To: Members and Affiliates of NAFE and others of Interest

Ref: Guidelines II

In 2005 NAFE Pres. John M. Carden, P.E., appointed a special committee to add supplemental information and current comments to the "Guidelines for the P.E. as a Forensic Engineer: The Engineer as a Witness."

The original "Guidelines" were written by the undersigned in 1979 for an NSPE PEPP committee and published by NSPE in 1980, then republished by NSPE, and then in 2001 by NAFE with permission of NSPE. All NAFE Members and Affiliates have been furnished copies of the 2001 printing.

The attached writings titled as "Guidelines II" should now be retained with the original "Guidelines" which they supplement (not replace). They were approved and adopted by the NAFE Board of Directors on January 4, 2008.

The Guidelines II Committee was under the excellent chairmanship of Paul R. Stephens, P.E., assisted by committee members John M. Carden, P.E., Louis E. Howarth, P.E., Laura L. Liptai, Ph.D., John A. Murdoch, P.E., E. Smith Reed, P.E., and Marvin M. Specter, P.E., L.S.

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Att.

M. M. Specter, P.E., L.S.
F. NSPE, Hon. M. ASCE
Executive Director, NA FE
Supplement to Guidelines for the P.E. as a Forensic Engineer

Introduction:

This supplement is being issued to provide clarification and expansion of some topics contained in the document that was developed and published initially in 1980 (most recently published (3rd edition) in 2001). It is not intended to replace that document, which has stood the test of time and remains an authoritative guideline for ethical professional engineering practice in the forensic engineering field. Readers are encouraged to use this supplement and the original document concurrently. [Paragraph numbers coincide with those of the 1980 publication].

Financial Arrangements

7. Review the January 2005 NAFE publication titled “Contingent Fee Practice of Forensic Engineering is Unethical” document for additional fee-related guidance. Included therein is the NSPE Board of Ethical Review [BER] Case 2003-13 on this subject.

Investigations and Preparation

13. To preserve evidence for future evaluation, unless you and all other parties to the litigation jointly agree otherwise, site or evidence inspections and tests must be non-destructive. Cover plates, if they themselves are not evidence related to the incident, may be removed to examine hidden components visually. It is recommended that nothing be purposefully altered unless a protocol has been agreed upon and authorized by all parties to the litigation. Be mindful that evidence alteration can affect the understanding of the incident.

14. An assessment of what level of activity is required is particularly important in view of the post mid 1990 impact of Daubert-related requirements on forensic engineers. There may be situations where the client will be unwilling to compensate you in full for the analysis and tests that in your opinion are necessary to comply with Daubert-related court requirements. As a career forensic engineer, you would then have to decide what must be done to complete your professional obligations.
15. Evidence in your possession must be stored in a secure location to avoid deterioration. A failure to maintain evidence in proper condition can be grounds for an allegation of evidence spoliation. The forensic engineer should also consider whether or not his or her insurance coverage is inclusive of evidence spoliation coverage. Some offices choose to return all evidence to the client to eliminate the likelihood for improper storage or maintenance as well as long-term expense.

16. Appropriate chain of custody records that should be generated and maintained in your file include: signed receipts for evidence moving into or out of your custody; shipping documents, such as shipment receipts, photographs of the evidence in the condition received and the condition upon release from your custody.

17. The Court as “Gatekeeper” may be making admissibility judgments based on the content of your resume, your report, or an expert disclosure. Evaluate whether or not the connection between your qualifications and the technology involved in the case would be evident to the court. What might be basic engineering to you may not be viewed by the court as sufficient basis for testimony determined to require specialized competence. Be sure that you provide all pertinent information to the client retaining you.

Procedural Problems

12. Be mindful that such records are discoverable and should not contain language or punctuation that a legal professional could construe as your having adopted a liability theory without benefit of analysis. The lack of a question mark after a theory of liability stated as an alternate possibility might be exploited to allege bias on your part.

13. Request and note the name of at least the plaintiff on all inquiries to facilitate the detection of duplicate calls. Unless you have received verbal assurance from the initial contact that you were being retained or a letter of retention, you have not been retained and are free to offer your services to the second caller. However, it is recommended that you advise the second caller of the initial contact so that he or she can be prepared to address any objections from the initial caller to your use as the second caller’s expert based on the alleged prior exchange of confidential information or other such basis. It is best to avoid receiving or discussing any information that might be construed as confidential or privileged until a written agreement for services is completed.

Some attorneys may object if opposing counsel retains you after having spoken with you about the case. Be very careful about working for opposing counsel after one side has spoken with you about the case, without retaining you, even though legally you may have the right to do so.
14. Subpoenas can be attempts to compel you to appear for deposition testimony on an adversary's terms, not yours, or to produce a copy of your files. Be mindful that subpoenas other than those issued by a federal court are not valid across state lines. Some states may not require you to leave your county of record. However, in all cases, your client should be made aware that you have received a subpoena so that he or she can take action with the initiating party. If a subpoena requests personal records, such as tax forms or records on other cases, because such information or records may generally be considered confidential and unrelated to the case at hand, even if your client does not object to such document production, you may wish to resist. In such a situation, you, personally, may want to retain an attorney to represent you personally and have that attorney prepare an appropriate response.

15. It is unusual that an expert witness' personal attorney is present during an expert's deposition. However, do not assume or expect that your client will protect your professional and legal interests. The nature of forensic engineering is such that your client's interest is in the outcome of his or her case while yours is in the objective, unbiased, professional rendering of expert engineering opinions. Some questions may demand personal information such as your social security number, annual income, company revenues, terms of a divorce, investments, lawsuits filed against you or your company, or other such personal questions. You need not answer such questions during the deposition, and a suggested response might be to invoke your right to privacy. If later ordered by a judge, you may wish to reserve the right to consult with your personal attorney prior to answering such questions.

16. You must not permit unauthorized disassembly or alteration of evidence in your possession.

17. When provided medical information as part of a forensic engineering analysis, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") should be considered in view of the Act's intent to provide privacy of medical information. It is recommended that the forensic engineering office control how individuals' health information is handled to minimize access to the information outside of forensic engineering analytical and educational use. Two practical examples to protect the medical privacy of individuals' medical information within the forensic engineering office include: 1) changing the names of the parties for presentation and publication and 2) shredding the medical information or returning it to the client.
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This document is one of a number of publications developed and produced by the Professional Engineers in Private Practice Division of the National Society of Professional Engineers. It addresses a specific area of practice but one which is becoming more and more significant in our profession. Other PEPP publications address other aspects of the practice. All are designed to assist the practitioner in the provision of professional services in an effective manner. This publication, as are all PEPP publications, is in keeping with the mandate of the professional society.
Introduction to the Third Edition (2001)

In 1980 a committee of the National Society of Professional Engineers (NSPE) Professional Engineers in Private Practice (PEPP) on forensic engineering culminated a two year examination of the role of the professional engineer in litigation and arbitration by revising and expanding an existing NSPE/PEPP document to provide guidance to the professional engineer serving as an expert witness. The work of that committee, headed by Marvin M. Specter, P.E., L.S., resulted in a publication, Guidelines for the P.E as a Forensic Engineer, which has proven to be of value not only to professional engineers but also to the legal profession and others who must work with professional engineers in the application of their technical competence and professional expertise to the problems of the law.

Since the publication of Guidelines for the P.E as a Forensic Engineer, there have been minor changes in the Code of Ethics of the National Society of Professional Engineers and a significant increase in the number of professional engineers serving as expert witnesses. The guidelines were published by NSPE/PEPP in 1980 and republished in 1985. Also, in 1982, the National Academy of Forensic Engineers (NAFE) was incorporated and granted Chartered Affinity Group status by the National Society of Professional Engineers. Marvin M. Specter, P.E., L.S., who chaired the PEPP Forensic Engineering Committee which reissued these Guidelines for the FE as a Forensic Engineer, served as the Founding President of the National Academy of Forensic Engineers and since 1999 has been Executive Director of NAFE.

The Guidelines as printed herein are unmodified from their original drafting, it being the view of the NAFE that they have stood the test of time (more than 20 years) and are still valid. The NAFE is appreciative of the permission of NSPE and assignment of the NSPE copyright for the purpose of reprinting by NAFE.
Introduction to 1980 Edition

In recent years there has been an increasing demand for engineering services in connection with litigation, arbitration actions and in contract matters requiring input from both the legal and engineering professions. The engineers who perform these services for, and in concert with, the legal profession derive from virtually every practice and technical discipline of engineering. Those who are most competent in the application of their technical engineering background to the problems of the law have come to be known as "Forensic Engineers," in addition to their basic engineering disciplinary titles ("civil, mechanical, electrical," etc., etc.).

Also, there has been an increasing recognition by courts and all those involved in legal processes of the special value of the expert engineer whose competence has been validated through the legal process of examination by the state, and who is registered for engineering practice by the state. Thus, the "Forensic Engineer," of whatever academic discipline, is now also very likely to be registered as a "Professional Engineer."

In addition to an increased recognition of the strength which professional engineering at the competence level of the forensic engineering expert adds to the client's legal position in such traditional areas as construction contract disputes and in highway and construction accident litigations, the legal staffs and trial counsel for manufacturers, and for insurance carriers as well as plaintiffs' attorneys have greatly increased their reliance on the forensic engineer as product liability suits have proliferated. Accident reconstruction and arson investigation studies and testimony have also had a substantial increase in response to a social trend toward litigation, and an upsurge in arson for profit and arson as a form of political or social protest.

In a civilization whose physical being is based on engineering, the social trend toward consumerism, paired with an increase in litigation, has impelled a need for the highest standards of engineering competence to operate in the public view, subject to the sometimes highly critical examinations which are part of the legal process. Thus, the forensic engineer.

In earlier years engineering experts were drawn principally from university faculties and research staffs of large corporations. Engineers in private practice have gained increasing recognition because consulting engineers, as independent experts with strong practical experience backgrounds, are most likely to be viewed as being competent and unbiased on the critical engineering issues being examined or litigated these days, and, therefore, are very likely to be persuasive witnesses when their professional opinions and judgments are presented.
While this publication has been drafted for the particular use of the independent expert, the principles and methodology explained herein should be of value to those engineers employed by industrial firms, the insurance industry, construction companies, government agencies and public interest groups. It is the hope of the committee that the information contained herein will also assist the members of the legal profession and professional managers and executives to understand the value of competent forensic engineering and how best to utilize the forensic engineer.

Respectfully submitted,

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Chairman

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Forensic Engineering committee NSPE/PEPP (1978-80)
General

1. Have a clear understanding with your client regarding such matters as Client Relations coordination of your work with that of others, the person to whom you should report, and as to who will be responsible for payment of your fee and related expenses. Clients should be encouraged to discuss fee arrangements during their initial request for services.

Clients purchase services, not insurance. Professional service is a “work product of the mind.” Those who engage professionals cannot expect infallibility but they can rightfully expect reasonable care and competence.

Rules vary from one jurisdiction to another. Recognize an attorney may restrict dissemination of your findings and in other areas your work product may be discoverable.

2. Make sure you are competent to deal with the subject matter of the case. Recognize that in many cases the actual problem area may not be well defined initially and thus your service in effecting its definition is of considerable value.

Abraham Lincoln is quoted as stating “A Lawyer’s Time is His Stock in Trade.” That is true of forensic engineers. A potential client may want a “quick” informal opinion as to whether or not you can testify favorably.

This might be in effect a quest for “free advice” critical and valuable in management of the case. Should you answer Yes” the potential client is armed for a strengthened negotiation to force a more favorable settlement short of trial due to the threat of your potential testimony. Should, however, your answer be “No” you provide the opportunity to seek an early settlement on the most favorable terms before the weakness of the case is fully revealed by the discovery legal process. Experienced forensic engineering practitioners frequently request a retainer from a new client to assure they have a commitment from a client adequate to allow them to make even “preliminary” value judgments. An expert who gives “Free Advice” may often discover that potential clients feel that is all the advice is worth. In the field of professional service there is no shortcut to excellence.

3. Give honest, impartial, loyal and professional service. Your responsibility is to be loyal to your client within the framework of ethical practice, which places truth above all other considerations.

It is your expertise, as an experienced engineer, upon which attorneys, judges, insurance personnel, juries and other lay people rely. Do not hesitate to advise and insist on retention of a specialist by your client if this appears necessary and advisable.
Advise your client of the nature of your findings and their possible or probable effect on the outcome of the case. Such information is not to be divulged to others unless you are required to do so by proper legal procedures.

4. Keep your client fully informed regarding *work progress and charges*. Do not submit a written report *unless and until such a report is requested by your client.*

Maintain calculations, test results, and file data as confidential but in proper form for use later when memory may have failed.

5. Participate only in honest proceedings. Disassociate yourself from any endeavor which is or may appear to be fraudulent in nature but do not, in your relations with your client, assume the role of judge and jury. It is permissible to honestly assist a client in efforts to establish where and to what extent liability lies. Further, you may advise the client, to the best of your ability, as to the best course of action. If the ultimate decision is in doubt and liability appears to reside unfavorably with your client, it is imperative that you bring this information, in its clearest terms, to your client’s attention.
Financial Arrangements

1. The Code of Ethics of the National Society of Professional Engineers prohibits the use of a contingency fee basis if payment depends on conclusions related to the engineer’s professional judgment. That is, the opinions expressed by the professional engineer acting as an expert witness must be independent of the possible outcome of the case involved. This ethic applies whether the services are provided for your employer or an outside client.

So that there is no doubt as to the basis of service by the expert, the agreement for services to be rendered should explicitly state that “payment to the engineer shall be made promptly, and shall not be contingent upon the results of any legal action, arbitration or settlement.”

Be aware that laws forbid the practice of “champerty,” which means the subsidizing of all or part of a lawsuit, either directly or through payment of expenses of the litigant, in return for sharing in the benefits of the lawsuit if the party supported is successful.

2. Provide your client with a detailed fee schedule before beginning your services. Obtain an advance retainer unless experience indicates otherwise. A retainer should be adequate for the scope of service anticipated. Those seeking “free advice” should be discouraged since a forensic engineer must allocate adequate time to prepare value judgment of significance. All parties are best served when a written agreement is signed that sets forth the services to be performed, the billing rates, times of payment, service charges for late payment and identification of the entity responsible for the guarantee of fees. It is not unusual to obtain a personal guarantee since corporate default can negate opportunity to receive payment notwithstanding a written commitment.

3. Submit monthly invoices, particularly if substantial expenses are incurred, including itemized summaries by calendar dates, of your services. The invoices should show overall figures of hours and days spent on the assignment and the fee therefore computed in accordance with your standard fee schedule. The invoice should list expense items of significance which are agreed to for reimbursement.

4. Advise your client you expect prompt payment on your invoices. Follow up if required. Payments should be current prior to your appearance for any sworn testimony or recorded statement. Although it may not be your feeling at the moment, an astute adversary attorney can leave a jury or other determinative body with the impression that your testimony is not independent and impartial if it is ascertained that you are waiting for substantial fee payments.
5. Charge fees which are commensurate with the professional services furnished. Do not be influenced to reduce fees by the presence of special facilities or other circumstances available to you on an advantageous or "free" basis.

Apply your fee schedule uniformly to all clients and all assignments of a similar type. In general the rates for forensic engineering assignments should be at or above rates for routine work not of such special demand.

6. Advise your client well in advance of the estimated total costs through trial of your services and thus establish the option of consideration and possible utilization of other alternatives.

Since legal proceedings frequently are subject to adjournment and delay for reasons unrelated to the expert witness it is best that payments be based on a per diem rate rather than lump sum.

Also, the time period for a particular case may extend over a number of years, from the time the engineer is first contacted until the time the case is dropped, settled, or tried. In this sometimes long time period, because of inflation or other reasons, the engineer's time charges may increase. The engineer should decide whether or not to maintain a constant time charge fee, as of the time of first engagement on the case, throughout the case, however long it may be. If the engineer has a policy of periodically adjusting the time charge fee, this policy should be made known to the client at the very outset; and an appropriate provision should be made in the agreement to cover escalation.
Investigations and Preparation

1. Express an opinion only when it is founded on adequate knowledge. This means, in most cases, that a substantial detailed investigation and study must be made.

2. Inspect the site and evidence personally whenever possible. Witness all tests where practical and have them made to your instructions or be prepared to have the tester called as a witness. Understand the test results and their limitations.

3. Verify that you are qualified and competent to deal with the pertinent subject matter. Inform your client if you feel that a specialist should be retained either as a replacement or in conjunction with yourself.

4. Make thorough detailed inspections, taking dimensions and other data to provide documentation and study material. Take or assist in obtaining professional quality photographs and the thorough documentation and witnessing of them so that they can be legally admissible when needed.

Consider benefits of color photographs in lieu of black and white. In arson investigation in particular use of color photography is beneficial as it illustrates colors that can identify cause and effects for the investigator.

5. Review all pertinent depositions, manuals, standards, related hardware, literature, design drawings, and specifications.

6. Recommend to your client the need for, and make, all calculations, analyses and tests necessary to establish and confirm an opinion. Advise your client of the possible consequences if such work is not authorized, and performed in a competent and timely fashion.

7. Recommend and explain to your client the need for timely preparation of trial exhibits and demonstrations. Cooperate in scheduling this work so as to minimize the expense to your client. Explain to your client their probable value, either in negotiations or trial. Recognize the attorney in the case will be the final judge as to whether to use an exhibit or demonstration in the trial proceedings.

8. Do not exaggerate to explain or clarify a point on an exhibit. Be very careful of charts and curves relative to scale and boundaries. Do not use or prepare misleading exhibits.

9. If it becomes necessary to take evidence into your custody to preserve it, obtain a witness, photograph the evidence, and record its prior condition and the circumstances under which it was obtained. Use registered or certified mail for shipment of evidence, with return receipt to provide proof of transmittal.
10. Preserve the chain of custody of all significant items to insure their positive identification and knowledge of their physical condition.

11. Provide the attorney in the case with a resume of your education, work history, registrations, professional affiliations, and societal and peer recognitions, and related experience, patents and publications, and with any other information which will assist to qualify you as an expert for the purposes of your testimony.

12. Strongly recommend that you and the attorney involved conduct a thorough review and analysis of your testimony prior to the trial. Establish the sequence of questions, clarify responses, avoid ambiguity and insure to the degree possible that information is presented in lay terms. Establish in advance the points at which items of evidence and exhibits will be introduced. If this involves a witness other than yourself, that individual should be familiar with the planned procedure. During this exercise be mindful of and utilize the opportunity to function in a Devil’s Advocate role which frequently provides an opportunity to evaluate a given set of circumstances from a different perspective.
Procedural Problems

1. Keep records, with dates, of inquiries for services from potential clients. In your responses to such inquiries, and in your records clearly state the conditions for your retention.

2. If you receive more than one call on a single case, a first-come, first-served policy is recommended. In the event a subsequent call is received relative to a case on which you have already been retained, inform the caller of that fact at once, terminate the discussion immediately and notify your client of the call.

3. While you will not want to spend a significant amount of uncompensated time looking into a case, it is desirable to respond sufficiently to be briefed on the circumstances and to advise the prospective client as to your competence, availability and probable charges and expense.

4. Be aware that if you are retained on a case, you will be obliged to spend a considerable amount of time talking with, explaining to, and otherwise assisting the attorney in the case. You will probably be asked to help prepare questions and answers (interrogatories) to related case circumstances. On occasions, you will be asked to pose a series of questions, the answers to which will guide the collection of factual knowledge.

5. If you are served an unexpected subpoena, receive it courteously and sign a receipt for any expense (cash or check) as may be reasonably requested. Inform the attorney in the case immediately advising whether you will be available on the date and time specified. If you have made firm, prior and conflicting plans, the attorney in the case should be able to negotiate an alternate time.

6. If you are served a subpoena it will most likely be for the purpose of taking your deposition, which is essentially a series of answers by you to questions from various attorneys including your own. Your answers will be taken under oath and for the record and can be quoted later at the trial. Since no jury will be present and the transcript will be ambiguous with respect to pauses, you should take ample time in answering questions. You may not have an answer at the time and should so state, even though you expect to determine the answer later.

7. If you are asked to bring your notes, work records, reports, calculations, photographs, or other data with you for the taking of your deposition, it is recommended you advise your attorney of this request. ("Your" attorney may be your client, your client's attorney or your personal attorney.) In any event, that individual is responsible for your legal welfare during these proceedings. In return, you should follow the attorney's requests, advice and demands at this juncture as to whether to produce certain documents and answer specific questions. Questions of law and procedure are involved which only the attorney is qualified to explore. If you are threatened with "contempt of court" by opposing attorneys, let your attorney handle it.
8. You should receive a regular fee for the time you spend in giving a deposition. A per diem basis is recommended. In some cases the deposing attorney may tender you the nominal expense and witness fee; as this is completely inadequate, it should be returned to the sender or credited to account on a proper billing. Your client should guarantee that you receive your regular fee; it is recommended, however, that the attorney requesting the deposition pay your fee.

In the event you are subpoenaed as a "witness of fact," i.e. to testify of your observations in a given situation (but not as an expert), you have the same obligation to appear as if you were a layman, and probably would only be paid nominal expenses of travel, depending upon the law in effect in that particular jurisdiction. When you are not appearing as an expert you should abstain from answering questions which require the expression of professional opinions, judgment or experience, or the "Operation of Mind."

9. Inspection by others of evidence in your custody is a frequent situation. If asked to witness such inspection, do so diligently, being courteous, cooperative and helpful to others in their efforts to determine the facts to their satisfaction. Alterations to evidence may be reasonably required or permitted and may occur inadvertently or deliberately. In any event, make notes and records of all such alterations. If you are denied access to items in the custody of others when, in your judgment, their inspection by you is required to determine or verify the facts, you should make your position known to those in authority and immediately contact your attorney, refraining from further action. Arrangements for inspections should, when possible, be understood and agreed to by all interested parties prior to an inspection.

10. You are obliged to safeguard items of evidence when you have custody of them. You should obtain a dated itemized receipt before transferring any item of evidence to another party. Such transfers should be made only with the full knowledge and authorization of the attorney in the case.

11. As an expert, you may find it necessary to conduct tests; you may find it necessary to divide them into different classes, such as "preliminary" and "final for the record." Preliminary tests are necessary for such reasons as establishing test procedure, parameters, and factual details not previously known but necessary for a proper test. Be aware that the "adversary system" in our courts may inadvertently oblige you to reveal the results of tests other than those which are "final for the records." Therefore, it is recommended that judgment be exercised as to the type and extent of records and usage made of preliminary test results. In some cases, it may be best to treat these informally, either with no records or labeling them for what they really are, listing results only as pertinent for defining the final test procedures. As an expert, you should avoid using preliminary test records in court since they may be misunderstood or misused.
Courtroom Participation

1. Accept the fact that the attorney in the case conducts your part of the trial.

2. Be prompt and available when requested. Schedule well ahead of time and keep flexible. Try to determine the time span for which your presence will be requested. This can vary from an hour to many days or weeks depending on your role. Normally one or two days should be adequate but the appearance almost always extends longer than anticipated.


4. Be courteous. Speak with clarity. Adjust your voice level to the courtroom acoustics. Try to visit and get a “feel” of the courtroom prior to testifying.

5. Since you will be speaking for the benefit of the judge and jury, address the jury directly at least part of the time, particularly when making key statements. Be certain the jury can hear you. When displaying exhibits, do so in such a manner that they are clearly visible to each member of the jury. Use lay terminology to the greatest extent possible. Use technical terms only in a context which defines them by their use. If necessary, use analogies, descriptive gestures, or actual demonstrations, if prepared, planned and approved by the attorney in the case.

6. Be aware that, while courtroom demonstrations can be very effective, the danger of an abnormal or accidental result cannot be overlooked. Review in detail with the attorney in the case the meaning, value and potentialities of any recommended demonstration. It may be necessary, in some instances, to actually construct and prepare the demonstration for a full-scale review with your attorney before a decision can finally be made relative to its use in the courtroom.

7. It is imperative that you pay close attention to every question asked you. You must remain alert, not letting your mind wander or dwell too long on past questions and answers. Do not anticipate the questions too extensively and do not answer as if you had anticipated them. Answer briefly and in accordance with what was asked. Volunteer information only as required to qualify and explain your answers and then only when essential to your opinion or to emphasize a factual point related to the questions. If you and the attorney in the case have prepared properly for the trial, on direct examinations you will probably be asked further questions to permit you to expand and explain pertinent points in a logical and precise manner.

8. If you do use an exhibit, have it prepared well ahead of time and with the full knowledge of your attorney for trial admission. Be prepared to draw sketches free hand on large paper pads. Blackboard and chalk are sometimes prohibited.
9. Be aware that on cross examination, you are largely on your own. It is usually necessary and desirable to include explanations and qualifications in your responses to questions. Do so courteously and matter of factly, bearing in mind that as an expert you have this right. While your attorney will have an opportunity in redirect examination to go over points raised in cross examination, the lapse of time will result in loss of continuity, concentration, meaning and emphasis.

10. Keep your emotions, particularly anger, under control. Derogatory remarks or reflections on your work and ability may be made. Any display of anger or any confused or erroneous response on your part will tend to discredit you in the eyes of the court and jury and possibly will create misunderstanding of facts and opinions expressed in your testimony. In a tough cross examination an adversary attorney may attempt to entice or provoke you into an emotional response where you might appear biased or make some exaggerated statement that can be seized upon to discredit the rest of your testimony. Do not fall into the trap.

11. Use copies of reference material, data and standards during your testimony at the trial and furnish copies for exhibits and retention by the court. Your personal references and standards should be retained in your files. Use your best judgment as to what documents and files you bring into court as they may be subject to search and seizure.
Depositions

1. Answer questions truthfully in as few words as possible.

2. Do not elaborate or volunteer information.

3. It is natural to be nervous at the start. Relax and remain professional.

4. A “sense of humor” is out of place in a deposition. Remain professional—a remark that is said in jest might have an adverse impact when it is read in the transcript.

5. Do not lose your temper. What you say is recorded.

6. Do not use expressions or nod your head. The stenographer cannot transcribe motions. Try to be articulate with words. Simple declarative sentences and words often are most beneficial.

7. Do not talk to opposing counsel “off the record.”

8. If interrupted by another question finish answer to the original question first. Do not be embarrassed to ask for a question to be repeated.

9. Do not waive the reading and signing of deposition. Before you sign it read it and make sure it reflects your statements. Once you sign, you consent to agreement of its contents.

10. Remember the axiom “Lawyers do not ask questions to which they do not already know the answers.”

11. Answer YES or NO questions with YES or NO, or I don’t remember or I don’t know.

Do not ramble on with lengthy answers to simple questions. You are there to impart knowledge, not to impress others with your knowledge.
Post-Máil Circumstances (or Negotiated Settlement)

1. Let the attorney in the case know where you can be reached after you have testified in the event it is necessary to recall you in rebuttal.

2. Be aware that you are obliged to retain your files, exhibits and other data used in your testimony to be reused if an appeal or retrial is scheduled. As a general rule, do not dispose of any files, exhibits or other data until at least one year following formal notification of an official complete settlement in the case.

3. After the trial is over, discuss the results with the attorney in the case. Solicit the attorney’s opinion of your testimony and the effectiveness of the evidence, exhibits and demonstrations employed. Discuss the possibility of further legal action. Schedule the submission of your final billing.

4. Where appropriate, follow up the trial proceedings with recommendations for corrective action to eliminate unsafe conditions, inadequate designs, manufacturing defects, lack of user education, etc.

After the trial, cases are often appealed. It may be many years before the case is finally closed. And again, when a case is settled, there are often agreements made about confidentiality of the settlement and the case itself. The engineer should obtain written permission from the attorney to refer to the specific case when the engineer follows up the case to make safety recommendations in professional journals or in presentations.

Summary

In practicing forensic engineering, you are providing professional engineering services. Follow the Code of Ethics, as you would in providing any other type of service. **When you are on the stand as an expert witness, you carry the reputation of every other professional engineer on your shoulders. BE PROFESSIONAL.**