

Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to nskaye@aol.com.

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The 2013 columns will address a variety of questions submitted by readers regarding the attorney-expert relationship, including common problems and potential solutions. Dr.'s Kaye and Sadoff have conferred on the advice being provided.

Q. What can I do to make sure I get paid for my time and work product? How do I deal with a lawyer who wants more time for a deposition than was allotted? What about the billing issues?

Kaye: Most forensic psychiatrists set up a fee schedule based on an hourly rate. Those of us with web sites will post our fees along with a list of services on the websites (eg.: www.courtpsychiatrist.com). At the same time, it is permissible to charge a flat rate or case rate. It is not permissible to charge a fee based on any outcome of the case (contingency). Requiring a retainer is the best advice and the retaining party can be billed as needed should the retainer be insufficient.

Mandating the lawyer sign a contract making her responsible for all fees incurred by either side is the recommended. Ideally, you should be paid in full prior to releasing any report to the retaining party. There is a tendency to be too nice to a lawyer in the belief that such "customer service" will be rewarded with future referrals. Also, if a lawyer or firm or insurer has used you in the past, there is a temptation to believe that they can be trusted to treat you fairly in the future. All of us have made this error.

At the beginning of a deposition, when people are introducing themselves, I generally try to remember to ask that the record reflect who is paying for my time and if there is any addition charge, to what address I should send a bill. This formal record of financial responsibility carries significant legal weight should a dispute erupt later.

I have yet to meet any seasoned forensic psychiatrist who has not had a billing dispute. There can be significant pressure brought upon you to accept payment at a later date. Insurers may not want to "pre-pay" and will argue that you don't know how many hours you will use and are sure you will inflate your billings to match your retainer. Some governmental agencies are not allowed to pre-pay and require billing after the fact. Most of us start out being strict, then ease up

until we get burnt, and then get strict again, reasoning that "one bad apple can spoil the whole bunch."

Lastly, a cleared check should be required prior to entry into court. That allows you to testify with no fear of being "stiffed" if the case goes against the retaining party and allows you to tell the jury that your testimony is unhampered, because you have already been paid.

Sadoff: It is important to have an agreement with the attorney about the hourly fee or set fee for a particular case. Some attorneys prefer to have a fee agreement signed by both parties. Some forensic psychiatrists prefer to have everything in writing as well. I have not had a problem with attorneys with whom I have worked as long as there was an established verbal agreement at the outset.

I do not see pro se individuals; I insist on working with an attorney. I require a retainer fee in civil cases when working with a plaintiff attorney or in criminal cases when working with a defense attorney. I have never had a problem with being paid by a prosecutor or a district attorney and have had few problems with defense counsel in civil cases so I may extend them the courtesy of being billed.

It is best to charge by the hour rather than a flat case rate as one can't know in advance how many hours it will require to review records, examine an individual, or to speak with other involved parties/witnesses. I usually set a base of 5 hours for the retainer fee with the understanding that if I work more, I will bill for the balance before releasing my report. I also return any unused funds promptly.

Depositions can pose problems as they are mostly requested by the non-retaining attorney, who has no particular obligation to me, since she works for the other side. That makes it extremely important to have a retainer fee for the deposition paid in advance. It is best to have it paid several days in advance to assure the check clears your bank prior to the deposition. Should the non-retaining attorney request more time for the deposition than was originally agreed to, I always request from the non-retaining attorney a fee for the time she estimates the deposition will take. Knowing that depositions may run beyond the allotted time, I usually do not schedule anything after a deposition, allowing me some flexibility. I insist that the attorney bring a blank check to the deposition to pay for any additional time used. It is up to the retaining attorney to assure her adversary brings the check in order for the deposition to go forward. If the attorney needs more time and doesn't have a check with her, I insist on ending on time and rescheduling with prepayment. I will offer the retaining attorney the opportunity to guarantee payment in order to negate the need to reschedule.

While I am aware that some colleagues charge more for the first hour of a deposition, it is my belief that a standard hourly rate is best for all work, including depositions and court appearances.

I usually charge my regular hourly or day rate for travel, since that is time that I would normally spend working. If one must stay overnight, a charge for a full day and partial day for the following day is appropriate. A day rate equal to 8-10 times the hourly rate is customary.

When asked about your rates/billings, it is best to answer as clearly as possible so that it is clear that you have nothing to hide or to be ashamed of, especially if the billing would "shock" a "typical" juror who might earn far less annually.

I explain to the attorney: "your check is my key to the courtroom door." Being paid in advance not only assures you will be paid, but also eliminates any implication that your testimony is biased or dependent on the outcome of the case. If the case runs longer than planned and I am required to come back to court again, as with a deposition, I ask to be paid in advance for the additional time.

Working with attorneys is a labor of mutual trust. The attorney trusts that the expert will provide an unbiased professional examination, evaluation, and consultation to the attorney, who will provide the agreed upon fee requested by the expert.