

## ***Should Experts Implement Alternative Fee Structures?***

### ***Getting Paid: Part Four***

*Editor's note: This is part four of a five-part series on making sure you get paid as an expert witness. Earlier articles included an introduction to alternative fees and effective communication methods.*

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The quick answer to this question is, "It depends." For some experts in some industries, a shift to alternative fee arrangements may be the smart way to go. For other industries, with more unpredictable factors, it is safer to remain using the billable hour.

Attorneys and corporate counsel find flat rates appealing because they set a maximum cost at the outset and transfers the risk of overruns to the expert. Due to increased risk, the expert may be able to charge a higher fee. In the case where settlement comes early, the risk will pay off. If the case runs long or requires more effort and cost than planned, the expert will be required to absorb the overage.

With a flat rate system, an expert witness who is talented at time management will be rewarded for his efficiency, just as attorneys in similar systems are rewarded for their time management skills.

Although many attorneys and law firms are utilizing contingency fees, this method is ***not*** allowed for experts. Receiving payment based on the outcome of a case is ***highly*** unethical and, in many state and federal courts, illegal for anyone who is not a practicing attorney.

There are occasions when an attorney will approach an expert after a trial is over because they lost the case or did not settle for as much as expected. In these situations, an attorney will often ask the expert to reduce his hourly rate due to the negative outcome. When an expert agrees to a reduced rate, he is essentially agreeing to a contingency rate. You should not allow the outcome of a case to affect your fees in any way.

If, in a future case, an attorney asks if you have ever reduced a rate after a case was finalized, opposing counsel could discredit you before the judge and jury. Although reducing your rate for a valued client may seem like good a business practice now, it can have repercussions in the future.

Another alternative fee arrangement is a flat rate based on the stage of litigation.

Utilizing a flat rate for different stages of litigation allows an expert to firmly establish expected expenses. Pre-litigation consulting and document evaluation expenses will vary based on the

number of hours expected, but these can be estimated before any work is begun. Expert reports, deposition and trial can each have their own additional flat rate if litigation proceeds.

In medicine, it used to be traditional to charge a flat rate per inch of record review. With the advent of computers and electronic files, other alternative fees have become common. Doctors now often charge a flat rate per examination or disk of data.

Another advantage to a flat rate agreement is the ability to require payment upfront to lessen the possibility of invoice disputes later on in the process.