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EXPERT WITNESS HOURLY RATES
 And General Explanation of Expert Witness Role in Litigation

March 21, 2013

Menu of Services and Rates

Consulting	Testifying	Description	Hourly Rate
X	X	Attend deposition of other witness(es) to assist trial counsel in understanding witness responses and providing trial counsel with additional areas of inquiry. [Four hour minimum]	\$150.00
X	X	Attend mediation to assist trial counsel in: (i) characterization of settlement related issues and recognition of new issues; (ii) evaluation of reasonableness of offers; and counter offers; and, (iii) identification of opposing party strategy. [Four hour minimum]	\$150.00
X	X	Research assistance. Provide assistance to trial counsel with legal research. I have nationwide Westlaw coverage of statutes and cases plus real property practitioner data base access. I subscribe to all major title insurance treatises. I also have an extensive private collection of research materials based on thirty plus years of practice	\$175.00
X	X	Report preparation. This includes investigation, research, evidence review and analysis, meetings, preparation for deposition, preparation for trial and other aspects of report preparation.	\$225.00
	X	Deposition of Steven Lawrence. This rate is applicable when S. Lawrence is being deposed as an expert witness.	\$275.00
	X	Trial This rate is applicable for trial and trial associated activities such as hearings.	325.00

**I.
Introduction**

Many clients are not experienced with the litigation process. Even those clients who have had some litigation experience may not be aware of the role of the expert witness in the litigation process. The purpose of this document is to provide a general educational overview of the role of an expert witness for those who are unfamiliar with the process. This document is not intended to cover all aspects of expert witness work.

**II.
Beginning The Process**

First there will be preliminary discussions between the expert witness and trial counsel. Once trial counsel elects to proceed, there will be a detailed retainer letter, executed by the client and the expert witness, which contains the contractual provisions applicable to the expert witness services. The client under the retainer letter is typically the plaintiff or defendant. In the retainer letter, typically the client appoints their current trial counsel as the person who will coordinate directly with the expert witness and as the person who will otherwise direct the scope of work of the expert witness. There needs to be a close and coordinated working relationship between the trial counsel and the expert witness. Usually the expert witness does not meet alone with the client without the trial counsel being present in order to protect attorney/client confidences. Although the expert witness works with and for the trial counsel, it's the client who signs the retainer letter and pays for the expert services. After the expert witness reviews the evidence, typically the expert witness will first produce a verbal report to the trial counsel. Then the trial counsel and expert witness agree on how to proceed from that point forward.

**III.
-A General Discussion-
Consulting Expert Witness Roles and Testifying Expert Witness Roles**

Subject to any different standards required under Texas law (or the law of the state where the land is situated if not in Texas), ABA Formal Opinion 97-407 (May 13, 1997) provides a good general framework for understanding roles in the expert witness context. The ABA Opinion distinguishes between the role of a **testifying** expert and that of a **consulting** expert.

TESTIFYING EXPERT: A testifying expert works for the attorney who retains the expert and does not occupy an attorney-client relationship with the client. A testifying expert can review discovery materials, share legal opinions, suggest factual support for expected testimony and provide legal and industry authority applicable to his testimony. A testifying expert also may help the attorney to define potential areas for further inquiry. A testifying expert is expected to present testimony in the most favorable way to support the hiring lawyer's side of the case. Nevertheless, the expert's testimony is presented as objective and, therefore, the expert must provide opinions adverse to the party for whom he expects to testify if frankness so dictates. No attorney-client privilege protects the testifying expert from having to reveal client confidences in order to answer truthfully on the witness stand (or in deposition).

CONSULTING EXPERT: In contrast, in-depth strategic and tactical involvement in shaping the issues, assistance in developing facts which are favorable, zealous partisan advocacy, and protection of client confidences are characteristic of an expert consultant. A consulting expert is considered to be a co-counsel. The consulting expert, therefore, does not generally testify, does not have to have his name provided to opposing counsel, and does not have his communications with the retaining law firm subject to discovery. If a consulting expert is expected to testify as a testifying expert, then privileged matters should not be disclosed to the expert.

This discussion is of a general education nature, intended to be illustrative, and is not intended to be an explanation of all the rights, duties, privileges and obligations of an expert witness under state or federal law.

IV.
Level of Expert Witness Due Diligence

For clients who are unfamiliar with the expert witness services we provide, you should know that the level of expert witness due diligence investigation which is necessary depends upon what we are asked to do by the trial counsel. Below are some examples

1. If requested to simply give our informal verbal impression of the case, a simple reading of the relevant documents provided by your trial counsel to us will generally be all that is necessary. No research is typically performed since this level of inquiry is for providing trial counsel with an informal impression of the case.
2. If we are asked to give a verbal or written opinion, the level of due diligence will involve more detailed work such as: (i) a detailed reading and re-reading of all relevant documents (both recorded and unrecorded documents), including, but not limited to, deeds, deeds of trust, restrictions, easements, mineral grants/reservations, releases, probates, condemnations, title opinions, commitments for title insurance, title insurance policies, title policy endorsements, insured closing service letters, errors & omissions insurance policies, business reports, other expert reports, land title surveys, maps/plats, guaranty files, escrow accounting records, bank account records, title company manuals and bulletins and training materials, pleadings, interrogatories, depositions, requests for admission, and, analysis of the relevant portion of the "chain of title" as evidenced by an abstract of title; (ii) preparation of a time line of relevant facts; (iii) development of transaction schematics; and, (iv) formulation of outlines of relevant facts or theories. Most cases involve this level of diligence.
3. If we are asked to provide testimony in a deposition, or live trial testimony, our due diligence: (i) will involve review re-review of items (i) through (iv) above to reach a level of "top of the mind familiarity" with the case so as to be able to credibly testify and successfully rebut the challenges of opposing counsel; (ii) may involve preparation of trial exhibits relevant to the proposed expert testimony; (iii) may involve meetings with trial counsel; and, (iv) might involve possible practice testimony with your trial counsel.

V.
Sample Retainer Letter
Establishment of Expert Witness Relationship

A "sample" Expert Witness Retainer Letter (approximately 6 pages) is available for your review upon request. The sample version of the retainer letter is just that, a sample, and therefore does not have any case specific information. Although the retainer letter is a "form," it's modified in each case with transaction specific details. The retainer letter typically covers the following areas:

- a) Designation of expert, client and trial counsel
- b) Identification of litigation
- c) Definition of scope of expert services
- d) Business & Personal Philosophical Disclosure by S. Lawrence
- e) Terms & Conditions
 - i) Planning process
 - ii) Discharge/Withdrawal
 - iii) Billing related matters
 - iv) Retainer deposits
 - v) Estimates
 - vi) Waiver/Consent for future representation of others in unconnected cases
 - vii) Definitions

Please note that this document is not a contract or offer for expert witness services. The expert witness relationship is established upon execution of a retainer letter by both the client and expert witness and the deposit by client of any required retainer funds with expert witness.

VI.
How Much Will It Cost

The cost of expert witness services are driven by such factors as: (i) the volume and complexity of the documents reviewed; (ii) the complexity of the factual and legal issues; (iii) the number of plaintiffs and defendants; (iv) the existence of cross claims and counter claims and cross or counter plaintiffs/defendants; (v) the existence of intervenors; (vi) the aggressivity of opposing counsel in discovery, depositions and trial; (vii) the need for experts on issues such as survey matters and damages; (viii) dilatory tactics by opposing counsel and insurance carriers; (ix) the amount of money in dispute; and, (x) various other factors.

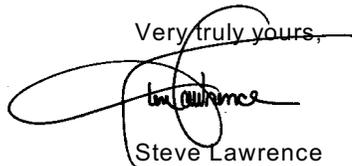
For very simple matters, I have had cases with expert fees in the neighborhood of \$5,000.00. These generally involve small single issue cases with services such as described in paragraph (IV)(1) above. For highly complex multi-party litigation involving expensive commercially developed property, I have had expert fees in the neighborhood of \$200,000.00. Most cases fall in the mid-range with many cases at less than \$100,000.00. I cannot guaranty a cap on expert fees. Fees are case dependent. Please note that it's unethical for any expert to work on a contingent fee basis.

Clients on occasion perceive that trial counsel and the expert witness appear to duplicate work or research. Any apparent duplication is professionally necessary for the expert. An expert cannot rely upon pleadings or verbal representations of trial counsel to provide facts which will form the basis for the opinion. It's necessary for the expert to review the types of documents described in paragraph IV above to reach an opinion about facts. An expert witness can accept case citations and briefs from trial counsel; but must read the cases and perform confirming research if the expert intends to rely on a case provided by trial counsel. This paragraph is intended to address scope of work and apparent duplication of services which are not, in fact, duplications but necessary due diligence.

IV.
Conclusion

Thank you for the opportunity of requesting your service in connection with the captioned matter. If you have any questions, or if you wish to discuss this matter further, please do not hesitate to contact me at the telephone, fax or e-mail address noted at the beginning of this letter.

In closing I am,

Very truly yours,

Steve Lawrence

Enclosures: Nones