

# Expert Witness and Independent Medical Exam Retention Contract

1. **Parties.** This contract is made between Robert W. H. Mason, M.D., M.B.A (“Expert”) of Robert Mason, M.D., P.L.C and the Law Firm of:

\_\_\_\_\_ (“Client”) regarding the underlying legal matter of:

2. **Retention.** The parties agree that Expert will only become retained by Client once this contract has been mutually executed and Client has paid the initial non-refundable retention retainer specified in paragraph 4.b. Expert has no duties to Client until such time.

3. **Expert’s Fees and Expenses.** The parties agree that the fee for all time Expert spends on the case will be compensated at a rate of \$1,000/hour. It is agreed that this specifically includes (but is not limited to) research, conferences, consultations with Client, reviewing documents, organizing documents, analysis, testing, responding to discovery requests, report writing, testifying, investigating, reading and signing deposition transcripts, local portal-to-portal travel, waiting time, preparing exhibits, preparing demonstrative aids, and preparation time for testifying at deposition, trial, hearing, arbitration or other venues. Expert’s time will be tracked and invoiced to the nearest 1/4 of an hour, rounding upward. In lieu of the above hourly rate, duties that reasonably require overnight travel will be billed at the minimum rate of \$8,000/day (8 (eight) hour minimum at \$1,000 per hour) on site. In all events, Client will be responsible for all reasonable out-of-pocket expenses including, but not limited to travel, testing, research, copying, storage of evidence or documents, etc. Local Medical Examinations are billed a flat fee of \$5,000 for examination and in-house testing such as angiogram, fundus photos, OCT imaging, and electrophysiology studies. Additional required testing will be at cost. Document creation, review and extra activities, as described above are billed at \$1,000 / hour.

4. **Payment Terms.**

a. All payments are to be made to:

**Robert Mason, MD**  
**8231 Glover Drive**  
**Brentwood, TN 37027**

- b.** The retention retainer is \$4,000. Expert will invoice against this retainer.
- c.** Expert agrees to attempt to invoice client no less frequently than monthly.
- d.** All invoices will be paid within 15 days - or sooner if specified in this Contract.
- e.** Overdue invoices will accrue interest at a rate of 6.0% per month.
- f.** Fees for any time Expert is asked to reserve for testifying at a remote location (at trial, hearing, deposition, arbitration, medical examinations, etc.) and preparation for said testimony must be paid in advance and in full 5 (five) business days prior to the time reserved for the scheduled testimony. Said payment will consist of a \$8,000 per anticipated Appearance Day Retainer and a refundable \$4,000 Testimony Preparation Retainer as well as reimbursement for any travel fee expenses currently owed Expert. Expert is under no contractual obligation to reserve the time or appear to testify and provide opinions unless Expert has received this payment in full at least 5 (five) business days prior to the time reserved for the scheduled testimony. Expert will charge a minimum of 8 hours per day when work performed at a remote location.
- g.** Fees for any time Expert is asked to reserve for testifying at a local location (at trial, hearing, deposition, arbitration, medical examinations, etc.) and preparation for said testimony must be paid in advance and in full 5 (five) business days prior to the time reserved for the scheduled testimony. Said payment will consist of a \$4,000 per anticipated Half-Day Appearance Retainer and a refundable \$4,000 Testimony Preparation Retainer as well as reimbursement for any travel fee expenses currently owed Expert. Expert is under no contractual obligation to reserve the time or appear to testify and provide opinions unless Expert has received this payment in full at least 5 (five) business days prior to the time reserved for the scheduled testimony. Expert will charge a minimum of 4 hours per half-day when work performed at a local location.
- h.** Client is responsible for collecting all deposition fees owed by other lawyers or parties. In the event Expert's deposition fees are reduced by court order, Client shall still pay Expert's full fee specified in paragraph 3.
- i.** Expert will invoice Client upon completion of Expert's report(s). All fees must be paid in full before a report is released to Client, other parties or anyone else. Expert is under no duty to release a report until Expert has been paid in full for all work performed to date.
- j.** Expert will invoice Client before scheduled testimony for any outstanding fees and expenses for work performed to date. All such fees must be paid in full before Expert

testifies. Expert is under no contractual duty to appear to testify and provide opinions until Expert has been paid in full for all outstanding services performed and expenses incurred on behalf of Client.

**5. Fees for Late Notice Cancellation or Rescheduling of Testimony.**

- a. Client understands that Expert will suffer damages from late notice cancellation or rescheduling of Expert's testimony and that since the precise amount of these damages would be difficult to determine, Expert shall instead be entitled to the cancellation and rescheduling fees specified in paragraphs 5.c and 5.d.
- b. The fees specified in paragraph 4.f. are 100% refundable to Client in the event Expert's scheduled testimony is cancelled or rescheduled with notice to Expert of 5 (five) or more business days, less charges for completed work.
- c. In the event Expert's scheduled testimony is cancelled or rescheduled with 2 (two), 3 (three), or 4 (four) business days' notice, Expert may retain a cancellation fee of 75% the amount of the Court Appearance Day Retainer and the Testimony Preparation Retainer from paragraph 4. f. The remaining amount will at Client's option be applied to future testimony or refunded to Client.
- d. In the event of same day (less than 2 (two) days) cancellation or rescheduling of Expert's Testimony or if Expert's testimony is completed in less time than was reserved pursuant to paragraph 4. f., Expert may retain 100% of the amount specified in paragraph 4.f.
- e. In the event of any cancellation or rescheduling of testimony, Client shall be responsible for all non-refundable out of pocket travel expenses incurred by Expert such as airline tickets and hotel rooms.

**6. Duties of Client.** The Client's duties specifically include, but are not limited to:

- a. Abiding by the applicable rules of professional conduct for attorneys.
- b. Making all payments as specified in Paragraphs 4 and 5 under the terms as specified in Paragraphs 4 and 5.
- c. Providing Expert with copies of or access to all non-privileged, arguably relevant documents, evidence, and other materials in the underlying legal matter.
- d. Notifying Expert of all parties and attorneys in the case so that Expert can check for conflicts of interest.
- e. Where circumstances reasonably allow, providing Expert with prompt notice of any *Daubert* motions, *Frye* motions, motions in limine, or other pre-trial motions made by

other parties or persons to restrict, exclude or in any way limit Expert's testimony or Expert's participation in the underlying legal matter.

- f. Obtaining Expert's advance approval (for accuracy) of the relevant portions of all answers to interrogatories, motions, expert designations or other documents which summarize Expert's qualifications, methodology, opinion(s) and/or anticipated testimony.
- g. Being available as reasonably requested to meet with Expert prior to anticipated testimony.
- h. Promptly notifying Expert of when and where Expert may be requested to appear to testify.
- i. Promptly notifying Expert of any issues related to paragraph 8.b. to which Client is or becomes aware of.
- j. Promptly notifying Expert of the settlement or final adjudication of the underlying legal matter.

**7. Duties of Expert.** The Expert's duties are:

- a. To truthfully represent Expert's credentials.
- b. To formulate with honesty and due care and truthfully express Expert's opinion(s) in those areas (and only those areas) where Expert feels qualified to render an opinion and where Client has requested an opinion. Client agrees that Expert's opinion(s) are not preordained, might be contrary to Client's position, and are subject to modification as a result of new or additional information.
- c. To cease work on the underlying legal matter and promptly inform Client whenever Expert has accrued unpaid fees and expenses totaling more than \$1,000. In this event, Expert shall not perform further work on the underlying legal matter until approval is given by Client.
- d. Expert is under no duty to provide and express opinions if Expert is given time deadlines or cost-based or other restrictions by Client that would not reasonably allow Expert to in good faith formulate and express his opinions with reasonable care.
- e. Subject to paragraph 7.d., to prepare a written report if Client requests one.
- f. Subject to paragraph 7.d. and to circumstances beyond the Expert's control, to meet all reasonable deadlines requested by Client.



Client if a written request to do so is received by Expert within the 30 (thirty) days following the termination of this agreement.

**12. Airline Flights.** All airline flights taken by Expert shall be direct, non-stop, First Class if possible, otherwise Business Class if possible, should First Class not be available.

**13. Disputes.** Any controversy, claim or dispute arising out of or relating to this Contract, shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association in the State in which the Expert is domiciled. The law of the State in which the Expert is domiciled will be the governing law. The arbitration award will be enforceable in any state or federal court. In any arbitration or court proceeding, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. In addition, Client shall be responsible for payment of attorneys' fees and expenses associated with the Expert's efforts to collect monies owed under the terms of this Contract.

**14. Miscellaneous.** Each party agrees that it may not assign its interest, rights or duties under this Contract to any other person or entity without the other party's prior approval. (Expert is under no duty to work for successor law firms on the underlying legal matter.) The performance of this contract by either party is subject to acts of God, death, disability, government authority, disaster or other emergencies, any of which make it illegal or impossible to carry out the agreement. It is provided that this contract may be terminated for any one or more of such reasons by written notice from one party to the other without liability. If either party agrees to waive its right to enforce any term of this contract, it does not waive its right to enforce any other terms of this contract. This written contract represents the entire understanding between the Expert and Client. The individual signing this contract on behalf of Client represents and warrants that he/she is duly authorized to bind Client.

**15. Additional Provisions (check all those that apply).**

a.  **Expert Unavailable** Notwithstanding Paragraph 7 Expert is unavailable to perform obligations under this contract during the following time frame(s):

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b.  **Split Hourly Rate.** Notwithstanding paragraph 3, the hourly rate for

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\_\_\_\_\_ shall be \$ \_\_\_\_\_/hr.

c.  **Scope of Work.** Client is requesting an opinion in the following area(s):

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d.  **Additional terms are attached to this contract as “Appendix A.”**

e.  **Waiver of initial non-refundable retainer for the exceptional circumstance of:** \_\_\_\_\_

**the retainer shall be (check and elaborate):**

**Refundable** \_\_\_\_\_

**Reduced** \_\_\_\_\_

f.  **The following additional terms apply:**

i.  \_\_\_\_\_

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ii.  \_\_\_\_\_

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iii.  \_\_\_\_\_

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EXPERT, by

CLIENT, by

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_