

Expert News - The Practice-Building Newsletter for Experts

March 2017 - Reader Feedback Edition

Expert News is a publication of [Expert Communications, Inc.](#) , Expert Witness Marketing Consultants

We asked, “Having Trouble Getting Paid?” and You Answered “YES”

In the March 2017 issue of Expert News, Rosalie wrote an article about steps you can take to ensure you are paid for your work. The article was titled, “Having Trouble Getting Paid?” and judging by the feedback we received, it’s an overwhelming, “Yes!” I thought you might be interested in some of the questions, comments, and resulting additional advice from Rosalie in some cases and have compiled them below. You might also find of interest, expert witness Scott Greene’s article directed at attorneys and published in Arizona Attorney magazine, [“Top Ten Reasons You Should Pay Your Expert Witnesses.”](#)

Best of success to you,
Meredith

(If you missed the original article, you can read it [here](#))

(Regarding the third point in the article: In your contract, state that “the retainer will be credited against the last invoice.” This is a change I make to the SEAK contract, which says, “Expert will invoice against this retainer.” After all, if your case review results in your telling your client, “Run, don’t walk, away from this case,” your initial invoice will probably be your last invoice.)

Expert Feedback: My only suggestion for your readers would be to utilize the word “final” instead of “last” invoice. I had an attorney interpret “last” as “most recent” invoice, which created some misunderstanding. I now changed my contract which you created to read “final invoice” and no problems since.

Rosalie: Good point! Thank you.

Expert Feedback: I read your thread on attorneys who don’t pay for deposition. I am owed almost \$27,000 in a case. I told the attorney I am working for that I am not doing anything more until I am paid. Last Monday he came to my office to tell me the date I am being deposed on this matter. I asked for a retainer and got \$0. He expects me to prepare this week and to be ready for the deposition next week. I am not doing one thing because I am not paid yet. Am I right?

Rosalie: I'm not an attorney, but will respond as if I were in your position. First of all, it appears, unless I'm misreading your information, that you went to work with engaging counsel without having received a retainer and maybe even continued to work without progress payment(s). That was a big mistake. What were you thinking, that all attorneys can be trusted to pay an invoice sent after the work is done?

My advice on deposition and court testimony is to not even SCHEDULE your time until payment for estimated time has been received in your office. After all, especially with deposition, why would opposing counsel feel any moral obligation to pay you? Accordingly, even though I recommend advance payment, I also advise clients to include in their engagement document (to be signed by engaging counsel) that if opposing counsel does not pay, engaging counsel is responsible for the expert getting paid.

Frankly, if I were owed \$27,000 by engaging counsel, I would insist not only on advance payment for depo time from opposing counsel (or for him by engaging counsel), but in addition, to a SUBSTANTIAL payment on engaging counsel's past-due debt to you, and also to pay for your depo prep time, which benefits him, not opposing counsel.

My analysis is that you have not been assertive enough with your financial policies and now you're caught in a position of having to be aggressive instead, which is even more uncomfortable than assertive policy enforcement earlier in the cycle. You might want to set or improve your engagement document. It is really too bad when you get in this situation, because, frankly, it is hard to get paid when it has gone this far. But remember you are right now in a good position, because both attorneys want you to be deposed, so you hold the trump. Make at least your engaging counsel PAY for the privilege of having you deposed. Remember, your trumps are your expert report, deposition, and court testimony, and you shouldn't give away any of your trumps without payment and, in this case, catching up on past-due payment! Please let me know how it goes for you.

Feedback from Bill Plunk, a collector: Rosalie, it never ceases to amaze me how many times I've collected for clients who kept selling product, supplying services, or both, to non-paying or slow paying customers / clients. Excellent advice to suggest experts "stop work." And I love that you acknowledge it's "not easy," but also insist it has to be done.

Expert Feedback: On the advice of a business attorney, my contract says my retainer is nonrefundable and deemed earned when paid. That's because once in a while an attorney will retain me but never send any documents. But they use my name or information we've discussed to settle the case. Also included is a statement to the effect that by retaining me they take me off the market for any other party to the case. Thus, my retainer is earned, even though I never actually did anything. I require a retainer equal to 4 hours of my time.

Expert Feedback:

1. Include an arbitration clause (including where the arbitration will take place; in our and that both parties bear their own costs. Just been through this and it was the best way to go. Must be sure it is a cost-reward benefit.
 2. In some cases, deposition testimony is under subpoena and the expert is required by law to attend even if client has not paid in full. The "there can be no appearance that my payment is contingent on the nature of my testimony" statement to the retaining attorney does usually work.
 3. The handling of a retainer, thanks to your advice, has been a great burden off our shoulders about getting paid. (Feel free to use that as a testimonial if you like). We do have the language in our retention contract that retainer applies against last invoice. [see first feedback] Sometimes an exception is agreed to between doctor and attorney that we can use the retainer against an ongoing and outstanding balance with the understanding that a replenishing retainer is immediately due. That gets muddy fast...I say get the replenishing retainer *then* apply retainer in hand against balance in hand. Tip off, if at the first call the attorney says about the retainer, "that's a lot of money for my client, can it be less?" is the sign that you should run, and run fast, from that case.
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Expert Feedback: Rosalie, years ago you graciously helped me improve my presentation of contract and billing. I still have to on occasion hold a hard line. Well over 300 cases now.

Expert Feedback: Having trouble getting paid by my attorney client. Learned that he is not passing on my bill to his client (the litigant). Proposing to add to my engagement letter that I will send my invoices electronically and that my engaging counsel is to forward to his client and cc me.

Rosalie: Please don't do that, as it somewhat puts you in a relationship with the litigant, which is not good for the "objectivity/unbiased" factor. Instead, you need to enforce your own policies, laid out in your current engagement document, with YOUR client, which is your engaging attorney. When your billing & collection process becomes consistent/predictable/effective enough, your engaging counsel will get over whatever is his reluctance to contact his client (the litigant) to get the money to pay your invoice. In point of fact, it is none of your business where YOUR CLIENT/engaging counsel gets the money to pay you, whether from his client, his banker or his mother! Just enforce the policies you have set up, rather than looking for a work-around.

Rosalie: One last comment: It is good practice to set policies to get a signed contract and a retainer, and advance payment for deposition and court, and to bill and collect frequently, etc., but they won't do you any good if you are not willing to enforce your own policies when appropriate.

Fine Print

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