a charge list for all of what you do including testimony, travel, parking, research, etc. You may want to add a paragraph at the bottom in contract form

indicating that the attorney agrees to these fees and have them sign this before you will work with them.

4) Submit a meticulous bill on a regular basis. Do not wait until the end of the case.

5) Because of contempt of court issues you can't just get up and leave. I charge an hourly rate for depositions and the attorney has to give me a check up front. If it is premade for only one hour I ask for a break at the end of an hour, go off record and ask how much time they expect to take. If it is more than a few minutes or if they say they don't know I ask for another check and will have refused to continue until the check arrives.

6) Always start your billed time at the time when the attorney asks you to be where you are supposed to be, make that very clear in writing in your charge sheet, that time does not start when he and everyone else gets there.

7) Individualize a plan for yourself and your risk tolerance, attorney tolerance and business. If you have to, surcharge all your med legal work by 25 to 30% and use that as wiggle room. Remember that if you like to do this kind of work you have to do a lot of this give and take stuff and if you are too loose about it everyone will take advantage of you and if you are too stiff necked about it you will make it too difficult to work with you and will lose attorneys as clients for your med legal work. You have to work out your own balance.

-----  
I say this in a loving friendly way--develop a backbone! You are in business. Do your patients come in to your practice and say that the visit or treatment was only worth so much? Of course not. Tell such an attorney that he should get another expert witness.

P.S. If this has happened to you more than once, something is wrong. Pay Expert Communications to review your Professional Services Retention Agreement.

-----  
My opinion is that my preparation for testimony, depo or trial, usually takes only about an hour or two, not 5.0 plus 10.0. But I am an economist and perhaps my focus is somewhat more narrow. I prepare a very thorough expert report and primarily review this only. I also charge less per hour than the medical doctors, so attorneys are not so sensitive about an additional hour or two if it is needed.

If an expert typically requires a substantial number of review hours prior to testimony, and also charges a relatively high rate, then that fact should be conveyed to the attorney prior to retention and a reasonable retainer should be requested to cover the document review, drafting the report, and preparing for any testimony. I always require payment in full prior to any testimony, and include the minimum charge for my testimony.

-----  
I charge a flat fee that includes preparation, pre-trial conference, travel, and testimony. That way, the client knows what to expect and there are no unpleasant surprises. That being said, I

do spend more time than I charge for, but that's to make sure I'm comfortable, and I don't think the client owes me for that part.

---

The best way I've found is to have enough covering the work or the deposition before it starts.

I haven't been paid for my work on occasion or I've had the person for whom I worked cut the price after the work was done.

---

There are a number of useful solutions to this problem, but the easiest (and probably the most effective) is to estimate the full charges for the deposition (including any preparation necessary) and request payment in advance. If the deposition goes on longer than what you have been paid for, stop at the end of the paid time and either ask for an additional payment, or require the deposing attorney to say, on the record, that he will pay you within, say, 30 days.

The attorney is taking your deposition for a reason which is beneficial to him/her (either to support his case or enable him to refute the allegations), so any attorney other than an idiot does not want you to be angry at him.

---

Never take on business from anyone like this, or you will regret it later. I have always charged retaining counsel for prep time. Occasionally it is harder to collect but I almost always get paid. You should never need work so bad that you compromise proper principles, including preparation.

---

yes. GET PAID UP FRONT !!! no pay = no work, no deposition.

after the shyster has what he wants from you he has no incentive to pay you. zero.

and get his obligation to pay IN WRITING ! his flattery and "gratitude" are worthless shams to soften you up and con you into trusting him. a terrible mistake.

otherwise he will stiff you. without shame.

the practise of law, unlike medicine, is NOT about truth or ethical behavior. it's about winning. and money.

---

The worst clients by far are attorneys—I much prefer to be an expert in cases where the client is a company that retains both the law firm and the expert(s). The second worst scenario is when you were found for your client by one of those expert services.

Because of bad experiences, I require a \$10,000 up-front retainer fee which is fully refundable at the end of the litigation AND after my billed fees exceed the retainer fee.

This serves three purposes: 1) it costs the litigants the retainer fee when they know I would not take their case and they want to disqualify me for serving on the other side; 2) it provides a financial cushion against slow-paying clients and those that try not to pay you when the case settles, and 3) it provides leverage against shenanigans as you have described..

---

I would love to contribute an answer to this question. I also went through this many years ago, and have found a good way to get paid nearly all the time.

First, I insist on getting my depo fee prior to sitting for a depo, with a three hour minimum (each expert can determine their own minimums). That gets me paid for the depo without question. Then, I have a good retainer agreement. I leave dispute resolution up to me...either arbitration or civil court. Most disputes will fall into the category of small claims court. When a former judge trained me as an expert, and I found attorneys who would flat refuse to pay me for my time, my mentor said: "Sue them. Take them to small claims court". Word will get out fast, and they'll quit messing with you." Best advice in the world. Once I took 3 attorneys to court (won each time), all the crap stopped. Ever since then, they pay me.

Have a good interest rate in your retainer agreement also. It all comes down to a solid retainer agreement, and your willingness to sue a couple of these irresponsible attorneys. My problem has gone away completely. I also learned early on that deposing counsel will not pay for prep time. So I include it in my retainer agreement, and the time spent to prepare for depo or trial is up to me....not the attorney. They all read my retainer agreement before they hire me, and that means they have to live with the conditions. Hope this helps.

---

Hi folks, in response to this expert on getting paid. I have one very strong and never changing professional expert consulting policy. Never ever testify without getting paid at least one week in advance of all testimony trial or deposition. Charge flat rates and good estimates for all expenses up front. As to prep time opposing attorney does not pay for this, the hiring attorney does and welcomes it , if not do not show up for testimony, then that attorney is in serious trouble. Remember no attorney wants their expert unhappy in any way including money issues, that is just bad lawyering. All of an expert's fees and expenses and payment issues are to be in the retainer up front.

I have only been stiffed once in 30 years with this policy.

good luck and enjoy being an expert.

---

I have been working as an expert witness for the past 8+ years (after a 25-year career as a trial lawyer myself), and have never encountered this particular problem. My retainer agreements provide that I will be paid a stated hourly rate for ALL of my work on a case, "including without limitation all time spent: reading or reviewing any files, pleadings, discovery materials, exhibits, etc. related to the case; preparing and discussing my conclusions and opinions; conducting any additional research reasonably necessary to address such issues; preparing for and attending



any depositions, mediation or trial proceedings; and travel time with respect to any of the above." By far, the two largest items of time spent on a case are reading deposition transcripts and preparing for deposition and trial testimony. Since most attorneys also bill by the hour, I would be shocked if my time in these areas were questioned. I suppose if you are doing a high volume of smaller cases for a flat fee, the story would be different. But in that case, you just need to anticipate how much time you require to adequately prepare for a typical case, and bill accordingly.

-----

I simply charge for all time at my standard hourly rate. Depositions and trial days, themselves are billed in half or whole day increments since one can seldom do anything else on those days.

Can't do much about the deadbeats except charge a big retainer and renew it when it is used up before doing anything else.

-----

What I do is demand payment in advance for preparation and deposition time. I notify the lawyer requesting the deposition (usually via the lawyer that I am working for) that unless I receive payment at deposition time I will not testify. Just prior to deposition, I usually know how much prep time I have devoted to the deposition and bring an invoice with me or send it to the deposing lawyer beforehand.

Push comes to shove, the dispute goes to the judge for decision and they usually back up the expert if the charges are reasonable. Most lawyers don't want things to get that far and will cave under threat.

These situations usually emanate from the expert's client's adversary because adversaries are usually responsible for payment since it is their deposition. My experience in such cases is with the opposite side's lawyer.

-----

I STRONGLY SUGGEST THAT YOU DO NOT WORK FOR ANY ATTORNEY WITHOUT A **RETAINER AGREEMENT** AND THAT YOU OBTAIN A RETAINER, UPFRONT, WHICH IS APPLICABLE AGAINST THE FINAL INVOICE.

Here is what I state in mine regarding fees:

1. Fees Not contingent. (Your Firm) will provide its best efforts to provide the support that its clients require. (Your Firm) requests that sufficient notice be provided as to the work to be performed by (Your Firm) and that timelines and milestones (or changes) be provided on a timely basis.

(Your Firm) strives to meet its obligations to its clients by providing unbiased consulting services. It is our policy not to take "sides" but to present our findings, reports and

opinions based upon the facts as we see them. We will communicate our findings to the client in a timely and through manner.

Our fees are not contingent upon the results obtained in any litigation. We do not warrant or predict results or the final outcome of any matter.

2. Fee Schedule. Please refer to **(Your Firm'S)** 2009 Fee Schedule
3. Retainer. A retainer of **\$X,XXX (8 Hours of Charges)** is required to commence work or upon designation as an expert witness. ***The retainer will be offset against our final invoice for this matter.*** Any excess will be promptly refunded when the matter is concluded.
4. Payment of Fees. Invoices will be presented bi-monthly, or at other appropriate intervals, and are due upon presentation. We reserve the right to halt further services until payment is received on past due invoices.

Invoices for which payment is not received within 30 days shall be subject, at **(Your Firm's)** option, to accrual of a monthly compounded late charge at the highest rate allowable by law (18% per annum).

We require that we be paid in full prior to any testimony (i.e. prior to deposition, and again prior to trial for all work performed to date. (Deposition and Trial hours are to be estimated by responsible attorneys and agreed to by **(Your Firm)**.) The firm of «AddressBlock», the CLIENT, is responsible for all payments due to **(Your Firm)**.

5. Out-Of-Pocket Expenses. In addition to hourly and daily rates, CLIENT agrees to reimburse**(Your Firm)**for actual costs incurred for transportation, lodging and related meals, overnight mail or courier services, telephone charges, photocopying and other agreed upon support services.
6. Other Compensation Issues. We will be compensated for any time and expenses, including time and expenses of legal counsel, incurred in conducting or responding to discovery requests or participation as a witness or otherwise in any legal, regulatory, or other proceedings, including those other than the instant case, as a result of our performance of services in this case.
7. Fee Disputes. In the event CLIENT disagrees with or questions any amount due under an invoice, CLIENT agrees to communicate such disagreement to our firm in writing within 30 days of the invoice date. Any claim not made within that period shall be deemed waived.

In the event that collection efforts are required to recover outstanding payments due, CLIENT agrees to pay all expenses incurred by **(Your Firm)** at**(Your Firm's)**hourly rate in its efforts to collect. **(Your Firm's)** hourly rate will be that noted in the **(Your Firm) Fee Schedule** in effect at the time **(Your Firm)** was engaged to provide expert services. These charges will be applied in addition to any outstanding balances due to **(Your Firm)**.

Additionally, CLIENT will be liable all attorney or collection agency fees and costs actually incurred by our firm in connection with such collection, whether or not suit is filed

thereon. Reasonable attorney or collection fees will be considered to be up to 50% of the outstanding balance if litigation is required for collection of the account.

I believe It is essential that you obtain a signed agreement and remind the attorneys prior to deposition and trial that they abide by the terms and that you do not proceed without payment.

-----  
I won't accept an assignment unless the client is willing to pay for as much preparation time as I feel necessary. However, I often spend time in preparation that I don't bill for. I do that if I'm researching something that a client might reasonably expect me already to know. I don't expect clients to pay for my education.

It's a false economy for a client to refuse to pay for preparation time. In my very first case as an expert witness, my client's attorney paid me to sit in his office for several days reading all the documents produced during discovery. There were quite a few of them, and many were not that closely related to my testimony. But the attorney wanted me to have the benefit of reading them, and he wanted me to be able to testify that my opinions were based on reading every last document related to the case. He did well.

-----  
There is only one way to handle this and that is to require a deposition on a daily basis. If you anticipate time working up the case, include that in the fee.

Experts have to protect themselves from abusive attorneys. After doing more than 100 cases, I have learned the hard way.

-----  
I've had attorneys who I didn't bill ahead of time because they seemed like nice guys, stiff me. Now, before I give the attorney any information, he/she is billed for the time already put in and payment must be received prior to any oral or written reports. If there is to be a deposition then payment must be received for the number of hours in preparation and the estimated deposition time 10 days prior to the deposition. The same is true for trial.

-----  
I have never had any problems with getting paid for my professional services as an Expert over several decades. I was advised by the first agency that I talked with when getting started to get the money up front; otherwise you are the bottom on the ladder for payment.

So, I request a retainer (lawyers understand retainers) of a standard amount -- providing time for me to review all documents, to prepare my opinion(s), and to submit them verbally and in any form of a written document (i.e., a preliminary report, a draft report, or whatever). If the case then involves preparation for deposition or for trial, I request another upfront payment -- reflecting a reasonable amount of hours to be spent. No upfront payment, no service provided.

Once services is provided as an Expert without upfront payment, you will have to chase, particularly when working for a plaintiff attorney who loses the case. I let this happen once because I trusted the attorney...never again.

---

Yes I have also been stuck not being paid not in reference to limiting prep time I\* have never been asked about prep time .The reality is that some attys ( more then we all think) are sh... and won't pay once they got what they needed. The only way we can protect ourselves is to be paid in advance i.e. bill prior to the trial or depo. and if they don't pay then I am unavailable. I have on my fee schedule a stipulation that all accounts have to be current prior to depo or trial otherwise I will not keep the dates on my calendar. If it gets very close to trial request a certified check by fedex.I also have it in writing that all time spend on the case is billable time.  
Has anybody ever used a collection agency ? if so what agency?  
May be we should start a blog listing these shysters or list them on Angie's or Greggs list.

---

This email really "rang a bell" with me. Tell your Dr. experts they must do two things:

- (1) Demand a sufficient retainer (\$3,000.-\$5,000.), UP FRONT. This will help keep "marginal" cases at bay-those that are not "worth much".
- (2) Estimate ALL depo/trial testimony fees & expenses, & demand PREPAYMENT of same... no "ifs, ands, or buts"; DO NOT EVER provide ANY testimony until the prepayment has been received.

I have done this for 12+ years, with good success & VERY LITTLE difficulty. It really DOES work!

---

I am an RN expert, and I am appalled that you allowed yourself to be swindled. The one attorney you mention that produced hours of documentation that he read to you- YOU allowed him to control that situation and angered all involved. One of you (court reporter, you or other attorney) should have immediately stopped and rescheduled. Everyone's time is valuable and he clearly was indifferent to your time and everyone else's.

While I recommend that a retainer may be in order for certain cases, you do sound as if you are somewhat incendiary when it comes to your pre-emptive statements regarding attorneys. They are not likely to retain someone who is remotely confrontational, and your comments do lead in that direction. While we must protect our reputations and make all efforts to do appropriate work and billing, a more collaborative approach may be in your best interest.

---

Your plan seems fine with me, but keep in mind that when working with plaintiff's attorneys, it's the plaintiffs who usually control the purse strings. I get a budget approved for each stage of the case, bill in advance for that amount, and put the issues entirely out of my mind until either

the payment arrives or the attorney notifies me that the plaintiff just coughed up a check.

Of course, one firm lied to me about receiving the plaintiff's check .

Twice in the last year, I've had to file small claims against plaintiffs and/or their attorneys for collection. In both cases, they settled out of court. In two more cases, I had to put the squeeze on the firms to get paid within 60 days.

Long story short, you are running a business and can't let customers tell you how to run it. Just tell attorneys that you have been experiencing problems collecting for your work (they can relate to that) and you need to remain current so to can focus on your work rather than worry about getting paid. If they hem and haw, take your leave.

-----  
One of the first considerations of an independent business person deals with how serious they are about getting paid. I don't know if this expert is affiliated with a hospital or a private practice. The bottom line is still the bottom line; if the enterprise is an income-deriving business, then "show me the money." No one should ever feel guilty about asking a client for money. After all, we are performing the service which (in an idealized world) will enable the client to triumph.

When an e-mail or phone message comes in from an "unknown" prospective attorney client, the first thing that I do is a "run through on Martindale-Hubbell." I want to know as much as I can about this prospective client. In this manner, I try to restrict my expert practice to AV-rated attorneys. With the exception of one "bad apple", these attorneys tend to give superb direction, they promptly (usually within 48 hours) respond to electronic and telephonic inquiries, and they pay in less than 30 days.

Because my firm's income is solely derived from our expert practice, I need to be as close to absolutely sure as I can be that this attorney is worthy of our attention. We've got far too many irons in the fire to waste our limited time on someone who is not serious about what we can do for them.

I have gone the route of a detailed fee schedule with two signature lines (one for me and one for the attorney client). Two versions are sent to the client, an unsigned MS WORD version (can be edited) and a signed .pdf version (cannot be changed). Everything that we do is negotiable. If there are issues, then the client is encouraged to edit the .doc file and get back with me. Should the .pdf version be in order, then please sign it, date it, and get it back to me via scanned e-mail or fax.

As an example, I've got an A-List client in Houston. He had a case several years back involving the release of hazardous material from a rail car. After two-and-one-half years of false starts,

his toxicology expert contacted me. It took me an additional 18 months, but I was able to plausibly deduce the scenario (A to B to C to D) of chemical transformations from what was in the rail car to what the medical personnel had identified as the causative agent. Our piece of this case favorably settled.

The chemical in the rail car in the scenario described split into two pieces. One of the pieces went through all of the transformations noted and the settlement covered the medical expenses incurred by these Plaintiffs. The other piece could not be ignored. However, no matter how hard all of us tried to tie this second chemical fragment to the medical conditions of a second group of Plaintiffs at the site, the pieces of this jig-saw puzzle would not fit together properly.

Each of us reported back to our client that the facts do not support this allegation. The case, appropriately, was dropped/not further pursued. There are members of the second group of Plaintiffs who are now suing my A-List client for legal malpractice! While the new attorney is entitled to his opinion, he isn't entitled to his facts.

I laid it out for the new attorney's paralegal. If you want to know what the facts are, then you'll need to depose me. I will need to meet with my client in Houston (he has already told me that he will pay for my time) to review what he believes is important for me to know. Since the new attorney made the request, this gent is responsible for all other portal-to-portal expenses. Parking at the departure airport, round-trip mileage reimbursement from the office to the departure airport, total time in transit (driving to the departure airport and time in the sky), reasonably priced ground transportation when I have arrived at the destination, at least one night of moderately priced hotel accommodations at the destination, actual under oath time (deposition) based on a four hour minimum, any preparation time not covered by my client, and minor incidentals/meals.

The paralegal was informed upfront that I will negotiate the estimated costs with the principal (the new attorney) and that at least 50% of the estimated costs must be paid for in advance. If there is a schedule that must be adhered to, then it behooves the attorney to move expeditiously to ensure that the arrangements are in order.

The detail and precision of these arrangements is literally out of Stephen Covey's "7 Habits of Successful People." In this case, what can be solved twice is solved twice. We transparently articulate what is necessary and then we execute. I don't like surprises (or being blind-sided) and neither do the attorneys that I work with.

The horror story described by the expert can happen when there isn't outstanding two-way communication with the client. Whether the client is local or out-of-town, the degree of planning will vary. As many of the loose ends should be tied up in advance as possible.

Under oath activity (deposition or trial testimony) success is based on preparation. We move heaven and earth to be credible in our areas of expertise and we must also ensure that we are properly remunerated for our professional services. What we do has evolved into what we use at present. To date, this procedure works well for us.

-----

Any attorney who doesn't pay for prep time is the kind of attorney who doesn't prep for trial, doesn't prep for depositions, and doesn't care if you're a witness that has any integrity. The good attorney walks into a deposition or court knowing more about everything in your file--and everything that went into making your file--than you probably do. The attorney who cuts your prep time cuts your ability to know enough about the case to do the job your credibility demands.

Your attitude toward not needing that kind of repeat business is exactly what's required, and you're doing the right thing. You do what you have to do to cover all the bases in your preparation of the material for your testimony, whether in deposition or in court. Work with attorneys who understand this and are willing to pay for it.

-----  
I think knowing the attorney is very important. I am in a different field and have run into two attorneys with which I will not work. Life is too short to be beholden to deadbeats. EVERY profession has their share.

-----  
Yes, aside from obtaining a deposit from which to invoice and you have plenty of time to replenish the advance before you have earned it. Be fair and precise in your hours and bill promptly - say every week or so if there is alot of time spent, then hound the associate on the case after about 10 days (The client and/ or law firm takes about that long to process a check out the door, after approvals and related bureaucracy) documenting with an email and/or "Second Request". If it gets ridiculous, simply stop (most effective when your testimony is important and, hopefully, imminent) work and tell them nothing more happens until your paid (say 45 - 60 days late).

Otherwise, welcome to the land of the independent expert. Always realize that you are pretty much at the bottom of the legal process food chain, sort of the pet fish in the tank in the law firm lobby. Fed once in a while to allay guilt trips but otherwise pretty much ignored.

-----  
This expert obviously does not receive a retainer in advance and/or does not have a provision in his/her agreement stating that the client is responsible for all time spent on the client's case. Occasionally, I get one that does not want to pay for one reason or another - it just seems to go with the territory. All retainers are applied to the final invoice so I usually have a supply of their money on hand. I simply deduct the charges from their retainer and notify them NO further work will be done until the retainer is replenished. I don't care where they are, I turn them over to collection if the charges exceed the retainer balance. I would rather give all the charges to the collection company than let them get away with the theft of my services. Others have told me that collection companies do like to put attorneys to collection. I use the collection arm of Dun and Bradstreet for my collections. Not many law firms have the ability to intimidate D&B. I have never had D&B fail to collect in full. Call Mike at Dun & Bradstreet at 800-333-6497 X8237226.

We're supposed to get paid?

---

I am a forensic engineer. I charge my client for time in reviewing documents, inspecting artifacts, testing, analysis, and report writing. This way, the work has been done to support my opinions as given in my written reports. Preparation for deposition or trial testimonies consists mainly of reading over my reports and meeting with my client. Roughly speaking about two hours are sufficient to review my report and a few key documents. Client meeting can usually be accomplished in about an hour and travel time may be extra.

I now bill in advance for adverse depositions. The billing consists of 4 hours for all preparations and local travel, plus two hours for testimony payable in advance. If the deposition goes beyond two hours after the scheduled start time, I stop and won't proceed until I am paid for an additional hour or until I am satisfied that my client will cover the cost should the adverse attorney renege. I make this procedure clear before we even begin.

We must be careful to not mislabel original work used for developing our opinions as being preparation for testimony. Testimony charges should be only for those items that are strictly related to providing the testimony and that we would not be doing them were it not for the testimony.

---

--There is nothing more important to an expert than their credibility.

--I obtain a non-refundable retainer at the beginning of a case and identify the additional charges for deposition and trial testimony in my fee schedule. It might be in the wording of the invoice that causes the problems with the attorneys questioning the charges. I combine several areas into the days before the deposition or trial, such as reviewed files, travel time and preparation for deposition or trial.

--I have gotten blindsided in the past with the attorneys just providing limited information. I insist that they provide me with all information related to the case and I assure them that I will spend a limited amount of time reviewing the information that does not directly relate to my testimony. This gives me the big picture and an idea of how to complement the other experts, since in my case, I have both air traffic and pilot experience.

--If an attorney is that concerned about fees, I do not change my methods and make sure that I do not work for them again. Life is too short for that and like you mentioned and stated at the beginning, nothing is more important than your credibility.

---

Learn from the attorneys! I do NO work until I have a retainer in hand and a signed contract. I charge an hourly fee and that includes court and deposition appearances. I don't like gouging for short trial appearances so I charge somewhat more per hour for actual testimony, but if it is short the attorney (and his client) pays less. It also encourages the attorney to be efficient. The retainer needs to be adequate to cover the prep time (and the contract needs to indicate that appropriate prep time will be charged). Since the attorney has already paid for a review of the



records, which should be in depth, billing for a review of the records should not be that time consuming: I would never charge 5 hours of review time for even the most extensive case!

---

Just insist on a flat fee paid up front and include you average time for prep. Don't work for a lawyer that questions your fee, end the conversation immediately or you can be sure he will nickel and dime you all the Way. Disclose your fee to opposing counsel tell them on an hourly rate and justify it by "average case time" Don't work for a lawyer who won't pay or questions your rate....just say NO. Ever met a lawyer who works for a client before his retainer is paid??

---

Although I have never experienced this type of behavior from my clients, I suggest the following may be of use; always obtain enough of a retainer to avoid this being an issue in the future (I no longer work for attorneys without a **significant** retainer up front, include a statement in your agreement that you can bill for adequate preparation time before testimony and that the attorney agrees to pay for this, either from the retainer or, if your retainer is exhausted, thereafter, but perhaps the best thing to consider in the case that you describe is to recuse yourself from the matter (immediately) before the testimony begins.

I have walked out of depositions if the payment is not on the table BEFORE the testimony begins, leaving both attorneys (sometimes more than 2) and the reporter with the record saying that "I have not been paid as agreed with counsel prior to beginning and cannot continue under these conditions" I have left all of the documents that I have brought to the deposition for them to deal with (these are mainly documents that the attorney has provided to me anyway), collected my belongings, hailed a cab and returned to the airport with them screaming down the elevator shaft.

As this is an extreme measure, ensure that you have informed all of the parties in advance via email of your requirements, in advance.

I assure you this will make only an impression and will not impede future work from the community in which we work.

---

I have a "Fee Schedule" I send to attorneys to sign and agree to before I perform any work for them. In using it, I have never not been paid in full. Two attorneys have tried to stiff me, at which time I told them that if they did not pay me based upon my "Fee Schedule" to which they agreed in writing by their signature, I would file a formal complaint against them with their state bar for breach of contract. They both paid me promptly.

---

Having been the one to pose this question in the first place, I have now modified my fee schedule/retainer agreement to include language that 1) the outcome of a case may be

dependent on the quality of the expert testimony; 2) quality testimony requires adequate preparation; and 3) any restrictions placed upon the ability of the expert to prepare adequately for testimony, for any reason including costs, shall be construed as grounds for the expert to withdraw, without penalty or refund. I have submitted this modified agreement to 3 attorneys now, and it has been accepted in each case. Next time I hear, "this case isn't worth that much," I will take it as a warning this is a nuisance suit, and will either refuse to accept it, or threaten to withdraw if this scenario is pulled on me again just prior to scheduled testimony.

-----

~~~~~  
Fine Print  
~~~~~

Expert Communications  
Expert Witness Marketing & Training  
140 Island Way, #288, Clearwater, FL 33767  
Tel 727-467-0700 Fax 727-467-0800  
[meredith@expertcommunications.com](mailto:meredith@expertcommunications.com)

\*Expert Communications\* - We provide expert witness training tools and coaching, and create marketing plans, materials and websites for expert witnesses.

Find additional articles and resources for experts at  
<http://www.expertcommunications.com>

Sign up to be notified by email about new posts at Meredith's blog -  
<http://www.expertcommunications.blogspot.com/> Check out the archives and post your own comments while you're there!

Copyright 2009 by Expert Communications. All rights reserved.