

AAPL: Ask the Experts-2015

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Graham Glancy,

I want to personally thank Bob Sadoff, MD, who has co-authored this column with me since 2008. His friendship and mentoring has been a critical influence in the development of my own career. As Bob steps down, I welcome Graham Glancy, MD as my new co-author. Graham is well known to AAPL members and has served as President of AAPL. He brings a new international view to the column and I look forward to writing together.

Neil S. Kaye, MD, DFAPA and Graham Glancy, MB, ChB, FRC Psych, FRCP (C), 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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Q.: I worked really hard on a losing plaintiff case. The lawyer has asked me to reduce my bill due to the poor outcome. Is this allowed?

A. Kaye.:

My real advice is to avoid getting into this kind of situation. First, I require a retainer when I first get the case and my retainer agreement makes the following clear: I require payment in full for all work done prior to testimony. I also require payment for my expected time in court (billed by the day on most cases) in order to get me to come to court. I explain to the lawyer that paying me in advance is not just my requirement, but also helps her case. I am easily able to explain to the jury that my opinion is truly unencumbered. Since I have already been paid in full, there is obviously no possible connection between my testimony and being paid, and thus I am impartial with respect to the trial outcome.

However, to answer the question more directly: There is nothing that prevents you from reducing your bill, should you so desire. In some cases I will agree to a fee reduction based on how I feel about the case and my relationship with the lawyer. I also will ask the lawyer what her reduction in billing will be and may agree to match that in some way. Forcing the lawyer to give back to her client seems logical, if I am being asked to do likewise.

A. Glancy.:

Firstly would like to say how honored I am to step into the shoes of the great Dr. Robert Sadoff, one of the pioneers of forensic psychiatry. Dr. Sadoff has been instrumental in shaping forensic psychiatry as we know it today, so it is with great trepidation that I try and replace him as Dr. Kaye's co-author on this column.

I have to agree with Dr. Kaye regarding the importance of spending time on the initial stages of the referral so as to avoid difficulties later. It is at least helpful, if not essential to distill one's initial discussion with the lawyer into a written retainer agreement, which will request an agreed upon retainer fee prior to beginning the case. Time spent at this juncture of the referral avoids a lot of nastiness and potential misunderstanding later on. I concur that having a retainer fee in hand facilitates our role in maintaining objectivity and honesty.

Many lawyers in civil cases take a case on a contingent basis, whereby there are only paid according to the outcome of the case. However we must be clear as forensic psychiatrists, the AAPL ethical guidelines strictly prohibit working on a contingency basis.

In certain cases it may be reasonable to accept a case at an hourly rate lower than the usual rate that one generally charges. A case that is especially worthy, or where it is clear that the client will not be able to afford the psychiatrist's usual fee schedule may fall into this category. In certain cases involving issues of social justice it is not unreasonable to work pro bono.

Returning to the question at hand, Tom Gutheil, MD reminds us that although forensic psychiatry can be stimulating and fascinating, it is also way of making a living. One must pay attention to the business aspects of the practice. That does not mean that one should be ruthless, but rather that our relationship with lawyers is an important component of the business. Sometimes in a case one finds that one has billed over the original estimate. However if, as in the case at hand, the outcome is poor, one may be tempted to write off the last part of the account or offer a professional discount. This maintains your relationship with the lawyer who is likely already somewhat disappointed. From a business point of view this may be worthwhile in the long run.

I am reminded of the quotation from the torah that Dr. Sadoff used in his high school valedictorian speech, "everything is foreseen, yet the choice is given". As long as we are careful to follow our ethical guidelines we can make certain choices.

Take Home Point:

Relationships with lawyers are always a combination of personal and professional. There is a risk in trying to please a referring lawyer of losing impartiality and objectivity. Yet, there is a reality in running your business, as to what decisions are good business but still consistent with the ethics code of our profession.