

# ATTORNEY-CLIENT AGREEMENTS TOOLKIT

RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL



## **LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA**

5020 Weston Parkway, Suite 200, Cary, North Carolina 27513

Post Office Box 1929, Cary, North Carolina 27512-1929

919.677.8900 | 800.662.8843 | 919.677.9641 FAX | [www.lawyersmutualinc.com](http://www.lawyersmutualinc.com)

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UPDATED JULY 2016

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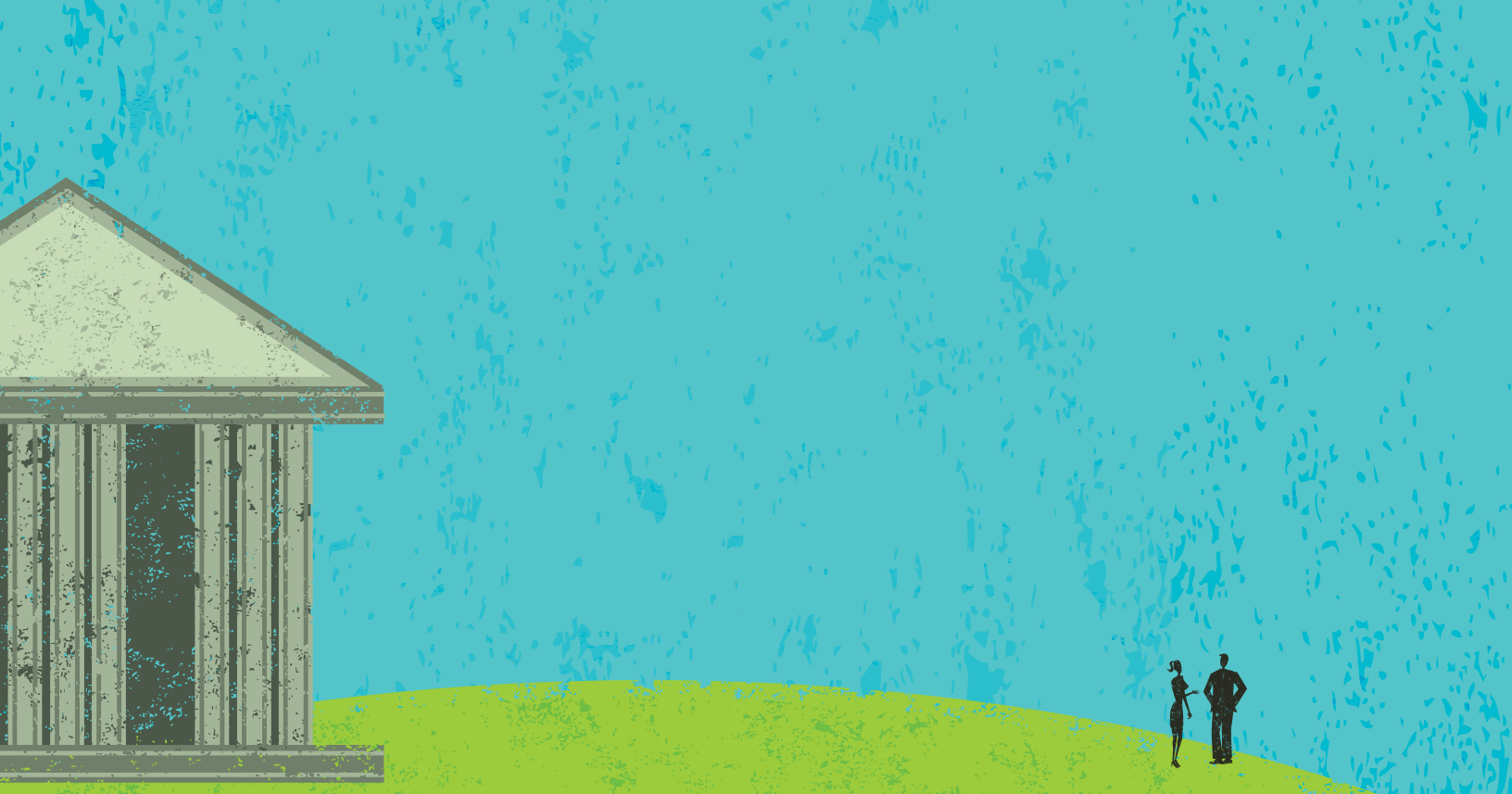
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## ENGAGEMENT LETTERS

### The Value of Engagement Letters

A study completed by the American Bar Association Standing Committee on Lawyers Professional Liability reported that 17% of all malpractice claims are the result of a poor attorney-client relationship.<sup>1</sup> Approximately 75% of all grievances filed against lawyers are the result of poor communication. A well-drafted engagement letter is the first step in establishing a professional relationship with the client and is an effective way of meeting the duty to communicate with clients. Many potential claims and/or grievances can be avoided with the adoption of a firm-wide policy to use an engagement letter for each new representation.

Whenever a new matter is opened, an engagement letter should be drafted to avoid misunderstandings, to build the attorney-client relationship, and to establish evidence of both the scope of the engagement and the fees to be charged for the firm's services.

Rule 1.2(a) of the North Carolina Rules of Professional Conduct requires an attorney to abide by a client's decisions regarding the objectives of representation. Rule 1.4(a) mandates that all matters be continuously explained to the full extent necessary to allow the client to adequately determine the course of representation. Rule 1.2(c), however, permits the lawyer to limit the scope of the representation to the duties that he or she agrees to undertake.<sup>2</sup>

It is with these rules in mind that the engagement letter should be drafted. The primary purpose of the written engagement letter is to prevent misunderstandings regarding the responsibilities of each party to the attorney-client agreement. Most importantly, documentation provides written evidence confirming the existence of an

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<sup>1</sup> *The Lawyers Desk Guide to Preventing Legal Malpractice*, ABA Standing Committee on Lawyers Professional Liability, 1999.

<sup>2</sup> See, e.g., *Kansas Public Employees Retirement System v. Rock*, 273 Kan. 481, 44 P.3d 407 (2002) (the lawyer is not a trustee of the client's interest with a responsibility to flush out all possible problems, but his or her duty is instead defined by the services agreed upon in the engagement letter).

## CASE STUDY



### Scope of Engagement

A “pro-se” litigant hired an attorney to make a limited appearance for the purpose of negotiating a settlement and to file limited responsive pleadings. This limited scope was repeatedly communicated, but never reduced to writing. When opposing counsel prevented settlement and the attorney did not show up for trial, a malpractice suit for approximately \$9,500 was filed to recover judgment and the fees for appeal. An engagement letter would have saved the attorney the cost of litigating the matter and may even have helped the client better understand exactly what the lawyer’s responsibilities were.

attorney-client relationship, who the parties to that relationship are, and exactly what each has agreed to do.<sup>3</sup> The engagement letter establishes the responsibilities that the firm will undertake, outlines limitations on the services to be performed and provides protection from later claims that the attorney or firm failed to perform a designated service.<sup>4</sup> It provides an estimation of the fees to be incurred and indicates how they will be calculated.<sup>5</sup>

Finally, the engagement letter can contribute to conflict prevention simply by serving as a management tool in the firm. It can be used to set a written standard of practice and facilitate clear identification of the client during the preliminary stages, which allows the firm to properly determine whether conflict of interest issues have been resolved.

### Communication is Key

Everything that is contained in the engagement letter should first be discussed with the client. The engagement letter then serves as a written record documenting the scope of the representation and the expectations and responsibilities of both the attorney and the client.<sup>6</sup>

During the consultation, stress the need for regular communication and the importance of the client providing information that is both complete and accurate to the best of his or her knowledge. Note that the client is responsible for notifying the firm of any changes to personal information or residence, or of any extended periods of time when the client will be unavailable. Specifically outline any client responsibilities or tasks that need to be fulfilled, decisions that need to be made, or documents that need to be produced. It is wise to also provide a checklist and deadline for the completion of any of the aforementioned tasks.

Reiterate that the firm has obligations throughout the process. Emphasize that the matter will be given due attention and that services will be provided timely and diligently. Offer reassurance that the client will be informed as to the status of the case and that he or she will be promptly notified in the event of any major developments. Alert the client, however, that there are certain areas when his or her consent will be required to proceed, such as when settlement offers are made.

Discuss with the client the rules regarding confidentiality and inform them if any exceptions to the rule may be implicated. Stress the need for protection

<sup>3</sup> See, e.g., *Varner v. Eves*, 164 Or. App. 66, 990 P.2d 357 (1999), review denied 329 Or. 650, 994 P.2d 133 (2000) (the fee agreement is the final expression of contractual duties and oral evidence of contrary arrangement made prior to its signing should therefore not be admitted).

<sup>4</sup> See, e.g., *Hummer v. Pulley, Watson, King & Lischer, P.A.*, 140 N.C. App. 270, 536 S.E.2d 349 (2000), on subsequent appeal 157 N.C. App. 60, 577 S.E.2d (2003), review denied by 357 N.C.459, 585 S.E.2d 758 (2003) (there is no valid claim of malpractice for acts outside the scope of engagement as delineated within a signed fee agreement).

<sup>5</sup> See, e.g., *Foodtown, Inc. of Jacksonville v. Argonaut Insurance Company*, 102 F.3d 483 11th Cir. (1996), reh’g denied (11th Cir. 1997) (an oral contingent fee agreement would not be enforced when a written agreement provided a clear, enforceable standard).

<sup>6</sup> See, e.g., *Fitzgerald v. Linnus*, 336 N.J. Super. 458, 765 A.2d 251 (2001) (the attorney is not liable for failure to provide tax advice on the planning of an estate when the engagement letter delineates the scope as providing assistance with executrix duties for the decedent’s estate).

of confidentiality and the inherent risks of cell-phones, emails or facsimiles. Inform the client that communication will only occur through authorized channels. Some firms require a separately signed authorization to use particular mediums, which would include the client's acceptance of the risks of unnecessary disclosure. Provide the client with a copy of the firm's policy on the standard time period for returned calls, and discuss what should be done in the event that the client's call or email has not been returned.

### **The Emergency Engagement**

A potential client will occasionally wait until the last minute to seek counsel, leaving insufficient time for the firm to conduct the standard client intake procedures or to properly draft an engagement letter. To avoid missing the statute of limitation or turning the client away, a limited engagement letter may be used. The function of this document is to accept the engagement, but only for the express purpose of completing the time sensitive duties. If the firm is to undertake any further representation, include a statement of the fees and instructions for the client to return on the following business day to review and sign a standard engagement form and to partake in any of the firm's other standard client intake procedures.

The limited engagement letter should be countersigned and returned to the firm before any work is done on the client's behalf. If necessary, this can be accomplished via fax or other electronic mediums.

### **Drafting the Engagement Letter**

The introduction should clearly identify the client.

Using proper legal names, document those that are represented. If there are others who are reasonably related to the transaction, but whose interests the firm will not handle, expressly indicate them as well. If representing a corporate client, make it clear that it is the interest of the corporation that will be represented, not the interests of the president, the board of directors, trustees, or any specific employees. It should also be noted whether or not subsidiary or parent companies are included in the representation.

Furthermore, should the situation call for it, recommend that non-clients seek separate counsel to represent their individual interests.

## CASE STUDY

### **SET TIMELINES AND PROVIDE UPDATES**

An individual hired a lawyer for representation in both a worker's compensation claim and in a third-party tort claim arising out of the same incident. While working on the workers' compensation claim, the attorney became distracted from the tort claim and missed the statute of limitation. He suddenly found himself responsible for over \$75,000 in damages. This common scenario could have been prevented had the attorney set a timeline for the client during the engagement process or if updates were provided in a reasonable timeframe.

Any claim for malpractice should be immediately reported in writing to the firm's professional liability carrier. A lawsuit will automatically trigger the firm's deductible and necessitate the retention of defense counsel.

## CASE STUDY

### Scope of Engagement

Before the closing of a business transaction, an attorney was hired specifically to file a UCC-1 financial statement and to attend the closing as a formality. He was not asked to draft or review any of the documents. An error in the financing statement compromised the security interest on the property. Though he did not draft any of the documents, the attorney was blamed for failure to notice the error before filing. During the resulting malpractice suit, the trial court held the lawyer accountable for \$1,400,000 in damages. The lawsuit may have been avoided if the engagement letter limited the scope of the engagement.

Outline the work to be performed and provide an approximate timeline of the case. Alert the client to the fact that the legal process can sometimes be a lengthy one. Let him or her know that he or she will promptly be made aware of any significant changes to the anticipated schedule, but that patience will be necessary while handling the matter. Though not required, some firms dedicate a section of the engagement letter, or provide a separate document, describing the legal system for those unfamiliar with it.

Finally, clients also like to know who will be working on the matter and who they should contact with questions. Identify the primary attorney who will be working on the case and, if applicable, another member of the firm that he or she can speak with in the event that the primary lawyer is unavailable. Identify anyone else within or outside of the firm who are likely to become involved with the case. This may include expert witnesses, outside consultants, paralegals or professional staff members at the firm. If this information is unavailable at the time of the engagement, include a general statement that these services will be engaged as necessary.

### Limiting the Scope of Engagement

It is not enough to simply delineate what will be done, but it is also wise to document any reasonably related matters that will not be handled. For example, if a personal injury client discusses a potential sexual harassment claim during the consultation, add a note to the engagement letter documenting that your representation will not include the discrimination claim. Failure to do so could result in the former client filing a frivolous claim alleging negligence for failure to pursue the discrimination claim in a timely manner.<sup>7</sup>

The “unbundling” of legal services, also known as “limited representation” is an increasingly common form of practice. The term refers to an arrangement where the lawyer agrees to some, but not all, of the legal services usually completed during a representation. For example, the lawyer may agree to help “ghostwrite” a complaint for a client to file pro se. In another case, a lawyer may agree to handle a client’s divorce, but not the equitable distribution issues. In these cases, it is essential that the attorney document the limited scope of the engagement with a well drafted agreement.<sup>8</sup> The American Bar Association Litigation Section published a

**Enter information about prospective clients into the firm’s database so that future conflicts can be avoided.**

<sup>7</sup> Federal employment discrimination claims must be filed with the EEOC within 180 days of the alleged violation. *See* 42 U.S.C. § 2000e- 5(c)(1); 29 U.S.C. § 626(d); 42 U.S.C. § 12117(a).

<sup>8</sup> *See, e.g., Lerner v. Laufer*, 359 N.J. Super. 201, 819 A.2d 471, *cert. denied by* 177 N.J. 223, 827 A.2d 290 (2003) (an attorney is not liable for malpractice for failure to conduct discovery when a signed engagement letter expressly limited the scope of engagement to reviewing the terms of a property settlement document).



“Handbook on Limited Scope Legal Assistance” that includes numerous examples of limited scope engagement contracts. The handbook can be downloaded at: <http://www.abanet.org/litigation/taskforces/modest/report.pdf>.

### **Joint Representation**

If jointly representing clients, explain that it is not uncommon for parallel interests to diverge during the representation. Include the circumstances under which the firm may or may not continue to represent some of the parties. This typically involves a discussion of how representation will be impacted if one client leaves for reasons other than a conflict, the requirement of informed consent to continue representing some clients in the face of a conflict, and/or a promise not to seek disqualification of the attorney by the departing client.

If representing multiple clients, the possibility of aggregate settlements should also be discussed, as should the process that will be involved if one is offered. Rule 1.8(g) forbids an attorney from participating in an aggregate settlement without obtaining the informed consent of all clients in a signed written agreement. Informed consent requires that all claims be discussed with each person involved, including the nature of the claim and any plea involved. Furthermore, an offer cannot be accepted unless each client consents after being made aware of the share that each person will receive.

### **Getting Paid Without Suing Your Client <sup>9</sup>**

A significant number of legal malpractice claims begin as a counterclaim filed in response to an attorney’s suit to collect fees. After repeated failed collection attempts, the attorney resorts to suing the former client for the unpaid bill. The former client responds by filing a counterclaim alleging malpractice. Such claims are often without merit, but must nevertheless be reported to Lawyers Mutual and usually trigger the firm’s deductible.

To avoid suit over uncollected fees many firms require an advance payment deposit for work that will be billed on an hourly basis. The advanced payment funds are deposited in the firm’s trust account, and as work is completed, the attorney withdraws the funds earned from the trust account and deposits them in the operating account. Rule 1.15-3(d) requires that the lawyer provide the

## CASE STUDY

### **BILL FREQUENTLY TO AVOID LITIGATION**

While stopped in her vehicle, the client was rear-ended by the car behind her, which had been forced into her when the car behind it failed to stop. She then filed a lawsuit against both vehicles, but blamed her attorney when the suit against the middle vehicle was dismissed for intervening negligence. The lawyer sued his former client for attorney’s fees after she failed to pay invoices. The counter-claims included breach of contract, slander, defamation, libel, unfair and deceptive trade practices, intentional damages, mental distress, physical injuries, emotional distress, emotional injuries, abuse of the disabled, filing of frivolous lawsuits, ineffective assistance of counsel, and damages caused to the primary case. The attorney prevailed on all claims, but spent \$3,078.85 to recover \$6,462.15. He lost billable hours throughout the six year litigation and now fears the frivolous claims may be used to hurt future political interests.

<sup>9</sup> For a summary of fee types, see 2008 FEO10.



## CASE STUDY

### A LIMITED VICTORY

A corporation sought legal advice regarding whether it could repossess goods as a result of a customer's failure to pay for the goods. The attorney advised the corporation that this option was not available because the "term sheet" did not provide for a security interest in the goods. The attorney offered to modify the term sheet for future purchase orders so that the corporation would retain a security interest in future sales. Without consulting the attorney for additional advice, the corporation revised its term sheet in an attempt to obtain a security interest in a future sale. After the buyer defaulted on payments, the corporation learned that its interest was unsecured. In a claim for malpractice, the corporation alleged that the attorney failed to advise it to make changes to its sales agreement. The law firm prevailed on summary judgment, but over \$40,000 was expended on defense costs. The claim might have been avoided if the attorney had sent the corporate client a limited engagement letter.

"client a written accounting of the receipts and disbursements of all trust funds (i) upon the complete disbursement of the trust funds, (ii) at such other times as may be reasonably requested by the client, and (iii) at least annually if the funds are retained for a period of more than one year."

The engagement letter should cover how the client's funds will be handled, including whether interest will be earned. If the firm holds a substantial amount of money for a significant period of time, the funds should be invested prudently on the client's behalf.

In these situations, a dedicated trust account, as described in Rule 1.15-1(c), should be maintained separate from the firm's general trust account, and the interest generated provided to the client, per Rule 1.15(p).

Regardless of whether the firm collects payments/fees in advance or bills as work progresses, every client should receive a monthly statement of services rendered. Regular monthly billing statements help a lawyer fulfill the duty to communicate with the client, the requirements of Rule 1.15-3(d), and help avoid the element of surprise.<sup>10</sup>

Whether fees are collected in advance of services or billed monthly as work progresses, the firm's billing procedures should be described in the engagement letter. Identify the amount and character of fees collected, replenishment policies and the actions that will be taken if the policies are not followed. The fee agreement should also clearly indicate the types of expenses that will be covered by the advance payment, whether the client will be notified before the account is used to pay costs that exceed a previously designated amount and how often an itemized statement will be provided.

Lawyers Mutual strongly discourages lawsuits against former clients for the collection of unpaid fees because the likelihood of a counterclaim for malpractice is extremely high. Attorneys that bill monthly and include a termination clause in the engagement letter (providing for withdrawal for nonpayment of fees) are less likely to have the need to file lawsuits against their former clients.

### Unconscionable Fees

Rule 1.5 addresses fees, beginning with a discussion of those that are

<sup>10</sup> See, e.g., *Dreyer & Traub v. Handman*, 121 A.D.2d 256, 504 N.Y.S.2d 1 (1986) (a client cannot prevail when contesting fees by stating that the firm exceeded the scope of engagement if monthly statements were consistently sent to the client and were neither questioned nor objected to prior to default of payments).

unconscionable. Unconscionability of a fee agreement is usually based on an assessment of the facts and circumstances as they exist at the time the agreement is entered into, with additional consideration given to foreseeable latent factors.<sup>11</sup> Such conditions include: whether or not a fee is illegal or clearly excessive with respect to the value of the service provided; the difficulty of the issue; the skill required to perform the requested services; the experience and reputation of those who are working on the matter; the nature and length of the professional relationship with the client; the sophistication of the client; and the likelihood, if apparent to the client, that undertaking the requested responsibilities will preclude acceptance of other employment. Other factors include: whether the fees charged for particular expenses are excessive; whether the fee is one customarily charged for the requested service in that locality; the amount of money involved in the matter; the results obtained for the client; and whether the fee is fixed or contingent.

### **Contingency Fees**

Contingent fees are permitted under the Rules of Professional Conduct, but unlike hourly or fixed fee arrangements, which Rule 1.5(b) merely encourages communication in writing before or within a reasonable time after commencing representation, Rule 1.5(c) requires that all contingent fee agreements be reduced to writing and signed by the client. Additionally, the rule requires that the document include statements outlining the methods by which the fee will be determined, including the percentages that will be collected if the matter is settled, tried or appealed.

In a contingent fee case, any deductions for litigation costs or expenses that will be taken from the final recovery, whether before or after the attorney's per-

### **RULE 1.5(C)**

(c) . . . A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

centage is collected, must be confirmed in writing. It is crucial that the client have advance notification of any expenses that he or she will be liable for, whether or not the prevailing party.

Finally, Rule 1.5(c) obligates the lawyer to provide the client with a written statement at the conclusion of the matter. Included in this document should be a statement of the outcome of the matter and, if applicable, an account of the recovery, the portion that will be collected by the client, and how this number was calculated.

### **Fee Splitting**

The Rules of Professional Conduct permit referral fees and other divisions of fees between lawyers who are not in the same firm. For these situations, however, several restrictions apply. Rule 1.5(e) provides only two circumstances under which the splitting of fees are permissible: (1) the division proportionately reflects the services per-

<sup>11</sup> See, e.g., *In re Jessup*, 922 So. 2d 467 (La. 2006) (despite correspondence to the hourly rates detailed in a fee agreement, charging excessive fees led to a verdict of \$74,200 against the attorney, and disciplinary actions were taken in two different states in which the lawyer practiced).

**RULE 1.5(E)**

- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
  - (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
  - (3) the total fee is reasonable.

formed by each lawyer, or (2) both lawyers assume joint responsibility for the representation.<sup>12</sup> If joint responsibility is assumed, the total fee must still be reasonable, and the client must provide written informed consent to the division of fees, including the share that each lawyer will receive.<sup>13</sup> The lawyer's obligations under Rule 1.5(e) can be satisfied by including a discussion of the fee splitting arrangement in the engagement letter.

**The "Regular Client"**

Some attorneys object to the use of engagement letters for long-standing clients. The most common rationale behind this is a belief that clients who have long placed their trust in the firm may be insulted or embarrassed, but the reality is often otherwise. The client is unlikely to be as surprised by the prospect of a written engagement as one might expect. Not only does the written documentation provide as much protection to the client as it does to the firm, but most clients, whether an individual or a large corporation, are accustomed to confirming major purchases or agreements in writing.

If the client is regularly represented by the firm, the engagement letter may be abbreviated but, at the very least, a short confirmation of the scope of current duties and the fees to be charged should be issued. This abbreviation should be avoided, however, if the attorney and client have not previously worked together, even if other attorneys in the firm have represented the client.

**Rights to Termination or Withdrawal**

The engagement letter should inform the client of their right to terminate the attorney-client relationship at any time. The client should also be informed of those circumstances under which the firm may withdraw from representation. The engagement letter should specifically reserve the right to terminate the representation if the client fails to fulfill the obligations outlined in the engagement letter, falls unreasonably behind on payments, or if criminal conduct is involved.<sup>14</sup> Include a statement that upon written notice and subject to both Rule 1.16(b) and, if applicable, the authorization of the tribunal, withdrawal may be appropriate in several other situations as well.

**File Retention**

If not done so elsewhere, state the firm's policies with regard to file retention. In addition to discussing which files will be copied and retained by the firm, inform the client of how long the files will be kept, how long after the conclusion of the matter the files will be destroyed, the steps that should be taken if the client wishes for the firm to hold them longer than the standard period, and whether certain original documents or records will be held to secure outstanding payments. (1.15-2n)

<sup>12</sup> See, e.g., *Noris v. Silver*, 701 So. 2d 1238 (Fla. 1997) (there may be joint and several liability between the attorney who referred the client and the lawyer who commits malpractice if there is an agreement to share fees based on the referral and the fees are not proportional to work done on the matter).

<sup>13</sup> See, e.g., *Chambers v. Kay*, 29 Cal. 4th 142, 56 P.3d 645, 126 Cal. Rptr 2d 536 (2002) (the sharing of fees is barred without the written consent of the client despite early work as co-counsel and acknowledgement of the arrangement by the client).

<sup>14</sup> See, e.g., *Commonwealth of Pennsylvania v. Roman*, 379 Pa. Super. 331, 549 A.2d 1320 (1988) (when a lawyer requests permission to withdraw following the client's violation of a fee arrangement permitting withdrawal for a client's default on payments, withdrawal is appropriate).

## **Acknowledgement**

Finally, as is with all contracts, the strength lies in the signature. Indicate to the client that his or her signature not only acknowledges that he or she has assented to the terms of the agreement, but also that it has been read, reviewed and understood, that the opportunity has been made available to discuss its terms with either the firm or another attorney, and that no representations have been made regarding the outcome of the case. Expressly state that work on the case will not begin until a signed copy of the agreement has been received by the firm.

“I had thought for years that [engagement letters] would be a total turnoff. People fully understand and are generally comfortable with the idea. . . . They really don’t turn people away like I thought and several times I’ve actually been really happy that I had one to return to!”

Jean Carter, Hunter & Williams

## **NON-ENGAGEMENT LETTERS**

### **The Value of Non-engagement Letters**

Malpractice claims filed by those whom the attorney never even considered a client may actually pose a substantial liability risk. Because of this, the non-engagement letter should be a principle part of the client-intake process.

Without a fee, without a commitment to representation, and sometimes even without having offered any legal advice, an attorney could find himself the subject of a malpractice suit. This is because the determination of whether or not an attorney-client relationship was created is based on whether the non-client reasonably believed that he or she had engaged or received legal advice from the lawyer.<sup>15</sup> Without written evidence of non-representation, courts typically rule in favor of the prospective client if he or she detrimentally relied on the lawyer’s advice, even if done so as the result of a reasonable misunderstanding.<sup>16</sup>

Consider the prospective client who mistakenly walks into a firm that is exclusively dedicated to environmental law. After politely listening to the individual describe a clear and severe case of medical malpractice, the attorney replies that as unfortunate as the situation is, the firm cannot help. Interpreting this to mean that the case has no merits, the prospective client does not seek other counsel and the statute of limitation passes. Shortly thereafter, the prospective client discovers that she had a multi-million dollar claim and sues the unsuspecting environmental lawyer for malpractice.

Unfortunately, this was almost the exact scenario for the Minnesota law firm Vesely, Otto, Miller & Keefe in the principle non-client liability case.<sup>17</sup> After John Togstad suffered severe paralysis and lost the ability to speak because of a hospital’s failure to better supervise his condition or to use more appropriate methods of treatment, his wife contacted the firm

<sup>15</sup> See, *Broyhill v. Aycock & Spence*, 330 N.C. 438, 410 S.E.2d 392 (1991) (an express verbal agreement, fees or a formal contract is not necessary to establish an attorney-client agreement because such can be implied in conduct).

<sup>16</sup> *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980).

<sup>17</sup> See, e.g., *Hashemi v. Shack*, 609 F. Supp. 391 (S.D.N.Y. 1984) (court based determination that an attorney-client relationship did not exist solely on two written documents that confirmed to the client that the firm was awaiting authorization).

for consultation. No fee arrangements were discussed, no medical authorizations were requested and no bill was sent for the interview. The attorney testified that he told Mrs. Togstad that “there was nothing related in her factual circumstances that told me that she had a case that our firm would be interested in undertaking, . . . that this was only my opinion and she was encouraged to ask another attorney if she wished for another opinion, . . . she ought to do so promptly,” and that his firm “was not engaged as experts in the area of medical malpractice.”<sup>18</sup> Mrs. Togstad did not consult another attorney to learn the merits of her case, however, until after the statute of limitation on the medical malpractice claim had lapsed. The jury awarded \$650,000 in damages for the attorney’s negligence in rendering legal advice.

Even if a consultation with a prospective client is unlikely to result in a malpractice claim, sending a non-engagement letter is good for business. A letter in the hand of a person who turned out not to be a client is still a potential referral to someone who may be in the future. Bearing in mind that most people will retain law firm correspondence with other important documents, the non-engagement letter can help ensure that the firm’s contact information is readily available when a referral opportunity arises. If representation was declined because the case was outside the attorney’s area of practice, consider including a brochure describing the firm’s services. The extra effort could pay off in the future.

### **Awaiting Further Instructions**

The non-engagement letter is not limited to situations where the firm decides not to represent a prospective client but should also be utilized when it becomes evident that the client has decided not to proceed. If the firm has been awaiting further instructions for a questionable length of time after a consultation, a non-engagement letter should be issued. This documents that the client’s lack of communication or follow-through, not the firm’s neglect, was the reason that representation did not continue.

### **The Beauty Contest**

Some clients stage a “beauty contest,” checking out different firms to see which is most attractive. If your firm does not win the contest, be sure to send out a non-engagement letter to confirm that representation will not

## **CASE STUDY**

### **NON-CLIENT LIABILITY**

An attorney representing the buyer prepared various closing documents necessary to complete the sale of a retail business. The seller was represented by counsel who did not attend the closing. At the closing, the buyer requested that the seller refrain from filing the UCC-1 financing statement securing the transaction until after bank financing for an inventory loan was finalized. The seller did not file the UCC-1 financing statement until after the buyers stopped making payments to the seller. By that time, two other secured parties had filed priority liens. After the buyers filed bankruptcy, the seller claimed that the attorney represented both parties at the closing and that in his capacity as the seller’s attorney had negligently advised him to refrain from filing the UCC-1 financing statement until after the buyers defaulted on their payments. A non-engagement letter to the seller could have avoided the \$100,000 malpractice claim.

<sup>18</sup> *Togstad v. Vesely*, 291 N.W.2d at 691.

be undertaken. In this case, the non-engagement letter should also reassert that information learned during the consultation will not be used to disqualify the firm from representing any other party in the matter.

### **Multiple Parties**

When an attorney is representing less than all of the parties to a transaction, a non-engagement letter should be issued to the non-represented party, even if already documented in the engagement letter. Otherwise there is a risk that a misunderstanding (or a non-client's fabrication) will lead to claims that the lawyer was providing representation to all. Some courts have even suggested incorporating a recommendation to seek another attorney into the non-engagement letter to help minimize the risk involved.<sup>19</sup>

Similarly, written documentation will provide protection if one or more of the nonclients in the transaction are using another lawyer or proceeding without one but asks the firm to provide a limited service. For instance, if only the seller is represented in a transaction for the sale of a house and the buyer asks the seller's attorney to record the deed, the seller's lawyer should expressly state in writing that he or she will perform the requested service but is not otherwise representing the buyer.

### **Detrimental Reliance**

Claims of negligent misrepresentation can arise out of situations where an attorney, typically counsel for a corporation, offers opinions on a matter and another party to the contract relies on that opinion, even if that party has their own lawyer. No attorney-client relationship is claimed, but liability can still potentially exist for detrimental reliance. Typically, it is sufficient to add a disclaimer stating that such an opinion is intended exclusively for the benefit of the client and no other person

or party, but a non-engagement letter can serve as an alternative or a supplemental preventative measure.

### **Identifying the Accidental Client**

Equally as important as recognizing when to use the non-engagement letter is having the ability to identify who the document should be issued to. More specifically, the prudent attorney will recognize the "accidental client" as well as those with whom he or she has directly or indirectly conducted business.

### **The Social Gathering**

Everyone loves free legal advice. Nearly all attorneys are familiar with some derivative of the scenario where an otherwise innocent introduction at a social gathering quickly turns into shop talk. The problem is no research can be performed, the occasion provides little to no confidentiality, and it is not an appropriate setting to determine sufficient facts. Despite this, any response to a legal question can be indicative of acceptance to the request for legal advice and can subsequently cause liability for detrimental reliance. Ideally, the situation should be avoided entirely. Explain that as a rule of thumb business and pleasure are never mixed or offer a business card with an invitation to stop by the office for a consultation. If advice is offered, however, a non-engagement letter, albeit a brief one, should be sent to the person to confirm that there was no intention to represent, comment on merits, or offer an opinion that could reasonably be relied on.

### **Public Speeches or Lectures**

Similar care should be practiced when giving public speeches or lectures. If an opportunity to educate a mass audience arises, generally describe the law's ap-

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<sup>19</sup> See, e.g., *Cooper v. Olinde*, 565 So.2d 978 (La. App. 1 Cir 1990), writ denied by 569 So. 2d. 966 (La.1990) (an attorney either has a duty to advise other parties to a real estate transaction regarding certain aspects or to inform them that they should use another attorney).



plication to common and broadly stated scenarios. If a member of the audience asks a question dependent upon specific facts, note that your response is general in nature and is not intended to provide specific advice. Reinforce this idea by stating that someone facing such facts should consult a lawyer for further advice.

### **Using Non-engagement Letters**

Depending on the situation in which it is used, the actual length of the non-engagement letter can range from a couple of sentences to the better part of a page or more. The general guidelines to follow when drafting the document remain fairly consistent nonetheless. Specify the matter for which the firm was consulted and unequivocally state in the letter that the case will not be accepted. It is unnecessary to provide a reason, but if one is given, it should be done without making any comment on the merits of the case and without any statements pertaining to why certain parties may or may not be liable. Furthermore, it should be specifically expressed that neither research nor investigation

has been conducted and that no opinion is therefore being offered.

The client should be advised that time limits will apply to the case and that the penalty for missing such deadlines can be quite severe. Advise the non-client to consult with another attorney, and if needed, stress the urgency, but avoid providing any specific dates or particular attorneys. Either can be interpreted as further legal advice and can give rise to future liability.<sup>20</sup>

Greater protection is always provided when a signature is included on the non-engagement letter, but this is not always possible or practical. The letter should, however, be sent with a return receipt requested, and if any original documents were given to the firm during the consultation or preliminary interview, the non-engagement letter can be used as an opportunity to return them. A copy of the letter should be kept on file, preferably with the signed receipt attached. Keep copies of all non-engagement correspondence for a period of at least six years, otherwise, the letter may not be available to rebut claims of representation.

### **RISK MANAGEMENT TIP**

If it is not practical to send a non-engagement letter to a prospective client following an initial consultation, give the individual an office “receipt” acknowledging that formal representation has not begun. Keep a copy for your records for at least six years.

#### **SAMPLE OFFICE CONFERENCE RECEIPT AND NON-ENGAGEMENT NOTICE**

This receipt is to acknowledge payment by [CLIENT’S NAME] in the amount of \$ \_\_\_\_\_ for an office conference on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. It is understood that this payment is for the office conference only and that no further obligation is incurred by either party as a result of this conference and that [ATTORNEY’S NAME] has not yet been retained to represent the above-named individual. If and when [ATTORNEY’S NAME] is retained in this matter, a formal retainer agreement will be executed.

\_\_\_\_\_  
[ATTORNEY’S NAME]

<sup>20</sup> See *Tormo v. Yormark*, 398 F. Supp. 1159 (N.J. 1975) (ordinary care and skill must be exercised when referring a client).



## DIS-ENGAGEMENT LETTERS

### Terminating the Representation

An attorney or law firm may be sued for legal malpractice up to four years after the date of the alleged negligent act or omission.<sup>21</sup> Upon expiration of the three year statute of limitation or four-year statute of repose, any claims against the attorney are barred. Therefore, effective risk management includes adopting a practice of utilizing a Dis-engagement letter at the conclusion of every matter to document the precise date when the statute of limitation begins to run.

Typically, the attorney-client relationship ends when the client's objectives have been fulfilled. Although a client may dismiss the lawyer's services at any time, an attorney is not permitted to abandon the client prematurely. Instead, Rule 1.16(d) states that an attorney may withdraw from the representation, but only after taking "... reasonable steps to avoid foreseeable prejudice to the rights of his [or her] client, including giving due notice to his [or her] client, allowing time for employment of other counsel, delivery to client of all papers and property to which the client is entitled and complying with applicable laws and rules."<sup>22</sup>

The client is entitled to representation by the counsel of his or her choice and may terminate the relationship at will. A claim of malpractice automatically dissolves the relationship because of the conflict of interest that has arisen. The attorney-client relationship is also terminated without prior notice by a client's death. Express permission to continue representation

of the deceased client must come from the personal representatives of the decedent.<sup>23</sup>

Similarly, the attorney-client relationship ends with the death of the lawyer and may also cease due to arising mental or physical impairments. A lawyer's loss of capacity to perform for the client suspends the authority to act on the client's behalf and withdrawal becomes mandatory when mental or physical conditions render it unreasonably difficult to carry out employment effectively, per Rule 1.16(a). If such developments have merely caused added difficulty, withdrawal is permissive, but not required.<sup>24</sup>

The "death" of the firm itself, however, does not eliminate the contractual obligation to the client. Each client of a dissolved partnership has the option of choosing to be represented by any member of the partnership or to seek other counsel. Ethics Opinion RPC 48 mandates that the client be notified of the change and given an opportunity to choose that the firm continue representation, continue with the original attorney or hire another firm. If the original attorney does not wish to continue the representation, then the appropriate steps for withdrawal, including permission of the court if applicable, should be followed.

### Documenting the End of the Representation

When the attorney-client relationship ends, whether as the result of the client's termination, the firm's

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<sup>21</sup> N.C. Gen. Stat. § 1-15(c) (2006). (indicating a three year statute of limitation and a four year statute of repose).

<sup>22</sup> *Commonwealth of Pennsylvania v. Scheps*, 361 Pa. Super. 566, 574, 523 A.2d 363, 367 (1986) (quoting *McDonnell v. Tabah*, 297 F.2d 731, 733 (2nd Cir. 1961), *appeal denied* by 516 Pa. 633, 533 A.2d 91 (1987)). *See also, e.g., Delesdernier v. Porterie*, 666 F.2d 116 (5th Cir.1982), *cert. denied* by 459 U.S. 839, 103 S.Ct 86 (1982) (affirming damages awarded to client for severe mental anguish resulting from attorney's withdrawal two months before trial after more than fifteen years of representation during preparations).

<sup>23</sup> Thomas P. McGarry, *Breaking Away: Avoiding Malpractice When the Attorney-Client Relationship Ends*, Hinshaw & Culbertson Resource Center, May 1, 2000, Online: [http://hinshawlaw.com/knowledge/publication\\_detail.aspx?id=1965&type=5274](http://hinshawlaw.com/knowledge/publication_detail.aspx?id=1965&type=5274).

<sup>24</sup> N.C. R.P.C. 1.16(b) (2006) (a lawyer may withdraw from representing a client if it can be accomplished without material adverse effect on the interests of the client and if good cause for withdrawal exists).

withdrawal, or simply due to completion of the matter, the client should be informed in writing. This not only ensures that the client is aware that a continuing duty does not exist, but it also documents the closure of the relationship, precisely why representation ended and that no further actions will be taken by the firm on the client's behalf.<sup>25</sup>

It is essential that any limitations on continuing services or responsibilities be clearly communicated because most states toll the statute of limitation on bringing a legal malpractice suit during the time that a lawyer handles any aspect of the matter.<sup>26</sup> Furthermore, by providing written documentation, clients are unlikely to claim that an attorney's silence indicated that all legal issues were satisfactorily resolved.

Issuing a Dis-engagement letter also provides the attorney with an opportune moment to settle the account. Any original documents or other belongings of the client should be returned with the letter. Refund unearned fees or any other funds held on the client's behalf. If any fees or expenses remain unpaid, final bills or invoices should be included with the letter. Inform the client about the firm's file retention and destruction policy. If applicable, alert the client to any final actions that need to be taken or to changes in the law or personal circumstances that would warrant a review of the client's legal affairs.<sup>27</sup> If the firm decides to take on the responsibility of following-up with or notifying the client in the future, expressly state exactly what duties are being assumed and that responsibilities are limited to those explicitly stated.

Finally, the Dis-engagement letter provides an opportunity to enhance client relations. A client who is pleased with an attorney's representation is less likely to bring a malpractice suit. Use this final opportunity to express gratitude for the client's business. If a favorable outcome was achieved, briefly remind the client of this fact. If desired, enclose a survey to evaluate and help enhance the quality of service provided by the firm.

## CASE STUDY



### CONTINUING DUTY

After representing a client in an alienation of affection case, the attorney left the firm and only brought active files to the new practice, which the aforementioned case was not. Ten years later, the client contacted the attorney when she realized that the statute of limitation had lapsed on the judgment renewal. The attorney maintains that such a duty was never assumed and that this type of representation would involve a new lawsuit with new fees to cover newly incurred expenses. Nonetheless, the attorney was sued for \$150,000 because the former client asserted that she detrimentally relied on assurances that the judgment would be automatically renewed by the firm. There is no written documentation to prove otherwise.

<sup>25</sup> See, e.g., *Barragree v. Tri-County Electric Cooperative, Inc.*, 263 Kan. 446, 950 P.2d 1351 (1997) (lawyer could have avoided litigation regarding the end of attorney-client relationship with use of a Dis-engagement letter).

<sup>26</sup> See, e.g., *Troy's Stereo Center, Inc. v. Hodson*, 39 N.C. App. 591, 251 S.E.2d 673 (1979) (equitable estoppel tolls the statute of limitation for legal malpractice if the attorney is silent when he or she has a duty to act).

<sup>27</sup> See, e.g., *Mayo v. Engel*, 733 F.2d 807 (11th Cir. 1984) (a Dis-engagement letter provides protection to attorney from later claims of continuing duty).

If you are attorney-of record in the case, remember that you must obtain a substitution of counsel or a court order releasing you from the case!

### **Using Dis-engagement Letters:**

#### **Termination or Withdrawal**

Many of the same procedures related to Dis-engagement letters issued at the close of the matter also apply when the attorney-client relationship ends prior to the conclusion of the representation. When representation of a particular matter is finished, the client may expect or choose to end the attorney-client relationship. However, if the attorney chooses to withdraw from representation before the conclusion of the matter, the client must be apprised of the reason for termination clearly and in writing. When doing so, avoid commenting on the merits of the case, but generally alert the client of time limitations and stress the need to obtain another lawyer promptly. If the reason for withdrawal is a client's failure to make payments or fulfill a particular obligation, it is within the firm's discretion to provide the client an opportunity to remedy the situation.

To reduce acrimony with the client, explain that there is still time to seek substitution of counsel without jeopardizing the case. If court permission is required to withdraw, seek the client's consent before filing a motion.

The Dis-engagement letter can also be used to clarify the relationship that the firm will have with subsequent counsel. Address whether consultations will occur and any conditions that will be necessary for this to happen, such as client consent. Let the client know that the firm will ultimately cooperate

with successive counsel, but document the extent to which work product will be shared, how the client's files and documents will be transmitted and whether compensation for the time will be necessary.

If a client terminates the representation, it is equally important to document the event with a Dis-engagement letter. If the client is disgruntled and threatens to file a grievance or claim against the attorney or firm, the incident should be immediately reported in writing to Lawyers Mutual. Failure to timely report a potential claim could void coverage under the firm's policy.

#### **The Regular Client**

A Dis-engagement letter should be sent at the conclusion of every matter, even if the firm intends to continue representing the client on other issues. The statute of limitation on a potential malpractice claim begins to run at the time of the alleged negligent act. If a malpractice claim is asserted more than three years after the file on the matter has been closed, it is likely that the claim will be barred.

At the conclusion of a case, send the client a letter noting that all work on the matter has been concluded and that the firm is closing the file. If appropriate, return property and funds belonging to the client. If you will be working on another matter for the client, a new file should be opened with a new reference number, and an appropriate letter of engagement should follow.

## **Delivering Dis-engagement Letters**

As previously stated, the three-year statute of limitation or four-year statute of repose on a malpractice claim begins running on the date the alleged negligent act or omission occurred.<sup>28</sup> Therefore, for some matters, it is advisable to send the Dis-engagement letter by certified mail and confirm receipt by the client. Although not practical for every matter, it is especially important to send the Dis-engagement letter by certified mail, return receipt requested, if the client or attorney terminates the relationship prior to the conclusion of the matter, or if the client is dissatisfied with the resolution of the representation.

Regardless of delivery method, a copy of the letter should be kept in the client file, preferably with the return receipt attached. Copies of all client files should be retained for a minimum of six years following the date of the Dis-engagement. Ethics Opinion RPC 209 provides that files may be destroyed without client consent six years after they are closed.

## **Withdrawing from Abandoned Claims**

A surprisingly common question that attorneys encounter is how to proceed when a client cannot be located during the course of a representation. North Carolina Ethics Opinion RPC 223 states that an attorney is constructively discharged from representation if unable to contact a client after taking reasonable steps to do so.

If there is sufficient time to conduct a search without danger of a lapsing statute of limitation, first turn to the information collected during the client intake process. If the client cannot be reached at the personal address or phone numbers on file, try contacting known family

members or personal contacts noted in the record. A driver's license number or social security number can be used to search the public records or taken to court for a request of records on file at the State Division of Motor Vehicles. A title search may disclose changes to property ownership, or if a medical release is on file, information may be available from the client's doctor or hospital. Finally, private locator services such as Data Check Systems<sup>29</sup> boast high success rates and do not collect fees if the individual sought is not found. Court Search<sup>30</sup> is an alternative investigation tool that allows the search of millions of court records for a small fee.

After reasonable but unsuccessful attempts to locate the client, it is appropriate to send a Dis-engagement letter to the client's last known address. The document should not only state the length of time that the firm has been unable to establish contact and that the client's file is being closed, but it should also include a brief outline of the process involved in trying to locate him or her.

If a client disappears within a few weeks or months of the running of the statute of limitation, additional precautions are warranted to avoid liability for a missed deadline. The absentee client could resurface and allege they had no knowledge of the deadline and thought that the lawyer was handling everything. One way to avoid this problem is to file the complaint on the client's behalf with the good faith intention of pursuing the matter if the client reappears. If unable to locate the client after reasonable attempts to do so, file a motion to withdraw from the case.

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<sup>28</sup> N.C. Gen. Stat. § 1-15(c) (2006).

<sup>29</sup> Data Check Systems • P.O. Box 10162 • Greensboro, NC 27404-0162 • (336) 288 – 3655 • <http://www.Datachecksystems.com/> \*Not affiliated with or endorsed by Lawyers Mutual Liability of NC\*

<sup>30</sup> <http://www.courtsearch.com/> \*Not affiliated with or endorsed by Lawyers Mutual Liability of NC\*

## LETTER NOTIFYING CLIENT OF DESTRUCTION OF FILE

[Date]

[Client Name]

[Street]

[City State Zip]

RE: [Name of Case]

Dear: [Name]

Please be advised that the Firm is purging its files of records pertaining to matters that have been closed for more than six (6) years. Our policy is to contact our clients and notify them of our intention to destroy the records unless they wish them returned.

Since these dead files pertain to matters that were concluded over six (6) years ago, you may not wish for their return. However, we will make these files available to you upon your written request. Please indicate your preference for destruction or return of the files on the attached listing and return it in the enclosed, self-addressed stamped envelope.

If you select destruction, the files will be physically destroyed by a method that will preserve client confidentiality. You will not be charged for this service.

If we are notified that you have received this letter, but we receive no response within six (6) weeks of your receipt, we will assume that you wish the file(s) to be destroyed.

If you wish the records returned, please contact us to arrange transfer of the file.

If you have questions, please address them to \_\_\_\_\_.

As always, we greatly appreciate your business and hope to continue working with you. Thank you for your assistance. You may receive additional correspondence regarding closed files for other work we have done on your behalf.

Sincerely,

*Attorney]*

*[Firm]*

\_\_\_\_\_ I/we prefer the file materials be destroyed.

\_\_\_\_\_ I/we prefer the return of the file(s).

\_\_\_\_\_  
[Client]

\_\_\_\_\_  
[Date]

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## **ENGAGEMENT LETTER: PRE-ENGAGEMENT**

[Date]

[Potential Client Name]

[Potential Client Address]

[Potential Client Address]

Re: Potential Representation

File ID:

Dear [Potential Client's Name]:

You have expressed an interest in discussing with us the possibility of [Law Firm Name] representing [Name of Company] in [describe prospective engagement]. We look forward to meeting with you on [Date] to discuss [Law Firm]'s qualifications and non-confidential information relating to the \_\_\_\_\_ matter.

You have indicated that you will be interviewing other law firms and it is therefore possible that you may decide not to retain us in the matter. We understand fully your desire to proceed in that manner. You, in turn, understand and have agreed that no attorney-client relationship will exist unless and until you decide to retain [Law Firm], and [Law Firm] agrees to represent you in this matter and an appropriate engagement letter has been executed.

You have also agreed that you will not disclose confidential information to us at our upcoming meeting, but only matters of general knowledge and facts already "of record". You have further agreed that nothing occurring at this meeting will be used to prevent [Law Firm] from future representation of others adverse to [The Company] if [The Company] does not retain us.

Please sign below to indicate your agreement with the foregoing.

Very truly yours,

[Attorney Name]

[Law Firm]

[Date]



**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: SIMPLE

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Engagement For Legal Services

File ID:

Dear [Client's Name]:

We are pleased that you have asked the firm to serve as your counsel. At the outset of any engagement, we believe it is appropriate to confirm in writing the nature of the engagement and the terms of our representation, and that is the purpose of this letter. If you have any questions about this letter or any of its provisions, do not hesitate to call. Otherwise, this letter and the attached Policy will represent the terms of our engagement. Again, we are pleased to have the opportunity to serve you.

### *Scope of Representation*

We have been engaged to represent [client's name] for the purpose of \_\_\_\_\_

\_\_\_\_\_, hereafter referred to as the "matter" or "engagement". However, engagement does not include \_\_\_\_\_.

### *Billing and Fee Policy*

Our fees will be based primarily on the hourly rate for each attorney and legal assistant devoting time to this matter. Our standard hourly rates for attorneys likely to be involved currently range from \_\_\_\_\_ to \_\_\_\_\_ per hour. Time devoted by legal assistants is charged at hourly rates ranging from \_\_\_\_\_ to \_\_\_\_\_ per hour. These rates are subject to periodic changes by our firm. In addition to the number of hours involved, we take into consideration other factors in determining our fees, including the urgency of the matter, the responsibility assumed, the novelty and difficulty of the legal problem involved, particular experience or knowledge provided, time limitations imposed by the client or matter, the results obtained, the benefit resulting to the client, and any unforeseen circumstances arising in the course of our representation.

We bill for out-of-pocket expenses, and also bill an administrative expense charge per billable hour in lieu of charging for long distance charges, routine copy costs, postage, and similar office expenses. Please refer to our attached Billing and Fee Policy, which is incorporated herein and made a part of the terms of our engagement for further details regarding our agreement regarding payment or reimbursement of fees and expenses.

### *General Waiver of Conflicts*

As we have discussed, you are aware that the firm represents many other companies and individuals. You agree that we

may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters may be directly or indirectly adverse to you. We agree, however, that the prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments during the course of our representation.

Very truly yours,

[Attorney Name]  
[Law Firm Name]  
[Date]

Enclosure:

The foregoing letter accurately states the terms of our engagement of [Law Firm] to represent us in connection with the matter and under the circumstances described above, including our waiver of any existing conflicts and our waiver of future conflicts.

\_\_\_\_\_  
[Client's Name]

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

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: HOURLY FEE

[date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Engagement

File ID:

Dear [Client's Name]:

We are pleased that you have asked [Law Firm] to serve as your counsel. At the outset of any engagement, we believe it is appropriate to confirm in writing the nature of the engagement and the terms of our representation, and that is the purpose of this letter. If you have any questions about this letter or any of its provisions, do not hesitate to call. Otherwise, this letter [and the attached Policy] will represent the terms of our engagement. Again, we are pleased to have the opportunity to serve you.

*Client(s):* [Name Client(s)] will be our only client(s) in this matter.

### *Scope of Representation*

We have been engaged to represent [client's name] for the purpose of \_\_\_\_\_

\_\_\_\_\_, hereafter referred to as the "matter" or "engagement". However, engagement does not include \_\_\_\_\_

### *Nature of Relationship*

Our objective is to provide high quality legal services to our clients at a fair and reasonable cost. The attorney-client relationship is one of mutual trust and confidence. If any of you has any questions at all concerning the terms of this engagement, our ongoing handling of this legal matter, or about any issue relating to a monthly statement that is unclear or appears to be unsatisfactory, we invite your inquiries.

### *Multiple Attorneys*

[Attorney's Name] will be the primary attorney handling this matter. [Attorney's Name] will be available to you for conferences and meetings upon your request, and you can call the office at any time for questions or concerns. In the event that [Attorney's Name] is unavailable, [Alternate Contact] will be fully informed and prepared to discuss any issues or respond to any inquiries. You should also be aware that other partners, attorneys, paralegals or experts from outside the firm will be called upon as necessary so that the best possible services can be provided.

Even though you have delegated certain levels of authority to act on your behalf, there will be times when we will not be able to proceed without your full and sometimes written consent, such as when negotiating settlement offers or when conflicts of interest arise. Please notify us of any plans for extended travel or if any changes are made to contact information.

*Communications*

It is important to keep our communications with you confidential. There are legal reasons for confidentiality such as avoiding risk of inadvertent disclosure or loss of attorney client privilege.

You should avoid any communications of sensitive matters with us where the conversation might be overheard. You should avoid discussing any of our communications with other people including your family and friends.

You should avoid using any workplace computer to send us email. Employee communications on workplace computers are typically subject to an employer's internal policies. These policies often permit your employer access to your email communication even on your personal email account.

Our firm uses email to communicate with clients but you should only do so on a personal computer, device and network using a personal email address.

*Fees and Expenses*

Our fees will be based primarily on the hourly rate for each attorney and legal assistant devoting time to this matter. Our standard hourly rates for attorneys likely to be involved currently range from \_\_\_\_\_ to \_\_\_\_\_ per hour. Time devoted by legal assistants is charged at hourly rates ranging from \_\_\_\_\_ to \_\_\_\_\_ per hour. These rates are subject to periodic change by our firm. In addition to the number of hours involved, we take into consideration other factors in determining our fees, including the urgency of the matter, the responsibility assumed, the novelty and difficulty of the legal problem involved, particular experience or knowledge provided, time limitations imposed by the client or matter, the results obtained, the benefit resulting to the client, and any unforeseen circumstances arising in the course of our representation.

We bill for out-of-pocket expenses, and also bill an administrative expense charge per billable hour in lieu of charging for long distance charges, routine copy costs, postage, and similar office expenses. [Please refer to our attached Billing and Fee Policy, which is incorporated herein and made a part of the terms of our engagement, for further details regarding our agreement regarding payment or reimbursement of fees and expenses.]

Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 30 days, we may suspend performing services until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses, and if such arrangements are not made, subject to applicable rules of professional conduct governing attorneys, we may terminate the engagement and withdraw from further representation.

As we have discussed, the fees and costs relating to this matter are not predictable. We estimate that the fees for this matter will be approximately \$\_\_\_\_\_ to \$\_\_\_\_\_. This figure is provided simply to assist with proper budgeting and is not a determination of the minimum or maximum fees that will be incurred. It is also expressly understood that payment of the firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

*Billing and Fee Policy (Option A)*

Payments will be made to the firm in the form of a retainer fund. It has been agreed that the initial deposit into the account will be in the amount of \$\_\_\_\_\_. This money will be placed in the firm's general trust account where it will be held until used to pay for discussed fees and expenses. It is important to note that representation cannot commence until the full \$\_\_\_\_\_ has been deposited. If the balance of the account falls below \$\_\_\_\_\_, [Client's Name] will immediately be notified. Any unused portions of the retainer fund will promptly be refunded at the conclusion of the engagement.

If the retainer fund is not replenished according to this agreement, the firm will immediately attempt to contact [Client's Name], at which time efforts will be made to resolve the situation. Interest will be calculated at a compound rate of \_\_\_\_% per month for every month that the balance is outstanding, and these fees are to be paid to the firm for deposit into a general account that is independent of our representation in this matter. If the outstanding balance has not been reasonably reduced within [State Time Period] months of default, notice will be sent to [Client's Name] with a request to withdraw from representation.

*Billing and Fee Policy (Option B)*

Enclosed is a copy of our [Billing and Fee Policy.] We encourage you to review the Policy and to contact us if you have any questions. The Policy shall apply except to the extent expressly modified by this letter.

*Conclusion of Representation; Retention and Disposition of Documents*

Unless previously terminated, our representation of you will terminate upon the conclusion of this matter, our written notice to you that the engagement has concluded and the mailing of our final statement for services rendered in connection with this matter. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. All documents retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

*Termination of Legal Services*

We are confident that we can work together in a manner satisfactory to you. However, you are free to terminate our services at any time. In addition, and subject to applicable rules of professional conduct governing attorneys, in the event we disagree on any aspect of this engagement or for other appropriate reasons, we have the right to withdraw from further representation of you. If you elect to terminate this engagement prior to conclusion of the matter, or if we elect to withdraw, you are responsible for paying our attorneys fees and expenses accrued through the effective date of the termination of this engagement in accordance with the Fee and Expense provisions of this letter set out above.

*Post-Engagement Matters*

You are engaging the firm to provide legal services in connection with a specific matter. After completion of the engagement, there may be changes in applicable laws or regulations, or new legislation or court decisions, that could have an impact upon you, your future rights and liabilities, or the matter for which we are engaged hereunder. You understand and agree that you are not engaging us to monitor new legislation or court decisions, or changes in laws or regulations, that occur after we have completed the engagement described above, and you agree that we are not responsible for advising you of any such new legislation or court decisions, or changes in laws or regulations.

*General Waiver of Conflicts*

As we have discussed, you are aware that the firm represents many other companies and individuals. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters may be directly or indirectly adverse to you. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

*Acknowledgement*

If you have read, understood and are in agreement with the terms of our engagement as outlined above and in the attachment, sign and return a copy of this letter in the enclosed self-addressed envelope. We cannot begin to represent you until we have received the signed confirmation of our engagement.

Again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments during the course of our representation.

Very truly yours,

[Attorney Name]

[Law Firm]

[Date]

Enclosure:

The foregoing letter and the attachment accurately state the terms of our engagement of [Law Firm] to represent us in connection with the matter and under the circumstances described above, and this confirms our waiver of any existing conflicts and our waiver of future conflicts as described in the preceding letter.

\_\_\_\_\_  
[Client's Name]

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

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: CONTINGENCY FEE

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Engagement

File ID:

Dear [Client's Name]:

We are pleased that you have asked [Law Firm] to serve as your counsel. At the outset of any engagement, we believe it is appropriate to confirm in writing the nature of the engagement and the terms of our representation, and that is the purpose of this letter. If you have any questions about this letter or any of its provisions, do not hesitate to call. Otherwise, this letter [and the attached Policy] will represent the terms of our engagement. Again, we are pleased to have the opportunity to serve you.

*Client(s):* [Name Client(s)] will be our only client(s) in this matter.

### *Scope of Representation*

Our representation will be limited to the specific matters described in this paragraph. [Law Firm] has been engaged to represent [Client's Name] for the purpose of \_\_\_\_\_

\_\_\_\_\_, hereinafter referred to as the "matter" or "engagement." However, engagement does not include \_\_\_\_\_.

### *Nature of Relationship*

Our objective is to provide high quality legal services to our clients at a fair and reasonable cost. The attorney-client relationship is one of mutual trust and confidence. If any of you has any questions at all concerning the terms of this engagement, our ongoing handling of this legal matter, we invite your inquiries.

### *Fee Agreement*

You have agreed with us that the firm will undertake this engagement on a contingency fee basis. Our fee will be based upon all amounts recovered on your behalf, including actual damages, punitive or exemplary damages, treble damages, interest, and attorneys fees, but excluding any recovery of costs awarded to reimburse out-of-pocket expenses incurred in bringing your claims. Our fee will be \_\_\_\_\_ percent ( %) of all amounts recovered on your behalf by any settlement(s) made prior to filing legal action, and our fee will be \_\_\_\_\_ percent ( %) of all amounts recovered on your behalf after legal action is filed, whether by settlement, jury verdict, or otherwise, unless there is an appeal of an award in your favor. If any award by a trial court in your favor is appealed, our fee will be [percentage] percent ( \_\_%) of all amounts ultimately recovered if there is a single appeal, and our fee will be [percentage] percent ( \_\_%) of all amounts



ultimately recovered on your behalf if there is more than one appeal. Unless the Termination of Services provisions apply as set out below, the contingency fee would only be due and paid in the event you recover damages or other amounts as a result of the Accident.

In addition to any contingency fee we earn in the event of a recovery, you are responsible for out-of-pocket expenses, including deposition charges, medical records charges, Federal Express and similar charges, large copying projects and messenger services. We would bill these charges separately, generally during the month following the month in which out-of-pocket expenses are incurred. We may advance out-of-pocket expenses and defer billing for them until the conclusion of this matter, in which event you agree that we may deduct and retain those amounts from any recovery, or you will pay them at the time of any recovery, in addition to the contingency fee described above.

We have attached our Billing and Fee Policy which applies to this engagement, except to the extent that this letter provides differently. In that regard, the administrative expense charge described in the attached Billing and Fee Policy, for which we ordinarily charge a fixed amount per hour of services rendered, will not be charged separately, and these are covered by the contingency fee set out above.

*Termination of Legal Services; Fees and Expenses Due*

We are confident that we can work together in a manner satisfactory to you, but you are free to terminate our services at any time. However, if you terminate this engagement before a final settlement or conclusion of this matter, you agree that our fee has been earned, and you agree to pay [Law Firm], at our option, an amount equal to (a) the hourly rate for the services of the attorneys and paralegals who work on this matter, based upon their standard hourly rates as adjusted from time to time during this engagement, plus all out-of-pocket expenses and all of the administrative expense charges as described in the Billing and Fee Policy, or (b) that percentage of any settlement or other recovery for your claims that would have applied had the recovery been made at the time we last represented you (for example, if you terminate our firm before legal action is filed, and you ultimately make a recovery, we would be entitled to \_\_\_\_%; if you terminate our firm after legal action is filed but before a settlement or trial verdict, and you ultimately make a recovery, we would be entitled to \_\_\_\_%), plus all out-of-pocket expenses we incurred.

Although we do not contemplate at this time any reason why we would seek to withdraw from representing you, should we determine in our discretion that we should withdraw and we are ethically permitted to do so, we retain the right to do so subject to such court approval, if any, that may be required, and in that event you would only be required to pay or reimburse any out of pocket expenses we incurred on your behalf that you had not previously paid, and you would not owe any fee to us unless our withdrawal was caused by your refusal to cooperate or communicate with us in the pursuit of your claims. If our withdrawal was caused by your refusal to cooperate or communicate with us in the pursuit of your claims, you agree that this shall be treated as if you had terminated our services, and our fee would be deemed earned in accordance with the preceding paragraph. Again, we certainly hope and expect that there will be no reason for either of us to want to terminate the engagement, and we look forward to representing you to the conclusion of this matter.

*General Waiver of Conflicts.*

As we have discussed, you are aware that the firm represents many other companies and individuals. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters may be directly or indirectly adverse to you. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

*Conclusion of Representation; Retention and Disposition of Documents.* Unless previously terminated, our representation of you will terminate upon the conclusion of this matter by the resolution of all claims by recovery of your damages and other amounts as a result of the Accident whether as a result of an award of damages at trial, a settlement, a mediation or arbitration, or any combination thereof. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. All documents retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

*Acknowledgment*

If you read, understand and are in agreement with the terms of our engagement as outlined above and in the attachment, sign and return a copy of this letter in the enclosed self-addressed envelope. We cannot begin to represent you until we have received the signed confirmation of our engagement. Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments during the course of our representation.

Very truly yours,

[Attorney Name]

[Law Firm Name]

[Date]

Enclosure:

The foregoing letter and the attachment accurately state the terms of our engagement of [Law Firm] to represent us in connection with the matter and under the circumstances described above, including the contingency fee agreements, and this confirms our waiver of any existing conflicts and our waiver of future conflicts as described in the preceding letter.

\_\_\_\_\_  
[Client's Name]

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

## **ENGAGEMENT LETTER: ALTERNATE CLAUSES - FEES PAID IN ADVANCE: ADVANCED PAYMENT, GENERAL RETAINER, FLAT FEE AND MINIMUM FEE (2008 FEO 10)**

### **Advance Payment**

As a condition of the employment of Lawyer, Client agrees to deposit \$\_\_\_\_\_ in the client trust account maintained by Lawyer's firm. This money is a deposit securing payment for the legal work for Client that will be performed by Lawyer and his/her staff. Legal work will be billed on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement. Client specifically authorizes Lawyer to withdraw funds from Client's deposit in the trust account when payment is earned by the performance of legal services for Client. When the deposit is exhausted, Lawyer reserves the right to require further reasonable deposits to secure payment. Lawyer will provide Client with a [monthly, quarterly, etc.] accounting [upon request] for legal services showing the legal fees earned and payment of the fees by withdrawal against Client's deposit in the trust account. Client should notify Lawyer immediately if Client retracts his/her consent to the withdrawal of money from Client's deposit in the trust account to pay for legal services. When Lawyer's representation ends, Lawyer will provide Client with a written accounting of the fees earned and costs incurred, and a refund of any unearned portion of the deposit that remains in the trust account [less expenses associated with the representation].

### **General Retainer**

As a condition of the employment of Lawyer, Client agrees to pay \$\_\_\_\_\_ to Lawyer. This money is a general retainer paid by Client to ensure that Lawyer is available to Client in the event that legal services are needed now or in the future and to insure that Lawyer will not represent anyone else relative to Client's legal matter without Client's consent.

Client understands and specifically agrees that:

- the general retainer is not payment for the legal work to be performed by Lawyer;
- Client will be billed separately for the legal work performed by Lawyer and his/her staff. Legal work will be billed on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement;
- the general retainer will be earned by Lawyer immediately upon payment and will be deposited in Lawyer's business account rather than a client trust account; and
- when Lawyer's representation ends, Client will not be entitled to a refund of any portion of the general retainer unless it can be demonstrated that the general retainer is clearly excessive under the circumstances.

### **Flat Fee (or Prepaid Flat Fee)**

As a condition of the employment of Lawyer, Client agrees to pay \$\_\_\_\_\_ to Lawyer as a flat fee for the following specified legal work to be performed by Lawyer for Client: [description of legal work]

Client understands and specifically agrees that:

- the flat fee is the entire payment for the specified legal work to be performed by Lawyer regardless of the amount of time that it takes Lawyer to perform the legal work;
- the flat fee will be earned by Lawyer immediately upon payment and will be deposited in Lawyer's business account

- rather than a client trust account; and
- when Lawyer's representation ends, Client will not be entitled to a refund of any portion of the flat fee unless (1) the legal work is not completed, in which event a proportionate refund may be owed, or (2) it can be demonstrated that the flat fee is clearly excessive under the circumstances.

### **Minimum Fee**

As a condition of the employment of Lawyer, Client agrees to pay \$\_\_\_\_\_ to Lawyer. This money is a minimum fee for the reservation of Lawyer's services; to insure that Lawyer will not represent anyone else relative to Client's legal matter without Client's consent; and for legal work to be performed for Client.

Client understands and specifically agrees that:

- the minimum fee will be earned by Lawyer immediately upon payment and will be deposited in Lawyer's business account rather than a client trust account;
- Lawyer will provide legal services to Client on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement until the value of those services is equivalent to the minimum fee; thereafter, Client will be billed for the legal work performed by Lawyer and his/her staff on an hourly basis [or other appropriate basis] according to the schedule attached to this agreement; and
- when Lawyer's representation ends, Client will not be entitled to a refund of any portion of the minimum fee, even if the representation ends before Lawyer has provided legal services equivalent in value to the minimum fee, unless it can be demonstrated that the minimum fee is clearly excessive fee under the circumstances.

## ENGAGEMENT LETTER: ALTERNATE CLAUSES - THIRD PARTY PAYOR OF FEES AND EXPENSES

*[NOTE: In addition to supplementing the engagement letter with a clause regarding third party payment of fees and expenses, a separate letter should be sent to the third party payor confirming that he or she is not the Lawyer's client, is not entitled to receive privileged or confidential information, and will not have input regarding the direction of the representation. This separate letter should also confirm details of the billing arrangement with the third party payor, in accordance with parameters set by the client.]*

### Fees and Expenses Paid by Third Party

As we have discussed, some or all of the fees for legal work performed by Lawyer for Client will be paid by \_\_\_\_\_ (the "Third Party Payor").

Based on all the information presently available, Lawyer has concluded that this arrangement will not compromise Lawyer's duty of loyalty or independent judgment to the client. Specifically, Lawyer has determined that his or her representation of Client will not be materially limited by Lawyer's own interests in accommodating Third Party Payor or by Lawyer's responsibilities to a payer who is also a co-client. In reaching this conclusion, Lawyer has considered the requirements of Rule 1.7(b) of the North Carolina Rules of Professional Conduct.

It is understood and agreed that Third Party Payor is not Lawyer's client in this matter. Lawyer will take instructions from Client, not from Third Party Payor, and Lawyer will only pursue Client's best interests in this matter. Third-Party Payor will not be consulted concerning strategic decisions in the case, nor will he or she in any other way have power, input, or influence as to the representation. Lawyer's sole duty and loyalty in this matter is to Client. Privileged or confidential information cannot and will not be disseminated to any third party, including Third Party Payor, except as directed by Client. Please let the Firm know immediately if Client objects to the Firm sending invoices directly to Third Party Payor that contain detail of each task performed on Client's behalf, who performed the task, and how long the task took to complete. If the Client has any concerns regarding Lawyer's billing method, we will work closely with Client to come up with an alternative that is acceptable to the Lawyer, Client and Third Party Payor, such as sending only summary invoices to the Third Party Payor.

Although we do not currently anticipate any conflict as a result of this arrangement, it is possible that circumstances could change in the future causing a divergence of interests. If a conflict arises between the duties Lawyer owes Client and the interests of Third Party Payor that could materially limit Lawyer's representation of Client, Lawyer may be required to withdraw from this engagement.

Client understands and consents to the payment of fees and expenses by Third Party Payor.

[Optional] Although Third Party Payor has agreed to pay fees incurred by Lawyer on Client's behalf, Lawyer holds both Third Party Payor and Client individually and collectively responsible for payment of Lawyer's fees and expenses. Should Third Party Payor become delinquent regarding payment of Lawyer's fees and expenses, Client will be notified and attempts will be made to seek payment from either Client, or an additional third party.

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: JOINT REPRESENTATION

[Date]

[Corporate Name]

[Corporate Address]

[Corporate Address]

Re: Confirmation of Joint Representation Engagement

File ID:

[Client's Name];

[Client's Name];

[Client's Name];

Thank you for contacting [Law Firm] for your legal needs. The purpose of this letter is to confirm the terms of representation and payment for the legal services that will be provided to [Names of All Clients] in relation to \_\_\_\_\_

\_\_\_\_\_, hereafter referred to as "the matter."

### *Scope of Representation*

[Law Firm]'s services will be limited to the representation of [Name All Clients] in defense of the claims filed against these staff members for [Brief Description of Claims]. However, [Law Firm]'s services will not be conducted for the benefit of or with the intention to represent [Corporate Name], any of its parent or subsidiary companies or any other employees of the corporation or affiliate company. Finally, services are limited to the joint representation of all named clients and will not extend to the unrelated or individual legal needs of any client.

### *Nature of Services*

[Attorney's Name] will be the primary attorney handling this matter, but in the event that [Attorney's Name] is unavailable, contact [Name of Alternate Contact], who will remain informed of the developments and status of the matter. Other partners, attorneys, paralegals or outside experts may be called upon as necessary.

In order to effectively and diligently represent your interests, communication is paramount. Not only is it important to provide complete and accurate information at all times, but communication must be maintained regularly. There are certain elements of litigation that require the full consent of all parties, such as when accepting settlement offers. Therefore, please notify us of any plans for extended travel or changes to contact information. In turn, each client will remain informed and up to date on all important issues, and prompt notification of any major changes or developments will be provided.

The channels through which communication will occur also need to be discussed. There are certain risks to confidentiality that are inherent to modern technologies, such as misdirected facsimiles or e-mails, unauthorized access to computer data or unsecured cell phone conversations. [A separate document will be provided to authorize and accept the risks of various forms of communication, but no medium will be used without the unanimous consent of all clients.]

It is the policy of the firm to respond to any messages or transmissions by the end [State Time Period]. If your message or transmission has not been answered within this time frame, please call the firm to make us aware and an attorney who is informed on the matter will respond immediately.

Representation also requires that the firm possess certain documents in our files. Any such document will be retained until the conclusion of the matter, at which time a copy will remain with the firm and all originals will be returned to the respective owner. The firm's files will be destroyed six years after the matter's close.

### *Joint Representation*

All clients have agreed to be jointly represented by [Law Firm Name], but each understands his or her right to retain separate counsel. Furthermore, each client acknowledges and confirms: (1) He or she has been made aware of the considerations and risks involved with representation of multiple parties; (2) He or she has had the opportunity to consult with independent counsel regarding any concerns; and (3) He or she has consented to the arrangement.

As a whole, participating clients are entitled to confidentiality and the attorney-client privilege, but there is no such entitlement from each other; no one will have an independent claim to confidentiality. Because we owe a duty to each client to keep him or her adequately informed, any relevant information revealed by one client will be discussed with all. Additionally, while these shared confidences are protected from third parties, all clients are entitled to be made aware of any information obtained from a third party source, including those revealed by one of the clients. If information is revealed by one client to a third party, protections of privilege and confidentiality may be lost for all. Finally, in the event that a conflict arises between clients, information communicated during the course of representation would not be privileged or confidential in any subsequent proceedings to resolve the dispute.

Inherent to joint representations are also considerations of potential conflicts of interest. The most important requirement is that a common stance be taken on all issues; contrasting positions cannot be taken by [Law Firm] for certain members or groups. While interests may be the same at the onset of the matter, it is not uncommon for circumstances to change and cause a divergence of interests. Though we do not currently anticipate any reasons for this to occur, some or all of the clients may be required to obtain new counsel in the event that it does.

The nature of the conflict will dictate whether the firm can continue to provide services to all three, some, or none of the clients, but if representation is to continue for any client in the face of a conflict, all must consent to the arrangement. This consent must include indication from each client that the information provided prior to withdrawal may be used during the continued representation of the remaining clients and that he or she will not seek to disqualify the firm from continuing services. Additionally, in signing this agreement and acquiring the services of this firm, each client agrees that if he or she voluntarily withdraws from the attorney-client relationship without the cause of a conflict of interest, the firm will continue to represent the remaining clients, that information provided prior to withdrawal may be used in the course of this representation and that disqualification of the firm will not be sought.



### *Fees and Expenses*

It has been agreed by the clients that costs will be equally divided. However, each client is aware of the possibility that one or more clients may withdraw from representation and cause the share due from remaining members to increase. In the event that an insurance agency or other third party is paying for a client's share, this client understands that he or she will be liable for his or her portion of costs and expenses in the event that third party payments are discontinued.

[Law Firm]'s fees are based on the actual amount of time spent handling this matter and will be calculated in intervals equal to [State Time Period] of an hour. Each member of the firm has an assigned hourly fee based on his or her position, which in turn reflects expertise and other relevant factors. Partners of the firm will be billed at \$\_\_\_\_\_ per hour, while associates will provide services at a rate of \$\_\_\_\_\_ per hour and \$\_\_\_\_\_ per hour will be charged for paralegal staff. The services of each will be called upon as necessary while handling the case.

Additional services and expenses will be provided by the firm and will be billed to the client at cost. Such expenses include but are not limited to long-distance phone calls, computer assisted legal research (CALR), photocopying, and travel expenses. The costs of any expert witnesses or other professionals who are called upon from outside the firm will decide their own rates, which will be reflected in monthly invoices.

All clients will be able to keep track of funds and expenses via a [Monthly/Bi-Monthly] invoice that will be sent to the address on file for each client. Said invoice will include the total amount of billable hours invested in the matter, the hourly rate of each person who has spent time working on the case, his or her respective investment, expenses incurred by the firm in relation to representation of this matter, the dates and amounts of any withdrawals from the retainer fund and the total amount remaining in the account. However, while fees and most expenses will remain current, it is important to note that certain other expenses will be delayed pending a receipt of costs to the firm.

Payments will be made to the firm in the form of a retainer fund. It has been agreed that the initial deposit into the account will be in the amount of \$\_\_\_\_\_, with \$\_\_\_\_\_ due from each party. This money will be placed in the firm's general trust account where it will be held until used to pay for discussed fees and expenses. Representation cannot commence until the full \$\_\_\_\_\_ has been deposited. If the balance of the account falls below \$\_\_\_\_\_, all clients will be notified and are expected to replenish the fund to \$\_\_\_\_\_ within [State Time Period] business days. Each client will replenish an equal share that amounts to \$\_\_\_\_\_ minus one-third of the remaining balance when replenishment notices are issued. Similarly, each client will have an equal share refunded at the conclusion of the matter.

If anyone should default on payments, he or she will be notified by the firm and efforts will be made to resolve the situation. Interest will be calculated at a compound rate of \_\_\_\_\_% per month for every month that the balance is outstanding. These fees are to be paid solely by the defaulting client to the firm for deposit into the firm's general account. If the situation cannot be resolved within [State Time Period] months of the first invoice that was issued with an outstanding balance, representation of this client will cease. Clients who are not in default will not be responsible for the outstanding payments of the defaulting client, but will be immediately notified upon the cessation of services to said client. An invoice will immediately be issued to all parties, and the responsibility of all subsequent costs or expenses will be equitably shared by the remaining clients.

### *Termination of Representation*

Each client individually has the right to decide whether or not he or she would like the firm to defend this claim and he or she may withdraw from representation at any time, subject to the payment of any final billings. However, if considering withdrawal because of concerns relating to the firm or its representation in the matter, we ask that these concerns first be

brought to our attention so that they can hopefully be remedied. In any event, we request the courtesy of reasonable notice prior to the termination of services.

The firm also has the right to withdraw under certain circumstances, including but not limited to failure to make payments in accordance with this engagement letter, failure of the client to cooperate with the agreed provisions of representation, failure to follow the advice of the firm, or under circumstances that would render the firm's representation to be contrary to the Rules of Professional Conduct. Any termination of our representation would be subject to the approval of the tribunal and will only be done after reasonable notice has been provided.

*Notice of a Binding Agreement*

Enclosed in the package delivered to each client are two copies of this agreement. The first is for personal records and should be kept in a place where it is secure but readily accessible. The second needs to be signed, dated and returned to the firm. Work cannot begin on this matter until a signed copy of the agreement is received from all clients and the initial deposits have been made. Once signed, no changes will be made to this agreement without appearing in a written document signed by the firm and all represented clients.

This agreement represents the entire agreement between [Law Firm] and [Name All Clients]. Because it is binding, each of you may wish to consult with independent counsel to review the contents of this document prior to signing. In providing your signature, you are acknowledging that you have read, understood and assented to the agreement and that you have had the opportunity to consult with either this firm or independent counsel to review any questions or concerns about information contained herein.

We would like to again thank you for the opportunity to represent you in this matter and look forward to working together.

Sincerely,

[Attorney's Name], Attorney at Law  
[Law Firm]

Client Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Client Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Client Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Client Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: LOCAL COUNSEL

[Date]

Re: Local Counsel Representation of [Client's Name]  
File ID:

Dear \_\_\_\_\_:

Thank you for contacting [Law Firm] regarding the representation of [Client's Name] as local counsel in connection with \_\_\_\_\_  
\_\_\_\_\_. At the outset, we wish to confirm the terms of our engagement.

### *Scope of Representation*

We understand that our firm's role in this representation will be as local counsel to you for the client in the above-described matter, and that you are and will remain primarily responsible for the representation of [Client's Name] in this matter. As local counsel, we are obligated to make reasonable inquiry and determine that any pleading or brief to be signed by us is well-grounded in fact and warranted by existing law or a good faith argument for its change. The law in this jurisdiction does not permit us to simply delegate to forwarding co-counsel our duty of reasonable inquiry.

### *Billing and Fee Policy*

Our fees will be based primarily on the hourly rate for each attorney and legal assistant devoting time to this matter. Our standard hourly rates for attorneys likely to be involved currently range from \_\_\_\_\_ to \_\_\_\_\_ per hour. Time devoted by legal assistants is charged at hourly rates ranging from \_\_\_\_\_ to \_\_\_\_\_ per hour. These rates are subject to periodic change by our firm. In addition to the number of hours involved, we take into consideration other factors in determining our fees, including the urgency of the matter, the responsibility assumed, the novelty and difficulty of the legal problem involved, particular experience or knowledge provided, time limitations imposed by the client or matter, the results obtained, the benefit resulting to the client, and any unforeseen circumstances arising in the course of our representation.

We bill for out-of-pocket expenses, and also bill an administrative expense charge per billable hour in lieu of charging for long distance charges, routine copy costs, postage, and similar office expenses. Please refer to our attached Billing and Fee Policy, which is incorporated herein and made a part of the terms of our engagement for further details regarding our agreement regarding payment or reimbursement of fees and expenses. You have agreed that we will bill you monthly, you will pay our invoices, and you will be responsible for getting reimbursed from [Client's Name].

As we have discussed, the fees and costs relating to this matter are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. It is also expressly understood that payment of the firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

### *General Waiver of Conflicts*

As we have discussed, you and [Client's Name] are aware that the firm represents many other companies and individuals. [Client's Name] agrees by engaging us that we may continue to represent or may undertake in the future to represent

existing or new clients in any matter that is not substantially related to our work for [Client's Name], even if the interests of such clients in those other matters may be directly or indirectly adverse to [Client's Name]. We agree, however, that the prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of [Client's Name], we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to the material disadvantage of [Client's Name].

*Withdrawal*

Although it is not likely, it is possible that there would be a conflict of interest that is not waivable as a result of our representation of another client while serving as your local counsel in this matter, and in such event you agree that we may withdraw from this engagement as your local counsel provided that there is adequate time for you to obtain replacement local counsel, and provided that we obtain approval of the court, if required. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent [Client's Name].

Thank you again for contacting us regarding this matter. Please have [Client's Name] sign the enclosed copy of this letter and return it to us to confirm the terms of our engagement. We look forward to working with you and [Client's Name] as the matter proceeds.

Sincerely,

[Attorney Name]

[Law Firm]

[Date]

Enclosures:

The foregoing letter and the attachment accurately state the terms of the engagement of [Law Firm] to represent us as local counsel in connection with the matter and under the circumstances described above, and this confirms our waiver of any existing conflicts and our waiver of future conflicts as described in the preceding letter.

## ENGAGEMENT LETTER: LIMITED SCOPE RETAINER AGREEMENT

This Agreement is made between the Attorney and Client named at the end of this agreement.

**1. Nature of Agreement.** This Agreement describes the relationship between the Attorney and Client. Specifically, this Agreement defines:

- a. The general nature of the Client's case;
- b. The responsibilities and control that the Client agrees to retain over the case;
- c. The services that the Client seeks from the Attorney in his/her capacity as attorney at law;
- d. The limits of the Attorney's responsibilities;
- e. Methods to resolve disputes between Attorney and Client; and
- f. The method of payment by Client for services rendered by the Attorney.

**2. Nature of Case.** The Client is requesting services from the Attorney in the following matter:

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**3. Client Responsibilities and Control.** The Client intends to handle his/her own case and understands that he/she will remain in control of the case and be responsible for all decisions made in the course of the case. The Client will:

- a. Cooperate with the Attorney or Attorney's office by complying with all reasonable requests for information in connection with the matter for which the Client is requesting services;
- b. Keep the Attorney or Attorney's office advised of the Client's concerns and any information that is pertinent to the Client's case;
- c. Provide the Attorney with copies of all correspondence to and from the Client relevant to the case; and
- d. Keep all documents related to the case in a file for review by the Attorney.

**4. Services Sought by Client.** The Client seeks the following services from the Attorney (please indicate services sought with check mark):

- ☐ a. Legal advice: office visits, telephone calls, fax, mail, electronic mail.
- ☐ b. Advice about the availability of alternative means to resolve the dispute, including mediation and arbitration.
- ☐ c. Evaluation of the Client's self-diagnosis of the case and advice about the Client's legal rights.
- ☐ d. Guidance and procedural information for filing or serving documents.
- ☐ e. Review of correspondence and court documents.
- ☐ f. Preparation of documents and/or suggestions concerning documents to be prepared.
- ☐ g. Factual investigation: contacting witnesses, public record searches, in-depth interview of Client.
- ☐ h. Legal research and analysis.
- ☐ i. Discovery: interrogatories, depositions, requests for document production.
- ☐ j. Planning for negotiations, including role playing with the Client.
- ☐ k. Planning for court appearances to be made by Client, including role playing with the Client.
- ☐ l. Backup and trouble shooting during the trial.
- ☐ m. Referrals to other counsel, experts, or professionals.
- ☐ n. Counseling the Client about an appeal.
- ☐ o. Procedural help with an appeal and assisting with substantive legal argumentation in an appeal.
- ☐ p. Preventive planning and/or legal check-ups.
- ☐ q. Other: \_\_\_\_\_
- 

**5. Attorney's Responsibilities.** The Attorney shall exercise due professional care and observe strict confidentiality in providing the services identified by a checkmark in Paragraph 4 above. In providing those services, Attorney SHALL NOT:

- a. Represent, speak for, appear for, or sign papers on the Client's behalf;
- b. Provide services listed in Paragraph 4 that are not identified by a checkmark; or

c. Make decisions for the Client about any aspect of the case.

**6. Method and Payment for Services.**

a. *Hourly fee.* The current hourly fee charged by the Attorney for services under this agreement is as follows:

Senior Partner: \$ \_\_\_\_\_

Junior Partner: \$ \_\_\_\_\_

Associate: \$ \_\_\_\_\_

Unless a different fee arrangement is specified in clauses (b) or (c) of this Paragraph, the hourly fee shall be payable at the time of the service.

b. *Payment from Retainer.* The Client shall have the option of setting up a deposit fund with the Attorney. Services are then paid for from this retainer account as they occur. If a retainer is established under this clause, the Attorney shall mail the Client a billing statement summarizing the type of services performed, the costs and expenses incurred, and the current balance in the retainer after the appropriate deductions have been made. Client may replenish the retainer or continue to draw the funds down as additional services are delivered. If the retainer becomes depleted, the Client must pay for additional services as provided in clauses (a) or (c) of this Paragraph.

c. *Flat Rate Charges.* The Attorney has the option of agreeing to provide one or more of the services described in Paragraph 4 for a flat rate. Any such agreement shall be set out in writing, dated, signed by both Attorney and Client, and attached to this Agreement.

d. *Attorneys' Fees.* Should it be necessary to institute any legal action for the enforcement of this Agreement, the prevailing party shall be entitled to receive from the other party all court costs and reasonable attorneys' fees incurred in that action.

**7. Resolving Disputes Between Client and Attorney.**

a. *Notice and Negotiation.* If any dispute between Client and Attorney arises under this Agreement, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Client or Attorney that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.

b. *Mediation.* If the dispute is not resolved through negotiation, the Client and Attorney shall attempt, within fifteen (15) days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within fifteen (15) days. If Attorney and Client cannot agree on a neutral mediator, they shall request that the [local or state] bar association select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of mediation, provided that payment of the costs and any attorneys' fees may also be mediated.

c. *Arbitration.* If mediation fails to produce a full settlement of the dispute satisfactory to both Client and Attorney, Client and Attorney agree to submit to binding arbitration under the rules of the [governing] bar association. This arbitration must take place within sixty (60) days of the failure of mediation. Costs and attorneys' fees for arbitration and prior mediation may be awarded to the prevailing party.

**8. Amendments and Additional Services.** This written Agreement governs the entire relationship between the Client and Attorney. All amendments shall be in writing and attached to this Agreement. If the Client wishes to obtain additional services from the Attorney as defined in Paragraph 4, a photocopy of Paragraph 4 that clearly denotes which extra services are to be provided must be signed and dated by both Attorney and Client and attached to this Agreement. Such a photocopy shall qualify as an amendment to this agreement.

**9. Statement of Client's Understanding.** I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:

\_\_\_\_ I have accurately described the nature of my case in Paragraph 2.

\_\_\_\_ I will remain in control of my case and assume responsibility for my case as described in Paragraph 3.

\_\_\_\_ The services that I want the Attorney to perform in my case are identified by check marks in Paragraph 4. I take

responsibility for all other aspects of my case.

- \_\_\_ I accept the limitations on the Attorney's responsibilities identified in Paragraph 5.
- \_\_\_ I shall pay the Attorney for services rendered as described in Paragraph 6.
- \_\_\_ I will resolve any disputes I have with the Attorney under this Agreement in the manner described in Paragraph 7.
- \_\_\_ I understand that any amendments to this Agreement shall be in writing, as described in Paragraph 8.
- \_\_\_ I acknowledge that I have been advised by the Attorney that I have the right to consult another independent Attorney to review this Agreement and to advise me on my rights as a Client before I sign this Agreement.

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Client

---

Attorney

---

Date

\* This model agreement is derived from an agreement in *Lanier's Guide to Being a Client Coach* (1994), published by the California State Bar Committee on Delivery of Legal Services for Middle Income Persons.



## **ENGAGEMENT LETTER: VIRTUAL LAW OFFICE — TERMS AND CONDITIONS OF USE**

The Terms and Conditions of Use (“Agreement”) are provided by Kimbro Legal Services, LLC, an online North Carolina law practice established in Wilmington, North Carolina and managed by attorney Stephanie L. Kimbro, a North Carolina Board Licensed, solo practitioner. The Agreement will govern your use of this website, including all content provided on the website and through access to all online services provided by Kimbro Legal Services. The Agreement to provide legal services to you covers the time period from which you accept this Agreement and we have received your payment through our funds transfer service to the time we have provided you with the requested and purchased legal service.

You agree that it remains your responsibility to proceed as a pro se litigant by filing all legal documents and complying with North Carolina state and local legal procedures. By providing you with limited legal services, Kimbro Legal Services has not agreed to attend a hearing or trial on your behalf or provide any legal services extending beyond those services which you have purchased and we have agreed to provide. We only provide limited legal assistance and document preparation and review. After performing the services purchased by you, we have no further obligation to you.

### **Limitation of Services**

While authorities in some jurisdictions may deem this website and this law practice to be an advertisement for legal services in their jurisdiction, our website is not to be considered as a solicitation for legal services related to any other states’ law. This website and this legal practice offer services related to North Carolina law only.

Unlike a geographically located law practice, Kimbro Legal Services will not provide physical legal representation or commence litigation on your behalf. The purpose of Kimbro Legal Services is to provide limited legal advice and general counseling on North Carolina legal matters with prompt service provided in a cost-effective manner. If we determine during our communication with you that your specific legal matter requires the engagement of a full-service law firm, such as in the event that your situation may require the commencement of a formal lawsuit, then we will promptly refer you to a full-service North Carolina law firm in your area or refer you to the North Carolina Bar Association’s Lawyer Referral Service.

### **Nature of Unbundled Legal Services**

Kimbrow Legal Services is not a pre-paid legal service; it is an online legal practice where you are charged a one-time fee for limited legal services related to North Carolina law. Kimbro Legal Services provides unbundled legal services. This means that the legal services provided by us only extend to those services of which you have requested and purchased and we have provided. After you have purchased a service and we have agreed to provide it and have completed the work, you cannot expect us to perform in any additional capacity. For example, if we assist you in creating Estate Administration documents, it is not our responsibility to ensure that the forms are properly filed, to attend a hearing or trial on your behalf, or to provide any other legal services related to that matter beyond the original purchased and provided limited legal services. Likewise, after you have paid for the requested services and we have performed them, we will not expect any further payment from you other than payment for the original requested legal services performed by us.

As with any legal service, we cannot guarantee any legal outcome. By purchasing our services, you agree that it remains your responsibility to properly and timely file any legal documents and to comply with North Carolina state and local legal procedures.

## **Confidentiality - Security - Retainment of Records**

Kimbrow Legal Services provides limited legal services pertaining to North Carolina law only. The attorney responsible for this site is licensed to practice law only in the State of North Carolina.

In compliance with the professional rules and restrictions of the North Carolina State Bar and the North Carolina Bar Association and for reasons of personal integrity, this practice is bound by stringent professional standards of confidentiality. Any information received by us from our clients is held in strict confidence and is not released to anyone outside of this practice, unless agreed with by you, or as required under applicable law.

An attorney-client relationship with this practice is established only after a specific question has been posed to an attorney at this practice through a prospective client's personal login page and that question has been confirmed as received through a reply communication from an attorney at this practice. Prospective clients should be aware that our duties of confidentiality and the attorney-client privilege may not arise until an attorney has expressly communicated the ability to respond to that prospective client. Once you have provided us with your personal information, we will first run a cross-check for any possible conflict of interest before accepting representation of your matter. We may decline to provide our services to you if a conflict of interest is discovered.

All our records are securely retained in electronic files, along with secure backups, for the period of years required under North Carolina law.

### **Articles and Other General Public Information Provided on this Website**

Any articles for general knowledge published on this website contain basic information on legal matters and are not meant to provide advice regarding a specific legal problem you may have. We remind you not to rely on this general information without first communicating with us or other legal representation regarding your specific legal situation.

## **Copyright**

Kimbrow Legal Services claims copyright protection on all of the content provided in this website. The content from this website may not be reproduced, copied and/or redistributed in any form without the express permission of Kimbro Legal Services. Furthermore, the content from this website cannot be modified nor can it be used for commercial purposes. Each document posted at this website shall contain the following copyright notice:  
Copyright 2006-2007 Kimbro Legal Services, LLC. All rights reserved.

## **Client Funds**

No fee will be charged or obligation incurred by registering on this website.

In most situations, a client's funds will not be transferred to Kimbro Legal

Services until the legal services requested by the client are ready to be accessed and received by the client on their personal login page. Some requested services may require the upfront payment of a retainer fee before Kimbro Legal Services will begin work. After the client's payment of the agreed upon price is confirmed through a Cardholder Information Security Program (CISP) compliant credit card processor, the client will have complete access to the legal advice, documents, research or other services provided by the attorney. If further communication with the attorney is required, the client may post a separate question regarding the received legal services or request a price quote for additional legal work. Kimbro Legal Services will not pay any court costs associated with your case which may be required as part of a lawsuit, filing fees or service of process fees.

## **Technology – Security**

Kimbro Legal Services does not rely on email to communicate with clients.

Email as it is commonly sent and received is unencrypted and does not provide a secure means of interacting with our clients. Primary communications are done through this website over Secure HTTP, which provides you with the highest industry standard protection available on the web. All payments are processed by Cardholder Information Security Program (CISP) compliant credit card processors, and no credit card or payment account numbers are stored on our servers. The maintainer of this site has over 7 years experience developing secure web-based applications, from tax filing to background checking software, and uses secure programming techniques and best practices along with continual code auditing to ensure that this site is as secure as possible.

## **Links and Email Addresses**

Links posted on this website to other websites are provided only as a convenience to our clients. We assume no responsibility for the content, security or reliability of any websites to which we have posted links.

Spamming, the unsolicited broadcasts of email addresses or links in this website, is prohibited and unauthorized.

## **Web Tracking - Cookies, Information Collection and Privacy Policy**

### **1. General Site**

To view the articles and public documents on this site you do not need to reveal any personal information. This site will present your browser with the option of accepting JavaScript and cookies in order to lay out the web page correctly and to store customized settings for your next visit. These features may be disabled by your browser, however this will limit the look and functionality of the website. All page requests are logged in order to properly maintain the service and security of this website.

### **2. Virtual Law Office**

In order to use the virtual law office, you must first register a username and provide personal information about yourself. This information will be used during your transactions with Kimbro Legal Services, LLC to provide limited legal services in compliance with North Carolina law. Your information may be provided to a third party in order to provide the service you requested and/or as is required by law. All other use of your personal information will be limited to your attorney/client relationship with Kimbro Legal Services, LLC. This site uses cookies to store a session id. Therefore, in order to register on the website, cookies must be enabled so that we can provide you with a secure transaction.

## **Registration**

In order to retain our services, you must register on our website. There will be no fee charged for registration on this website. By registering you will receive access to a personal information page where you may request our services in a secure manner. By registering on our website, you are representing that you are at least 18 years of age and able to enter into a binding contract with Kimbro Legal Services. Furthermore, by registering you are representing that the information you provide to us is correct, accurate and updated.

## **Reviewing and Updating Your Personal Content**

Kimbro Legal Services requests that you keep your personal contact information current. After you have registered on our website, you may enter your personal information page at any time to review and update your personal information.

## **Contact Information**

Because we are a virtual law practice, we would prefer that you provide your information to us using the technology provided for you on your personal client login page. However, if this is not possible and we require further information in order to review your legal matter, our mailing address is P.O. Box 4484, Wilmington NC 28406.

## **Limitation of Liability - No Warranties**

Kimbrow Legal Services assumes no liability for any errors or omissions in the content of this website. We will not be responsible under any legal theory for damages, including direct, indirect, incidental, consequential or special, arising as a result of your use of this website. As stated above, this website pertains to the practice of North Carolina law only. Therefore, the content of this website is not applicable in any other state other than North Carolina.

The general information provided on this website is provided without warranty of any kind, express or implied. Kimbro Legal Services reserves the right to change, modify, add, and delete the content on this website.

## **Jurisdiction**

The terms of this agreement will be governed by the laws of the State of North Carolina.

The state and federal courts located in New Hanover County, North Carolina will have exclusive jurisdiction over any case or controversy arising from or relating to this agreement, Kimbro Legal Services' website or any services provided by Kimbro Legal Services. Each person who registers on this website consents irrevocably to personal jurisdiction in such courts with the respect to any matters and waives any defense of forum non conveniens. Furthermore, each person who registers on this website is deemed to have knowingly and voluntarily waived any right to a trial by jury in any case or controversy related to this agreement, Kimbro Legal Services' website or any services provided by Kimbro Legal Services.

## **Assignment**

The rights and obligations created for you under this agreement may not be assigned to any other party.

## **Force Majeure**

Kimbrow Legal Services will not be deemed to be in breach of this agreement for any delay or failure in performance caused by reasons out of its reasonable control, including acts of God or a public enemy; natural calamities; failure of a third party to perform; changes in the laws or regulations; actions of any civil, military or regulatory authority; power outage or other disruptions of communication methods or any other cause which would be out of the reasonable control of Kimbro Legal Services.

## **Severance**

In the event that one or more of the provisions of this agreement shall be found unenforceable, illegal or invalid, it shall not affect any other provisions of this agreement, and this agreement shall be construed as if the provision found to be unenforceable, illegal or invalid had never been contained in the agreement, or the unenforceable, illegal or invalid provision shall be construed, amended and/or reformed to be made enforceable, legal and valid.

**IRS Circular 230 Disclosure**

In compliance with the requirements of the IRS pertaining to the publication of Circular 230, we inform you that any advice contained on this website or in any communication originating from this website or this law practice which is related to U.S. federal tax advice is not intended or created to be used, and cannot be used, for the purpose of 1) either avoiding penalties under the Internal Revenue Code or promoting, marketing or 2) recommending to another party any transaction or matter that is contained on this website or in any communication originating from this law practice.

**Complete Understanding**

This agreement supersedes any prior or contemporaneous communications, representations or agreements between Kimbro Legal Services and the client and constitutes the complete and final agreement between the parties relating to this agreement, Kimbro Legal Services' website or any services provided by Kimbro Legal Services.

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: CORPORATE

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Engagement

File ID:

Dear [Client's Name]:

We are pleased that you have asked the firm to serve as your counsel. This letter will confirm our discussion with you regarding your engagement of this firm and will describe the basis on which our firm will provide legal services to you.

Accordingly, we submit for your approval the following provisions governing our engagement. If you are in agreement, please sign the enclosed copy of this letter in the space provided below. If you have any questions about these provisions, or if you would like to discuss possible modifications, do not hesitate to call. Again, we are pleased to have the opportunity to serve you.

### *Scope of Representation*

Our client in this matter will be [Name of Corporation]. We will be engaged to advise the Company solely in connection with [Describe Matter and Scope of Representation].

### *Client Responsibilities*

You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. You also agree to pay our statements for services and expenses in accordance with the fee agreement outlined in this document.

### *Conflicts*

As we have discussed, you are aware that the firm represents many other companies and individuals. It is possible that during the time that we are representing the Company, some of our present or future clients will have [disputes or transactions] with the Company. The Company agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you. [Note: If possible, and if not prevented by considerations of confidentiality, insert disclosures about prior or existing relationships with other parties and the probable nature of any anticipated adverse relationships.]

You have agreed that our representation of the Company in this matter does not give rise to an attorney-client relationship between the firm and [Parent Corporation's Name] any of the Company's affiliates. You also have agreed that the firm, during the course of its representation of the Company, will not be given any confidential information regarding any of the Company's affiliates. Accordingly, representation of the Company in this matter will not give rise to any conflict of interest in the event other clients of the firm are adverse to [Parent Corporation's Name] or any of the Company's other affiliates.

It is understood that our client for purposes of this representation is [Company's Name], and not any of its individual members or any other entities whose interests in this matter are being represented by those individual members.

Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments during the course of our representation.

*Fees and Expenses*

Our fees will primarily be based on the billing rate for each attorney and legal assistant devoting time to this matter. Our billing rates for attorneys currently range from \$\_\_\_\_\_ per hour for new associates to \$\_\_\_\_\_ per hour for senior partners. Time devoted by legal assistants is charged at billing rates ranging from \$\_\_\_\_\_ to \$\_\_\_\_\_ per hour. Other factors may be taken into consideration in determining our fees including the responsibility assumed, the novelty and difficulty of the legal problem involved, particular experience or knowledge provided, time limitations imposed by the client or the matter, the benefit resulting to the client, and any unforeseen circumstances arising in the course of our representation. These billing rates are subject to change from time to time.

[Include language on reimbursement of disbursements and Administrative Expenses.]

[Include language attaching firm Billing and Fee Policy and incorporate it by reference.]

If you request us to do so, we will provide to you with each bill the detailed information maintained in our accounting database concerning time expended by each attorney and legal assistant in connection with the work covered by the bill as well as each charge item by the firm.

Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 90 days, we may suspend performing services for you [until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses].

As we have discussed, the fees and costs relating to this matter are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. It is also expressly understood that payment of the firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

*Retainer*

Our representation shall commence upon your execution of this letter and our receipt of an initial retainer of \$\_\_\_\_\_. At the conclusion of this engagement and after payment of all of our fees and expenses, we will return to you, without interest, any unearned portion of the retainer.

or



This will acknowledge receipt of your check for \$\_\_\_\_\_ as an advance for fees to be rendered in connection with our representation. Such advance will be deposited in our general trust account and we will charge our fees against the advance and credit them on our billing statement. In the event our fees exceed the advance deposited with us, we will bill you for the excess. Any unused portion of the advance will be refundable at the conclusion of our services. We will have the right to request additional advances from time to time based on our estimates of future work to be undertaken. If you fail to pay promptly any additional advance requested, we will have the right to withdraw from further representation.

#### *Term of Engagement*

Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the above matter, including consultations with subsequent counsel and providing him or her with whatever papers you have provided to us. If permission for withdrawal is required by a court, we will promptly apply for such permission, and you agree to engage successor counsel to represent you.

#### *Conclusion of Representation; Retention and Disposition of Documents*

Unless previously terminated, our representation of the Company will terminate upon our sending you our final statement for services rendered in this matter. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

#### *Post-Engagement Matters*

You are engaging the firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional advice on issues arising from the matter, the firm has no continuing obligation to advise you with respect to future legal developments.

Very truly yours,

[Attorney Name]

[Law Firm Name]

[Date]

Agreed and accepted:

\_\_\_\_\_  
[Name of Corporation]

\_\_\_\_\_  
[Name of Individual Signing]

\_\_\_\_\_  
[Title of Individual Signing]

\_\_\_\_\_  
[Date]

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

## **ENGAGEMENT LETTER: ALTERNATE CLAUSES - CORPORATE**

### **Scope of Representation**

#### Add for Business Transaction:

We will prepare, negotiate and revise documentation required to consummate [state transaction].

#### Add for litigation:

We will prepare and file necessary documentation in connection with [brief description of matter] and pursue such matter to an ultimate conclusion, either by order of court or by settlement. You may limit or expand the scope of our representation from time to time, provided that any substantial expansion must be agreed to by us.

#### For use with federally regulated financial Institutions:

It is our understanding that our engagement for this and other financing transactions will consist solely of assisting you with the structuring, negotiating, documenting and closing of your financings, and conducting a legal review (the scope of which will be defined at the commencement of each transaction) of certain due diligence matters pertaining to each prospective borrower's business. In connection with the foregoing, we will also assist you with the federal regulatory aspects of your receipt of equity enhancements (e.g., warrants and success fees) in connection with your financings and the effect on, and applicability to, your financings of federal margin stock laws and regulations; however, because we are not your counsel with respect to general corporate compliance matters, we will not otherwise undertake any responsibility for assuring that, with respect to any of the financing transactions, you will be complying with applicable state or federal laws and regulations because of your legal or regulatory status or because of the general nature of your business, including, without limitation, capital adequacy requirements, lending limits, restrictions on affiliate and insider transactions, rules regarding interlocking boards of directors, governmental reporting and licensing requirements, and federal, state or local tax matters. Of course you may limit or expand the scope of our representation from time to time, provided that any such expansion is agreed to by us.]

### **Fees and Expenses**

#### Retainer as Security:

Our representation will not commence until we receive from you a [certified] [cashier's] check in the amount of \$\_\_\_\_\_. These funds will remain in our client trust account for the duration of our representation, and any remaining balance will be returned to you immediately upon termination of our representation. We reserve the right to use any part of said funds to satisfy a delinquent payment, and to discontinue our representation until you forward funds to restore the full retainer.

#### Retainer To Be Drawn Down:

Our representation will not commence until we receive from you a [certified] [cashier's] check in the amount of \$\_\_\_\_\_. Those funds will be deposited in our client trust account, and we will draw against those funds to satisfy our monthly statements, copies of which will be sent to you for your information. Upon depletion of the retainer, we will so advise you, and you agree to pay all further statements upon receipt.

#### Additional Damages:

Papers we file may request that the court award you [attorneys' fees] [treble damages] [punitive damages] [prejudgment

interest] as part of your claim. These types of damages are rarely granted. Therefore, you should not, unless we advise you to the contrary, assume that any such recovery is forthcoming, nor should you assume that those items realistically will be part of any settlement negotiation. That means that in any settlement or favorable court judgment you will most likely have to bear your own attorneys' fees [and that you will not receive interest on amounts due you up to the date of judgment).

Fee Based on Factors Other than Straight Time:

As indicated above, the principal basis for computing our fees will be the time spent on the matter by various lawyers multiplied by their individual hourly rates. However, as we discussed, you understand that in a matter of this kind it may be appropriate to take into account in establishing our fees additional factors, such as the complexity of the work, the efficiency with which it is accomplished, the extent to which we may have forgone other client opportunities in order to satisfy your requirements, and the nature of the results that we ultimately achieve on your behalf. We will discuss any such special factors with you whenever we believe it is appropriate to do so.

Multiple Participants to Business Transactions

Single Representation:

As we discussed in my office on \_\_\_\_\_, this firm will be counsel only for A. We will not be counsel for B or C. They are encouraged to retain other counsel. As this matter proceeds, we will be seeking to protect A's interests as best we can, which may mean taking action that might eventually disadvantage B or C. If a dispute arises among A, B and C, we will have the right to represent A in that dispute, if A so chooses.

Joint Representation:

As we discussed in my office on \_\_\_\_\_, the "perfect" way to proceed would be for each of you to have separate counsel. There are many issues where you may or will have conflicting or potentially conflicting interests: compensation, ownership shares, control of the enterprise-just to name a few. Notwithstanding the above, you have each said that, to keep legal costs to a minimum, you may wish our law firm to represent all three of you.

Our bills will be sent to \_\_\_\_\_, but all of you will be jointly and severally responsible for their payment. If you disagree on any issue, we will ask you to resolve your differences among yourselves, without our assistance. If you cannot resolve your differences, we will not be able to represent any one of you as to that issue. If the differences are serious enough, we may be required by applicable ethics rules to withdraw from the matter completely.

We have agreed that there will be no confidences among us regarding the work we do for you. In other words, if we receive information from or about one of you that we believe the others should have in order to make decisions regarding the subject of our representation, we shall give the others that information.

Represent Entity Only:

Until the [corporation] [partnership] is functioning, we will send our statements to \_\_\_\_\_, who will be responsible for their payment.

When the [corporation] [partnership] begins functioning, we will send our statements to the [corporation] [partnership]. From that point forward our only client will be the [corporation] [partnership], and we will not be counsel for any of you individually. Absent a specific future understanding, we will not be representing any of you individually or jointly.

## Representing Employer and Employee

Because we believe that Employee's interests and Employer's interests are identical, or nearly so, we believe we can represent both. Employer agrees to pay all our fees and expenses. We urge Employee, however, to consult with another lawyer of his choice about our representing both Employer and Employee, and about Employee's signing this agreement.

### Trade Association or Group Type Client

It is understood that our client for purposes of this representation is [name of trade association or other group-type client], and not any of its individual members or any other entities whose interests in this matter are being represented by those individual members.

## Waiver of Future Conflicts

As we have discussed, you are aware that the firm represents many other companies and individuals. It is possible that during the time that we are representing the Company, some of our present or future clients will have [disputes or transactions] with the Company. The Company agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse including, for example, representing adverse parties in litigation. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you. [Note: If possible, and if not prevented by considerations of confidentiality, insert disclosures about prior or existing relationships with other parties and the probable nature of any anticipated adverse relationships.]

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: ESTATE PLANNING

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Engagement for Legal Services

File ID:

Dear [Client's Name]:

We are pleased that you have asked the firm to serve as your counsel. At the outset of any engagement, we believe it is appropriate to confirm in writing the nature of the engagement and the terms of our representation, and that is the purpose of this letter. If you have any questions about this letter or any of its provisions, do not hesitate to call. Otherwise, this letter and the enclosed Standard Terms of Representation will constitute the terms of our engagement. Again, we are pleased to have the opportunity to serve you.

**Client(s).** The two of you will be our only clients in this matter.

**Scope of Engagement.** Our representation will be limited to the specific matters described in this paragraph. You are engaging us to represent you both, and we agree to represent you both for the purpose of drafting new estate planning documents for each of you (hereinafter referred to as the “matter” or “engagement”). \*\*[See below for estate administrations]

**Nature of Relationship.** Our objective is to provide high quality legal services to our clients at a fair and reasonable cost. The attorney-client relationship is one of mutual trust and confidence. If you have any questions at all concerning the terms of this engagement, our ongoing handling of this legal matter, or about any issue relating to a monthly statement that is unclear or appears to be unsatisfactory, we invite your inquiries.

**Fees and Expenses.** Our fees will be based primarily on the hourly rate for each attorney and paralegal devoting time to this matter. I anticipate our fees in this matter to be approximately \$\_\_\_\_\_.

**General Waiver of Conflicts.** As you may be aware, our law firm represents many other companies and individuals. This confirms your agreement that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you in this matter or any other matter for which you may subsequently engage our firm, even if the interests of such clients in those other matters may be directly or indirectly adverse to you. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

**No Continuing Updating Obligation.** Upon our submission to you of our final bill, this matter will be treated as completed. Of course, after your estate planning documents have been signed, we would be pleased to respond at any time thereafter to your request that we review your estate plan, and/or the then applicable estate tax provisions and other relevant laws, for the purpose of determining whether we would suggest any changes. Indeed, we strongly recommend that you consult us, or some other lawyer of your choice, for that purpose at least once every three (3) years.

**Joint Representation of Spouses.** We have explained to you that each of you could choose to be represented by separate counsel who would advocate for his or her individual client's interests. You have, however, requested and consented to our representation of both of you in connection with your estate plan. Based on our discussion, each of you understands the need for full disclosure and candor in our discussions with one another. Thus, any communication and information we receive from or about either of you that is relevant to your wills and your estate plan will not be kept confidential from the other.

In the interests of efficiency, you may choose to communicate with us primarily through one of you, in which event we will provide any necessary explanation of issues to that individual. Of course, we will respond at any time to any questions put to us by either of you. Our experience has been that it is unlikely, but not impossible, that a relatively serious difference of opinion or disagreement might arise between the two of you in the development of your estate plan, and in that event considerations of legal ethics might compel us to cease representing both of you. If that happens, we will promptly notify both of you that we cannot continue to represent either of you in connection with your estate plan or any other matter that is related to your estate plan.

If the foregoing and the enclosed Standard Terms of Representation accurately state the terms of our engagement, please sign the enclosed duplicate of this letter and return to me. If the foregoing and the enclosed Standard Terms of Representation do not accurately state the terms of our engagement, please let us know immediately, and do not proceed to use our firm on this particular matter until we have agreed upon the terms of engagement and another letter is delivered to you confirming those terms.

Once again, we are pleased to have this opportunity to work with you. Please call me if you have any questions or comments during the course of our representation.

Very truly yours,

By: \_\_\_\_\_

Partner

Enclosures

The foregoing letter accurately states the terms of our engagement of [firm name] to represent us in connection with the matter described above.

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client Name

\_\_\_\_\_  
Date

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: ALTERNATE CLAUSES - ESTATE ADMINISTRATION

**Scope of Engagement.** Our representation will be limited to the specific matters described in this paragraph. During the course of our representation, we will address such issues relating to the administration of the estate as you, the personal representative, may direct. Our services will include the following:

1. Initial estate administration matters so that the estate administration can be initiated, including probate of the will and qualification of you as personal representative;
2. Preparation of all court inventories and accountings;
3. Assistance and coordination in collection, appraising, administering, and distributing all estate assets;
4. Any matters relating to the interpretation of the provisions of the will and the resolution of the same;
5. Serving as counsel to the personal representative; and
6. Publication of notice to creditors and mailing to known creditors.

Of course, you may direct us to address other issues that may arise during the course of administration if that becomes necessary, and you may direct that some services listed above be handled by yourself or by others.

The estate's Inventory of Assets listing all of the estate's probate assets and their fair market values must be filed within three (3) months after you qualify as personal representative. The estate's Annual Accounting for the Estate will be due with the Clerk one (1) year from the date of your qualification as personal representative. Once the estate administration is complete, a Final Accounting must be filed with the Clerk prior to closing of the estate.

**Investment Advice Clause.** An important power you hold as personal representative is the power to invest the estate assets. You have wide discretion in the choice of investments, but in exercising that discretion, you have a duty to exercise "prudent judgment" in managing the estate assets. We are not investment advisors and cannot give an opinion regarding the choice of one investment over another, so I suggest that you discuss the estate's investment objectives with an investment advisor.

[SELECT AS APPROPRIATE FOR YOUR REPRESENTATION]

- Option 1: **Tax Filing Requirements Where the Estate is Not Subject to Federal Estate Tax.** The tax aspects of estate administration will include preparing and filing various tax returns:

**SELECT OPTION FOR PARAGRAPH A (depending on whether Decedent was survived by a spouse):**

- A. **Federal Estate Tax Return:** Since [Decedent's] taxable estate is less than the current federal exemption and he/she was not survived by a spouse, you will not need to file a federal estate tax return with the Internal Revenue Service, and no estate tax will be due.

OR

- A. **Federal Estate Tax Return:** Since [Decedent's] taxable estate is less than the current federal exemption, you are not required to file a federal estate tax return with the Internal Revenue Service, and no estate tax will be due. However, I strongly recommend that you consider filing a federal estate tax return in order to preserve [Decedent's] unused estate tax exclusion. Under current law, to the extent that the [Decedent's] available federal estate tax exclusion is not used for his estate, the unused exclusion is "portable" and passes to the surviving spouse. In order to preserve the unused exclusion, an



estate tax return must be filed by the Executor. The federal estate tax return is due nine (9) months after the date of death of [the Decedent]. A six (6) month extension is available if requested prior to the due date of the return. Unless you direct our firm otherwise in writing, we are not responsible for preparing or filing the federal estate tax return to preserve portability of the unused exclusion. In any case, I recommend that you consult with a tax professional before making your decision about whether to file the return.

- B. **North Carolina Estate Tax Return:** You will file a NC estate tax certificate in the probate court. **Our firm will prepare this filing.**
- C. **Gift Tax Returns:** As personal representative of [Decedent's] estate, you must file a final gift tax return to evidence any gifts made by [Decedent] during the year prior to his/her death. **Please let me know if you are aware of any gifts in excess of \$13,000 per year that [Decedent] may have made in the year prior to [Decedent's] death.**
- D. **Income Tax Returns:** You are also responsible for filing [the Decedent's] final federal and state income tax returns covering the period [s]he lived during 2012, as well as the fiduciary returns for the estate (as discussed in the paragraph below).

You must file federal and state fiduciary income tax returns to report the income earned from the date of [the Decedent's] death until the estate assets are finally distributed to the beneficiaries. If all of the income received by the estate is distributed to the beneficiaries, the income received by each beneficiary will flow out of the estate and will be taxed to him. However, if no distributions are made during the tax year of the estate, the income will be taxed at the estate level. The fiduciary income tax returns are due within 3 ½ months after the end of the estate's taxable year. **Please confirm whether our firm will prepare the income tax filings on your behalf.**

OR

- Option 2: **Tax Filing Requirements Where the Estate is Subject to Federal Estate Tax.** If the estate is subject to federal estate tax, the federal estate tax return is due nine (9) months after the date of death of [the Decedent]. A six (6) month extension is available if requested prior to the due date of the return.

**SELECT APPROPRIATE OPTION BASED ON FIRM'S PREPARATION AND FILING RESPONSIBILITY OF THE ESTATE'S FEDERAL TAX RETURN (only use if Option 2 above is selected):**

- Option 1: **Not Responsible for Preparation or Filing of Federal Estate Tax Returns.** We are not responsible for preparing or filing estate tax returns and we are not responsible for any deadlines associated with the filing of such returns and the payment of any estate taxes. You should immediately retain a qualified tax professional to handle these matters.
- Option 2: **Not Responsible for Preparation of Federal Estate Tax Returns, but Responsible for Filing Federal Estate Tax Returns.** We are not responsible for preparation of estate tax returns but will file such tax returns if delivered to us properly completed in a reasonable time prior to the filing date with proper instructions to us from the tax preparer that include the required filing date and any other deadlines associated with the estate tax returns.
- Option 3: **Responsible for Preparation and Filing of Federal Estate Tax Returns.** We will prepare and file the estate tax return and will obtain any extensions necessary for filing.

**Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.

## ENGAGEMENT LETTER: FAMILY LAW WITH NON-LITIGATING CLIENT

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Engagement for Legal Services

File ID:

Dear [Client's Name]:

Thank you for contacting [law firm]. This agreement, hereinafter referred to as the "Agreement", a contract for employment of legal counsel, is made and entered into by and between [Law Firm], hereinafter referred to as "the Firm," and John Doe hereinafter referred to as "the Client."

By signing this Agreement, Client employs the Firm to represent Client with regard to Client's domestic dispute.

### *Representation*

Representation (hereinafter referred to as the "Representation") shall consist of the drafting and negotiation of a Separation Agreement and Property Settlement and any supporting documents and shall include but not be limited to the following services: verbal and written communication with opposing counsel and Client regarding the settlement of the domestic dispute in the form of telephone calls, in-person conference, letters, emails, and draft Separation Agreements. Representation shall not exceed a period of [State Time Period] days from the date of this Agreement except that Representation shall, if requested, also include seeking an Absolute Divorce which may take place outside of the aforementioned period. A separate agreement will be negotiated between the Client and Firm in the event that further negotiation, litigation or an appeal is requested by the Client. Client acknowledges that the Firm will not represent the Client in any litigation or appeal until such time as a separate agreement is executed.

In consideration of the Representation to be furnished by the Firm, Client shall pay the Firm pursuant to the following fee arrangements:

### *Fees*

In consideration of the Representation to be furnished by the Firm, Client shall pay the Firm a fee of [State Fee] (\$\_\_\_\_\_). Any payment that has come due and been paid by Client pursuant to this Agreement is a prepaid flat fee payment for the Client's continued exclusive use of the Firm's services. The fee will be deemed earned upon receipt.

### *Expenses*

All expenses the Firm incurs or advances in connection with providing Representation will be billed to the Client separately. The Firm shall bill the Client for all such expenses according to the actual amount of the expense. Examples of variable expenses are real estate appraiser fees, private investigator fees, etc. No such expenses shall be incurred without thoroughly

discussing the matter with the Client before incurring the expense.

*Personnel*

The Client acknowledges that he or she is employing the Firm instead of any particular individual, and that the Firm will assemble the team of professionals best suited to each Client to serve the Client's specific needs and requirements at each stage of the Representation.

*Termination of Services*

The Client may terminate the Representation at any time. Any such termination does not relieve the Client of the obligation to pay any amounts owed for fees and expenses incurred through the date of termination.

The Firm may terminate the Representation of the Client, and withdraw as the Client's counsel, if:

- a. The Firm discovers any conflict of interest;
- b. The Client fails to pay immediately when due any amounts required to be paid under this Agreement;
- c. The Firm discovers that the Client has made any misrepresentation in connection with the Representation, or the Firm discovers any material variance between the facts as related to the Firm by the Client and the facts as they actually exist;
- d. The Client acts in such a manner that, in the discretion of the Firm, the Firm deems it necessary to terminate the Representation;
- e. The Client fails to heed the Firm's advice or recommendations or otherwise does not cooperate with the Firm in the Representation; or,
- f. The Firm and the Client have a disagreement over what legal matters the Firm is supposed to be handling for the Client.

Client grants the Firm the authority to represent Client in the above matters and to enter appearances on behalf of Client in any court.

*Miscellaneous Terms*

We dislike being technical with our clients, but we must include the following clauses. If you have questions regarding these provisions, please ask.

- a. Each provision of this agreement is severable. The invalidity or unenforceability of any provision paragraph, subparagraph, sentence, clause, phrase or term of this agreement shall not affect or impair the validity or enforceability of any other provision, paragraph, subparagraph, sentence, clause, phrase or term of this agreement.
- b. By signing below, the Client indicates an understanding that we have not made an agreement with you or promises to you about the outcome or result of your legal matters. Also, you agree to notify us immediately in writing if you feel or believe any matter is not receiving proper attention or is otherwise not being properly handled or you suspect

any misunderstanding about what we are to do for you.

- c. By signing below, you agree that this agreement has been thoroughly explained to you and reviewed by you before you sign it, or that you had an ample opportunity to review it and have it fully explained to you.
- d. If you fail to pay the amounts due to us under this agreement, you agree to pay all reasonable attorney's fees and other expenses incurred by us in collecting the amounts due.
- e. After completing the work for you, we will dispose of everything in the file after mailing all original material back to you. We will maintain digital copies of all documents on our computer system for at least three years after the matter is finished.
- f. If any funds of yours are in our possession at any time, we may deduct from those funds and pay to ourselves any unpaid amounts we have billed you.

#### *Communication*

We encourage you to ask any questions you have about our charges or services. We promise to provide prompt, accurate answers. We expect you to inform us of any complaints about any bill immediately after it is sent to you.

Please indicate your agreement by signing in the space provided below on the enclosed extra copy of this contract and return it to us immediately. Thank you for giving us the opportunity to do your legal work.

The firm recognizes that our clients are our most valuable resource. We care deeply about your satisfaction with our work. In an effort to ensure that you as our client receive the personalized service you deserve, we will send you surveys regarding the quality of our work and our personnel. We ask your cooperation in completing these surveys. By signing this agreement you indicate you understand and agree to complete those surveys so we can maintain our highest level of service to you, our client.

Very truly yours,

[Attorney Name]

[Law Firm Name]

[Date]

Accepted & Approved By:

Name: \_\_\_\_\_

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

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

## **ENGAGEMENT LETTER: FAMILY LAW WITH LITIGATING CLIENT**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Engagement for Legal Services

File ID:

Dear [Client's Name]:

Thank you for contacting [law firm]. This agreement, a contract for employment of legal counsel, is made and entered into by and between [Law Firm], hereinafter referred to as "the Firm," and [Client's Name], hereinafter referred to as "the Client."

By signing this Agreement, Client employs the Firm to represent Client with regard to the litigation of a domestic dispute. The representation shall be limited to the matters of Child Custody, Child Support, Post-Separation Support and Alimony, Equitable Distribution, and Absolute Divorce.

A separate agreement will be negotiated between the Client and Firm in the event that an appeal is undertaken. Client understands that the Firm will not represent the Client in any appeal until such time as the separate agreement is negotiated.

In consideration of the legal services to be furnished by the Firm, Client shall pay the Firm pursuant to the following fee arrangements:

### *Legal Services*

The aforementioned services are provided to the Client, and the Firm is reserving its services for Client, in exchange for a fee paid as follows:

\$\_\_\_\_\_ paid upon Client deciding to retain the Firm, and  
\$\_\_\_\_\_ paid 75 days from the date of retention, and  
\$\_\_\_\_\_ paid 45 days prior to the scheduled date of the child support hearing, and  
\$\_\_\_\_\_ paid 45 days prior to the scheduled date of the post-separation support hearing, and  
\$\_\_\_\_\_ paid 45 days prior to the scheduled date of the alimony hearing, and  
\$\_\_\_\_\_ paid 45 days prior to the scheduled date of the child custody hearing, and  
\$\_\_\_\_\_ paid 45 days prior to the scheduled date of the equitable distribution initial pre-trial conference, and  
\$\_\_\_\_\_ paid 45 days prior to the scheduled date of the equitable distribution hearing, and  
\$\_\_\_\_\_ paid upon filing for absolute divorce.

The Client will have no obligation to make any of the foregoing payments if the matter is resolved by execution of a writ-

ten document prior to the payment becoming due. Each payment that has come due and been paid by Client pursuant to this schedule is a prepaid flat fee for the continued exclusive use by Client of the Firm's services. The fee will be deemed earned upon receipt.

The aforementioned fee includes testimony of up to five (5) witnesses at the hearing, one deposition, and two preliminary hearings if necessary. Preliminary hearings are minor hearings such as motions to compel the production of discovery, motions for the appointment of experts, or motions for summary judgment (These preliminary hearings are hearings that extend for no more than a few hours). Specifically, hearings relating to domestic violence protective orders, emergency child custody, and enforcement of prior orders are not covered by the terms of this Agreement and representation in these matters will be the subject of a separate agreement in the event that this becomes necessary. Additional matters which arise during the course of the representation, which are not covered by the terms of this Agreement, will be the subject of a separate agreement if such matters arise. In the event that the Firm determines that it is necessary to take additional depositions or to call additional witnesses the fee per witness is \$\_\_\_\_\_ and the fee per deposition is \$\_\_\_\_\_. In the event that more than two preliminary hearings become necessary the fee per additional hearing is \$\_\_\_\_\_. The fees for these services are to be paid to the firm prior to the initiation of the work required.

#### *Expenses*

All expenses the Firm incurs or advances in connection with providing legal services will be billed separately. All variable expenses will be billed according to the actual amount of the expense. Examples of variable expenses are recording fees, filing fees, investigator fees etc. Prior to the time that these expenses are incurred we require a deposit of funds into our trust account. We will not incur these variable expenses until we receive this deposit. This deposit will be applied toward these expenses. These deposits you maintain with us will not bear interest. We will refund to you any balance remaining in our trust account which is not needed to satisfy the balance of your account with the firm.

#### *Opposing Party and Attorney's Fees*

Sometimes the Court will order your adversary to pay part or all of your attorney's fees and expenses, although sometimes the Court makes no order for fees and costs. If you are the more financially able adversary, the Court may assess your adversary's fees and expenses against you. Because attorney's fees awards are totally unpredictable, court orders must be considered to be merely "on account" and you are primarily liable for payment of the total attorney's fees and expenses. Amounts received pursuant to court order will be credited to your account. The court award of attorney's fees and expenses, if any, does not set or limit our fee in any way or your liability to us for fees and expenses. The pursuit of attorney's fees and expenses against your adverse party is an additional service we perform on your behalf, and you will be expected to pay us fees on the same basis as is set forth in this Agreement for performing such services. Furthermore, if the Court does assess attorney's fees and expenses, or any part thereof, against the adverse party to apply on account of that which you owe us, the collection of such award from the adverse party by way of contempt or any other proceeding shall also be considered as further services on your behalf notwithstanding that, in accordance with the provisions of the court order, such judgment or attorney's fees and expenses shall be payable directly to us. Accordingly, you shall be expected to pay for the cost of collection. In the event you discharge us as your attorneys at any time, or we withdraw as your attorneys, it shall be understood that we shall nevertheless have the authority to continue to pursue the collection of attorney's fees and expenses against your adverse party due us from you and any part thereof that is collected will be credited to that which you owe us. Please understand, however, that you are at all times primarily liable to us for all attorney's fees and expenses and any pursuit thereof against the adverse party is on your behalf and as an additional service to you.

#### *Billing Frequency and Late Charges*

I understand that all bills are due when received by the Client. If a bill has not been paid in full prior to the expiration of a 30-day period from the date on the bill, a late charge of one-and-one-half percent per month will be imposed on the balance.

*Personnel*

The Client acknowledges that he or she is employing the Firm instead of any particular individual, and that the Firm will assemble the team of professionals best suited to each Client to serve the Client's specific needs and requirements at each stage of the Representation.

*Termination of Services*

You may terminate our representation of you at any time. Any termination of our representation of you does not relieve you of the obligation to pay any amounts owed to us for expenses incurred through the date of termination.

We may terminate our representation of you, retain your previous payments and withdraw as your counsel, if:

- a. The subject of the representation is concluded by execution of a Court order or judgment or written agreement between the parties;
- b. A period of two (2) years passes from the time of the execution of this Agreement;
- c. We discover any conflict of interest;
- d. You fail to pay immediately when due any amounts required to be paid under this agreement;
- e. We discover that you have made any misrepresentation in connection with the matter that we are handling for you, or we discover any material variance between the facts as related to us by you and the facts as they actually exist;
- f. You act in such a manner as to abuse the attorney/client relationship to such an extent that, in the discretion of the Firm, you are no longer someone whom the Firm is willing to represent;
- g. You fail to heed our advice or recommendations or otherwise do not cooperate with us in our representation of you; or,
- h. We have a disagreement over what legal matters the Firm is supposed to be handling for you.

Client grants the Firm the authority to represent Client in the above matters and to enter appearances on behalf of Client in any court.

*Miscellaneous Terms*

We dislike being technical with our clients, but we must include the following clauses. If you have questions regarding these provisions, please ask.

- a. Each provision of this agreement is severable. The invalidity or unenforceability of any provision paragraph, subparagraph, sentence, clause, phrase or term of this agreement shall not affect or impair the validity or enforceability of any other provision, paragraph, subparagraph, sentence, clause, phrase or term of this agreement.
- b. By signing below, you indicate your understanding that we have not made an agreement with you or promises to you about the outcome or result of your legal matters. Also, you agree to notify us immediately in writing if you feel or believe any matter is not receiving proper attention or is otherwise not being properly handled or you suspect any misunderstanding about what we are to do for you.



- c. By signing below, you agree that this agreement has been thoroughly explained to you and reviewed by you before you sign it, or that you had an ample opportunity to review it and have it fully explained to you.
- d. If you fail to pay the amounts due to us under this agreement, you agree to pay all reasonable attorney's fees and other expenses incurred by us in collecting the amounts due.
- e. After completing the work for you, we will dispose of everything in the file after mailing all original material back to you. We will maintain digital copies of all documents on our computer system for at least three years after the matter is finished.
- f. If any funds of yours are in our possession at any time, we may deduct from those funds and pay to ourselves any unpaid amounts we have billed you.

#### *Communication*

We encourage you to ask immediately any questions you have about our charges or services. We promise to provide prompt, accurate answers. We expect you to inform us of any complaints about any bill immediately after it is sent to you.

Please indicate your agreement by signing in the space provided below on the enclosed extra copy of this contract and return it to us immediately. Thank you for giving us the opportunity to do your legal work.

The firm recognizes that our clients are our most valuable resource. We care deeply about your satisfaction with our work. In an effort to ensure that you as our client receive the personalized service you deserve, we will send you surveys regarding the quality of our work and our personnel. We ask your cooperation in completing these surveys. By signing this agreement you indicate you understand and agree to complete those surveys so we can maintain our highest level of service to you, our client.

Very truly yours,

[Attorney Name]

[Law Firm Name]

[Date]

Accepted & Approved By:

\_\_\_\_\_  
[Client's Name]

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

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

## **ENGAGEMENT LETTER: LITIGATION**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Engagement For Legal Services

File ID:

Dear [Client's Name]:

Thank you for selecting [Law Firm] to represent you in connection with the action entitled [Case Name] pending in [Court Name] as [Case Number]. We have agreed that our engagement is limited to performance of services related to this action. Because we are not your general counsel, our acceptance of this engagement does not involve an undertaking to represent you or your interests in any other matter. In particular, our present engagement does not include responsibility for review of your insurance policies to determine the possibility of coverage for the claim asserted in this matter, for notification of your insurance carriers about the matter, or for advice to you about your disclosure obligations concerning the matter under the federal securities laws or any other applicable law.

I will have primary responsibility for your representation and will utilize other firm lawyers and legal assistants as I believe appropriate in the circumstances. We will provide legal counsel to you in accordance with this letter and in reliance upon information and guidance provided by you. We will endeavor to keep you reasonably informed of progress and developments, and to respond to your inquiries.

To enable us to represent you effectively, you agree to cooperate fully with us in all matters relating to your case, and to fully and accurately disclose to us all facts and documents that may be relevant to the matter or that we may otherwise request. You also will make yourself reasonably available to attend meetings, discovery proceedings and conferences, hearings and other proceedings. You also agree to pay our statements for services and other charges as stated below.

Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the litigation or various courses of action and the results that might be anticipated. Any such statement made by any partner or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

Our fees will be based primarily on the amount of time spent on your behalf. Each lawyer and legal assistant has an hourly billing rate based generally on experience and special knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the initial basis for determining the fee. Our billing rates currently range from \$\_\_\_\_\_ an hour for new associates to \$\_\_\_\_\_ an hour for senior partners. My time is billed at \$\_\_\_\_\_ an hour. Time devoted by legal assistants is charged at rates currently ranging from \$\_\_\_\_\_ to \$\_\_\_\_\_ an hour. Our billing rates are adjusted from time to time.

Other factors may be taken into consideration in determining our fees, including the novelty and difficulty of the questions involved; the skill requisite to perform the services properly; the experience, reputation and ability of those performing the services; the time limitations imposed by you or the circumstances; the amount involved and results obtained; and any other factors that may be relevant in accordance with applicable rules of professional conduct. However, these factors will not result in our fees exceeding the indicated amounts based on our hourly rates without prior discussion with you.

You authorize us to retain any investigators, consultants or experts necessary in our judgment to represent your interests in

the litigation. At our option, we may forward third-party charges in excess of \$\_\_\_\_\_ directly to you for payment. Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than \_\_\_\_\_ days, we may suspend performing services for you [until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses].

Once a trial or hearing date is set, we will require you to pay all amounts then owing to us and to deposit with us the fees we estimate will be incurred in preparing for and completing the trial or arbitration, as well as jury fees and arbitration fees likely to be assessed. If you fail to timely pay any additional deposit requested, we will have the right to cease performing further work and to withdraw from the representation.

As we have discussed, the fees and costs relating to this matter are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. Any estimate of fees and costs that we may have discussed represents only an estimate of such fees and costs. It is also expressly understood that payment of the firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

You may terminate our representation at any time by notifying us. Your termination of our services will not affect your responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or incurred thereafter in connection with an orderly transition of the matter. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We may withdraw from representation if you fail to fulfill your obligations under this agreement, including your obligation to pay our fees and expenses, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable notice to you.

Please review this letter carefully and, if it meets with your approval, please sign the enclosed copy of this letter and return it to me [with retainer or fee advance] so that we may begin work. Please call me if you have any questions.

Very truly yours,

[Attorney Name]

[Law Firm]

[Date]

Agreed and accepted:

\_\_\_\_\_  
[Client's Name]

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

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

## **ENGAGEMENT LETTER: ALTERNATE CLAUSES - LITIGATION**

### **Fees and Expenses**

#### Retainer as Security:

Our representation will not commence until we receive from you a [certified] [cashier's] check in the amount of \$\_\_\_\_\_. These funds will remain in our client trust account for the duration of our representation, and any remaining balance will be returned to you immediately upon termination of our representation. We reserve the right to use any part of said funds to satisfy a delinquent payment, and to discontinue our representation until you forward funds to restore the full retainer.

#### Retainer to Be Drawn Down:

Our representation will not commence until we receive from you a [certified] [cashier's] check in the amount of \$\_\_\_\_\_. Those funds will be deposited in our client trust account, and we will draw against those funds to satisfy our monthly statements, copies of which will be sent to you for your information. Upon depletion of the retainer, we will so advise you, and you agree to pay all further statements upon receipt.

#### Additional Damages:

Papers we file may request that the court award you [attorneys' fees] [treble damages] [punitive damages] [prejudgment interest] as part of your claim. These types of damages are rarely granted. Therefore, you should not, unless we advise you to the contrary, assume that any such recovery is forthcoming, nor should you assume that those items realistically will be part of any settlement negotiation. That means that in any settlement or favorable court judgment you will most likely have to bear your own attorneys' fees [and that you will not receive interest on amounts due you up to the date of judgment].

#### Fee Based on Factors Other Than Straight Time:

As indicated above, the principal basis for computing our fees will be the time spent on the matter by various lawyers multiplied by their individual hourly rates. However, as we discussed, you understand that in a matter of this kind it may be appropriate to take into account in establishing our fees additional factors, such as the complexity of the work, the efficiency with which it is accomplished, the extent to which we may have forgone other client opportunities in order to satisfy your requirements, and the nature of the results that we ultimately achieve on your behalf. We will discuss any such special factors with you whenever we believe it is appropriate to do so.

### **Multiple Parties to a Business Transaction**

#### Single Representation:

As we discussed in my office on \_\_\_\_\_, this firm will be counsel only for A. We will not be counsel for B or C. They are encouraged to retain other counsel. As this matter proceeds, we will be seeking to protect A's interests as best we can, which may mean taking action that might eventually disadvantage B or C. If a dispute arises among A, B and C, we will have the right to represent A in that dispute, if A so chooses.

Joint Representation:

As we discussed in my office on \_\_\_\_\_, the “perfect” way to proceed would be for each of you to have separate counsel. There are many issues where you may or will have conflicting or potentially conflicting interests: compensation, ownership shares, control of the enterprise—just to name a few. Notwithstanding the above, you have each said that, to keep legal costs to a minimum, you may wish our law firm to represent all three of you.

Our bills will be sent to \_\_\_\_\_, but all of you will be jointly and severally responsible for their payment. If you disagree on any issue, we will ask you to resolve your differences among yourselves, without our assistance. If you cannot resolve your differences, we will not be able to represent any one of you as to that issue. If the differences are serious enough, we may be required by applicable ethics rules to withdraw from the matter completely.

We have agreed that there will be no confidences among us regarding the work we do for you. In other words, if we receive information from or about one of you that we believe the others should have in order to make decisions regarding the subject of our representation, we shall give the others that information.

Represent Entity Only:

Until the [corporation] [partnership] is functioning, we will send our statements to \_\_\_\_\_, who will be responsible for their payment.

When the [corporation] [partnership] begins functioning, we will send our statements to the [corporation] [partnership]. From that point forward our only client will be the [corporation] [partnership], and we will not be counsel for any of you individually. Absent a specific future understanding, we will not be representing any of you individually or jointly.

### Representing Employer and Employee

Because we believe that Employee’s interests and Employer’s interests are identical, or nearly so, we believe we can represent both. Employer agrees to pay all our fees and expenses. We urge Employee, however, to consult with another lawyer of his choice about our representing both Employer and Employee, and about Employee’s signing this agreement.

### Trade Association or Group Type Client

It is understood that our client for purposes of this representation is [name of trade association or other group-type client], and not any of its individual members or any other entities whose interests in this matter are being represented by those individual members.

### Waiver of Future Conflicts

As we have discussed, you are aware that the firm represents many other companies and individuals. It is possible that during the time that we are representing the Company, some of our present or future clients will have [disputes or transactions] with the Company. The Company agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse including, for example, representing adverse parties in litigation. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you. [Note: If possible, and if not prevented by considerations of confidentiality, insert disclosures about prior or existing relationships with other parties and the probable nature of any anticipated adverse relationships.]

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## **ENGAGEMENT LETTER: MEDICAL MALPRACTICE FEE AGREEMENT**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Engagement For Legal Services

File ID:

Dear [Client's Name]:

The law firm of [Law Firm] is retained and employed by [Client's Name] to represent Client in a claim for damages against [Opposing Party's Name] or any others who may be liable for [Brief Description of Damage] sustained on or about [Date]. Attorneys are employed to obtain a verdict or settlement on behalf of Client. Attorneys are not employed to resolve any medical or other liens or to provide tax or accounting advice. Should representation regarding liens, taxation or accounting be needed by Client, Attorneys will refer Client to other professionals.

### *Attorney's Fees*

Attorneys shall receive as Attorneys' fees 40% of any recovery obtained on behalf of Client. If an appeal is taken or proceedings are necessary to collect any judgment, the fee will increase to 45%.

If settlement of this case is made by a structured settlement, attorneys' fees will be figured on the basis of 40% of the present value of the settlement. Attorneys' fees shall be paid out of the initial cash lump sum payment.

Attorneys have the right to withdraw from Client's representation at any time if in its judgment liability cannot be proven or a judgment, if one is obtained, will be uncollectible.

**If no compensation is recovered for the client, no attorney's fees are owed.**

### *Litigation Costs*

In addition to Attorneys' fees, all court costs, subpoena costs, photos, depositions, court reporters' costs, expert witness fees, reports, witness statements, travel, and all other out-of-pocket expenses incurred in investigating, preparing or litigating this claim shall be paid by Client, and Attorneys may deduct those amounts from the proceeds of any recovery.

### *Medical Expenses*

All medical expenses and charges of any nature made by doctors, hospitals or clinics in conjunction with the diagnosis or treatment of Client's injuries will be paid by Client. In the event that damages are recovered by the Attorneys, Client authorizes Attorneys to pay all such expenses and charges which are unpaid as of that date from Client's share of the recovery.

*Conclusion*

[Client's Name] agrees that no promises or guarantees have been made by [Law Firm] about the outcome of this case.

Very truly yours,

[Attorney Name]

[Law Firm Name]

[Date]

[Client's Name] hereby accepts this Retainer Agreement on the foregoing conditions:

\_\_\_\_\_  
[Client's Name]

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

[Law Firm] hereby accepts this Retainer Agreement on the foregoing conditions:

\_\_\_\_\_  
[Client's Name]

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



## **ENGAGEMENT LETTER: RESIDENTIAL REAL ESTATE TRANSACTION - FULL TITLE SEARCH**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Purchase of [Property Address], [Property County]

File ID:

Dear [Client's Name]:

Thank you for selecting our firm to represent you in closing the purchase of your Property in [County]. Upon receipt of the necessary information from your lender, we will proceed to search the title of the Property and prepare all necessary documents for closing.

To give you some idea of what to expect, typical categories for which costs will be incurred, associated with the purchase of the Property include:

- (a) Survey;
- (b) Title insurance;
- (c) Recording fees;
- (d) Bank fees;
- (e) Escrows;
- (f) Attorney fees;
- (g) Copy charges;
- (h) Express mail charges.

You will not need a hazard insurance policy for closing, given your lot is vacant. You will, however, need hazard insurance coverage in place prior to placing any improvements on the Property. We will order the survey and title insurance commitment.

In preparation for closing, we will perform a title search. The nature of that search may take one of two forms, depending upon whether or not the title has previously been insured. If the title has not been previously insured, a search of the public records for a period of time satisfactory to the title insurance company will be required. If the title has previously been insured, we can obtain affirmative coverage for you and your lender by having the title inspected from the effective date of that coverage to the present. Therefore, absent your objection, we will determine if title insurance coverage exists on the Property and, if so, have the public records examined from the date of that coverage. This procedure will enable us to keep your cost to a minimum while, at the same time, providing full title insurance coverage for you and satisfying your lender's requirements.

We, as closing attorneys, make no representation as to the structural integrity of any improvements on the Property (if any), nor do we provide any opinion as to the environmental condition of the Property. In addition, the survey should reveal whether or not the Property lies within a flood plain. As we are not surveyors nor are we engineers, we make no representations as to whether or not the property lies within a flood plain. Our ability to provide you with flood plain information is limited by what is disclosed to us by the surveyor's report and by what, if anything, we may find on the public record.

A survey of the Property may reveal the existence of boundary overlaps, gaps, gores or encroachments affecting the Property. If you do not want us to order a survey of your property, please advise us of that in writing within 48 hours of

your receipt of this letter. For your reference, if you elect not to have a survey performed, your title insurance policy will contain an exception as to matters of survey which could prove problematic for you in the future.

Presumably you have been provided copies of restrictive covenants applicable to the Property by your real estate agent or the Seller. If you have not, you should obtain a copy of such covenants to be certain your proposed use of the Property to be consistent with those restrictions. In that we have not yet searched the title to the Property, we do not have copies of any such restrictions. If you want us to obtain copies of such restrictions for you, we will be glad to do so in the course of our title search. Please let us know if you want us to provide them to you.

[Conform as Applicable to Facts: It is our understanding from you that the Property is not served by public water and sewer services. Accordingly, you should make arrangements to have the Property evaluated by the appropriate governmental agencies to determine if there is adequate percolation to support a septic system and to determine if the location of such percolation site in anyway conflicts with the location on the Property you have selected to place your house. We recommend that prior to closing you actually obtain a septic permit for the Property. Be mindful of the number of bedrooms allowed by the septic permit as septic systems are permitted based upon the number of bedrooms (not bathrooms) that you will have in your house. Also be mindful of any requirements such as the installation of low pressure pumping systems as they can prove costly and require maintenance. As for lack of public water, we recommend that you determine prior to closing that adequate water is present on the Property to support a residential dwelling.]

We will be in touch with you to confirm your closing date and time. No time of yet has been set. In the event either of you are unable to attend the closing, please let us know immediately. It is possible to close by Power of Attorney if necessary, but your lender must approve that procedure in advance of closing, and necessary document preparation must be completed prior to the date of closing.

Our fee for the above service is \$\_\_\_\_\_. In addition to the foregoing flat fee, you will also be responsible for payment of any expenses incurred by our firm in connection with your closing such as copy charges, express mail charges, fax and long distance telephone charges, each and all of which will be set out on the Settlement Statement at closing.

Upon receipt of your closing package, a closing statement will be prepared by our office. Until that time, we will be unable to provide you with the dollar amount of funds needed to close. When that number is available, we will let you know immediately. Please note that you will need to bring those funds to closing in the form of a certified or cashier's Check Made Payable to [Law Firm] Trust Account in order for us to comply with State Bar requirements.

Also, please remember to bring your drivers license or some other form of picture I.D., as many of the documents need to be notarized.

Should you have any questions regarding your closing at any time, please do not hesitate to contact us. We will be glad to answer any questions you may have.

With kindest personal regards, we remain

Sincerely,

[Attorney Name]

[Law Firm Name]

[Date]

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## **ENGAGEMENT LETTER: RESIDENTIAL REAL ESTATE TRANSACTION - LIMITED TITLE SEARCH**

Re: Purchase of \_\_\_\_\_ (the “Property”)

Dear \_\_\_\_\_:

Thank you for selecting our firm to represent you in closing the purchase of your Property in \_\_\_\_\_ County. Upon receipt of the necessary information from your lender, we will proceed to search the title to the Property and prepare all necessary documents for closing.

To give you some idea of what to expect, typical categories for which costs will be incurred, associated with the purchase of the Property include:

- (a) Survey;
- (b) Title insurance;
- (c) Recording fees;
- (d) Bank fees;
- (e) Escrow;
- (f) Attorney fees;
- (g) Copy charges;
- (h) Express mail charges;
- (i) Hazard Insurance policy.

We will obtain the title insurance commitment and title insurance policy.

In preparation for closing, we will perform a title search. The nature of that search may take on many one of two forms, depending upon whether or not the title has previously been insured. If the title has not been previously insured, a search of the public records for a period of time satisfactory to the title insurance company will be required. If the title has previously been insured, we can obtain coverage for you and your lender by having the title examined from the effective date of that coverage to the present. The process of performing only a limited title search is what is known as “tacking”. If we tack to an existing title insurance policy, you will be relying on your policy of title insurance and not our having actually examined the public records for any matter affecting your title prior to the date of the existing policy of title insurance to which we tacked. Therefore, absent your timely objection, we will determine if title insurance coverage exists on the Property and, if so, have the public records examined only from the date of that coverage to the present. In other words absent your timely objection, we will “tack” to that existing policy of title insurance. This procedure will enable us to keep your costs to a minimum while, at the same time, providing full title insurance coverage for you and satisfying your lender’s requirements.

You should be advised that title insurance, while a valuable insurance coverage, does not cover any and all damage that may arise from a title defect. Title insurance also does not necessarily provide immediate relief in the form of the payment of a claim given title insurers have a reasonable time to correct defects in title which the insurer reasonably believes can be corrected. What constitutes a “reasonable time” depends upon the nature of the defect.

We, as closing attorneys, make no representation as to the structural integrity of any improvements on the Property

(if any), nor do we provide any opinion as to the environmental condition of the Property. In addition, the survey should reveal whether or not the Property lies within a flood plain. As we are not surveyors nor are we engineers, we make no representations as to whether or not the Property lies within a flood plain. Our ability to provide you with flood plain information is limited by what is disclosed to us by the surveyor's report and by what, if anything, we may find on the public record.

A survey of the Property may reveal the existence of boundary overlaps, gaps, gores or encroachments affecting the Property. We recommend you have the Property surveyed prior to closing. If a new survey is not performed, you will not be insured by the title insurer for any matters that a new survey would have revealed. We will have the property surveyed absent hearing from you within the next five (5) days to the contrary.

If the Property is a condominium unit, no survey be performed. Therefore at or prior to closing, you should review the recorded condominium plats and plans to be sure the condominium unit you think you are purchasing is actually the condominium unit you have contracted to purchase.

Presumably you have been provided copies of restrictive covenants applicable to the Property by your real estate agent or the Seller. If you have not, you should obtain those covenants to be certain your proposed use of the Property is consistent with those restrictions. In that we have not yet searched title to the Property we do not have copies of any such restrictions. If you want us to obtain copies of such restrictions for you we will be glad to do so in the course of our title search. Please let us know if you want us to provide them to you.

We will be in touch with you to discuss your closing date and time. In the event either of you are unable to attend the closing, please let us know immediately. It may be possible to close by Power of Attorney, if necessary, but your lender must approve that procedure in advance of closing and necessary document preparation must be completed prior to the date of closing.

Our fee for the above service is \$\_\_\_\_\_. In addition to the foregoing flat fee, you will be responsible for payment of any expenses incurred by our firm in connection with your closing such as copy charges, express mail charges, fax and long distance telephone charges each and all of which will be set out on the Settlement Statement at closing.

Upon receipt of your closing package, a closing statement will be prepared by our office. Until that time we will be unable to provide you with the dollar amount of funds needed to close. When that number is available we will let you know immediately. Please note that you will need to bring those funds to closing **IN THE FORM OF A CERTIFIED OR CASHIER'S CHECK MADE PAYABLE TO "\_\_\_\_\_LAW FIRM TRUST ACCOUNT"** or wire the funds to us in order for us to comply with State Bar requirements. [If you wish to wire the funds, please contact our office and request our firm wire instructions.

ALSO, PLEASE REMEMBER TO BRING YOUR DRIVERS LICENSE OR SOME OTHER FORM OF PICTURE I.D. to closing.

Should you have any questions regarding your closing at any time, please do not hesitate to contact us. We will be glad to answer any question you may have.

With best regards I am,

Sincerely,

\_\_\_\_\_ LAW FIRM

By: \_\_\_\_\_

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## **NON-ENGAGEMENT LETTER: SIMPLE CONFIRMATION**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Engagement  
File ID:

Dear [Client's Name]:

Thank you for considering [Law Firm] for representation in your action for [Brief Description] against [Opposing Party]. As we discussed, we will be unable to represent you in this matter because our firm limits its practice to [Area of Law]. Nonetheless, I urge you to seek other representation without delay. Statutes of limitation set restrictions on the time you have to raise a claim, and hesitation can potentially result in the permanent loss of your right to do so.

Thank you again for your consideration and we wish you the best of luck in your pursuit of this matter.

Sincerely,

[Attorney's Name],  
Attorney at Law

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## NON-ENGAGEMENT LETTER: CONFIRMATION OF NON-ENGAGEMENT

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

Thank you for your visit to [Law Firm] earlier today. Unfortunately, as we discussed, [Law Firm] will be unable to represent you in \_\_\_\_\_. Although no research or investigation into the merits of the matter has been performed, we believe that [General Description of Reason].

Nonetheless, please understand that [Law Firm] is making no representations in regard to the intrinsic value of your claim, nor are we commenting on the likelihood that you will prevail. We strongly urge you to seek the opinion of another attorney and remind you that you must not delay because of the legal time limits that, if lapsed, can bar you from raising your claim. If you do not have another attorney in mind, we recommend that you immediately contact the North Carolina Bar Association's Lawyer Referral Service at (800) 662-7660.

Following the standard policy of [Law Firm], you will not be receiving any form of bill for this consultation. While we do charge a fixed rate for consultations in which an evaluation of the case is provided to the potential client, no opinion has been expressed regarding your circumstances and no charges have therefore been incurred.

Thank you again for considering our firm. We wish you the best of luck and hope that you will consider us again with any future legal needs.

Sincerely,

[Attorney's Name]

[Law Firm]

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## **NON-ENGAGEMENT LETTER: ALTERNATE CONFIRMATION OF NON-ENGAGEMENT**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

It was a delight to speak with you briefly this morning. This is to confirm my advice to you that neither I, [Attorney's Name] nor [Law Firm] will represent you with respect to\_\_\_\_\_. We further confirm that we do not currently represent you in any other matter.

Because [Law Firm] is not representing you on any matter currently, we cannot practically monitor any changes in the law or your circumstances as they might affect the strength of the case we discussed. We must, therefore, disclaim any duty to do so.

If you wish to pursue your claim with another lawyer, you will need to act promptly. As we discussed, there may be several important deadlines involved in your claim. If you fail to file suit or take other appropriate action in a timely manner, you may permanently lose some, if not all, of your rights.

Except for the specific information relating to\_\_\_\_\_, we do not believe that we have obtained any information from or about you or [opposing party] that should be considered confidential. If you disagree in any respect with that conclusion, please call me immediately so that we may resolve the point.

We are returning to you the papers and other information that you delivered to us for review in evaluating this matter. As we agreed, there is no charge for our examining the possibility of representing you. Thank you again for contacting our firm.

[Attorney Name]

[Firm Name]



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## NON-ENGAGEMENT LETTER: AWAITING FUNDS

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

Thank you for your recent visit to [Law Firm]. I enjoyed the opportunity to speak with you and look forward to serving as your counsel. As we discussed, however, we require a retainer deposit of \$\_\_\_\_\_ before work can begin on your case.

However, we would like to clarify that we are not yet representing you in this matter since, as we discussed, both a signed engagement letter and the initial deposit were prerequisites to acquisition of our services. We are excited about the prospect of assisting you but can only do so once we receive the aforementioned funds.

We would also urge you not to delay because legal time limits do exist that can potentially bar your claim if missed. Until we formally commence representation, we cannot take any actions with respect to these statutes of limitation either.

Thank you again. If you have any questions, please do not hesitate to call.

Sincerely,

[Attorney's Name]

[Law Firm]

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## **NON-ENGAGEMENT LETTER: AWAITING FURTHER INSTRUCTIONS**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

On [Date], [Law Firm] had the opportunity to speak about \_\_\_\_\_

. You were advised \_\_\_\_\_

At this time, [Law Firm] is not aware of any conclusion that you have reached on this matter. We will not be representing you until you expressly advise me that you wish to proceed and a formal contract has been signed.

Please recall our discussion regarding the statutes of limitation and the time limits that are placed on your claims. If you wish to proceed with your claim, it is important to act immediately so that these deadlines do not lapse and we are not barred from filing suit. If [Law Firm] has not heard from you within [State Time Period] from the date of this letter, we will assume that you have decided not to move forward with this matter and your file will be closed.

Please contact me with any further questions. We look forward to hearing from you and hope to represent you in this matter.

Sincerely,

[Attorney's Name]

[Law Firm]

### **Office Conference Receipt and Notice of Non-Engagement**

This receipt is to acknowledge payment by [Client's Name] in the amount of \$\_\_\_\_\_ for an office consultation on the date of [Date]. It is understood that this payment is for consultation only and that no further obligation is incurred by either party.

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## NON-ENGAGEMENT LETTER: CONFLICT OF INTEREST

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

Thank you for your visit yesterday regarding \_\_\_\_\_. It was a pleasure to speak with you. Regrettably, however, [Law Firm] will not be able to assist you in this matter.

As we discussed yesterday, [Law Firm] would not be able to formally offer our services until we had the opportunity to investigate whether any of our current or former clients would be adversely affected by our participation in your matter. After we spoke, this formal search was performed and I learned that a conflict of interest does exist. Unfortunately, this situation cannot be resolved in a way that would permit [Law Firm] to represent you in this matter.

Please understand that [Law Firm] expressing no opinions on the merits of your claim. Any comments made were offered based solely on memory of the law and without the benefits of research, a complete understanding of the facts or time to reflect on the issue. Because of this, any such comment was not intended to serve as definitive legal advice. We strongly urge you to seek other counsel in this matter and remind you that you must not delay because of the legal time limits that can bar you from raising your claim once lapsed. If you do not have another attorney in mind, we recommend that you immediately contact the North Carolina Bar Association's Lawyer Referral Service at (800) 662-7660.

Thank you again for your consideration, but we must decline representation. Please do not hesitate to contact us with any questions regarding this letter.

Sincerely,

[Attorney's Name]

[Law Firm]

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

## **NON-ENGAGEMENT LETTER: DECLINING REPRESENTATION FOLLOWING RE-VIEW**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

You recently requested that [Law Firm] evaluate your claim against [Opposing Party] to decide whether or not the firm would like to represent you in this matter. Unfortunately, after a review of the documents provided, I have concluded that [Law Firm] will be unable to serve as your counsel. However, we appreciate the opportunity to review your situation and would encourage you to contact us again with any future legal needs.

Please understand that [Law Firm] is not expressing any opinions on the validity or merits of your claim, nor are we attempting to convey any likelihood that you will or will not prevail. We strongly suggest that you obtain a second opinion and want to emphasize that you should not be deterred from seeking another attorney simply because we were unable to provide our services.

Statutes of limitation place limits on the amount of time that you have to file a claim, and delay can potentially bar you from bringing suit against [Opposing Party] or recovering any damages to which you may be entitled. If you do not have another attorney in mind, we recommend that you immediately contact the North Carolina Bar Association's Lawyer Referral Service at (800) 662-7660.

You have not been charged any fees in connection with our evaluation of this matter. All documents provided to us have been returned with this letter. Thank you again for the opportunity to evaluate your situation and please do not hesitate to contact us with any questions regarding this letter.

Sincerely,

[Attorney's Name]

[Law Firm]

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## NON-ENGAGEMENT LETTER: DECLINING REPRESENTATION FOLLOWING RE-SEARCH

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

As we discussed during the initial consultation meeting on [Date], [Law Firm] has conducted legal research relevant to the claim you wish to file against [Opposing Party]. Unfortunately, I have determined that there is no legal precedent indicating that there is an enforceable legal basis for \_\_\_\_\_.

Though we have reviewed the case law to support such a conclusion, we would like you to understand that this deduction is based solely on preliminary research and we urge you to consult another lawyer for a second opinion. It is also important that you not delay if you wish to proceed with this matter because there are legal time limits that can potentially inhibit your right to file an action. If you do not have another attorney in mind, we recommend that you immediately contact the North Carolina Bar Association's Lawyer Referral Service at (800) 662-7660.

All original documents are being returned to you since we will not be representing you in this matter, but we thank you for your interest in our firm and hope that you will consider us again with any future legal needs.

Sincerely,

[Attorney's Name], Attorney at Law

[Law Firm]

### Office Conference Receipt and Notice of Non-Engagement

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This receipt is to acknowledge payment by [Client's Name] in the amount of \$\_\_\_\_\_ for an office consultation on the date of [Date] and preliminary research performed to investigate legal precedent. It is understood that this payment is for consultation purposes only and that no further obligation is incurred by either party.

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## **NON-ENGAGEMENT LETTER: FAILURE TO KEEP INITIAL APPOINTMENT**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

You recently called [Law Firm] to request a consultation on\_\_\_\_\_. Because you did not keep our scheduled appointment, no agreement to represent you in this matter has been made and no attorney-client relationship has been formed.

If you still need legal advice in this matter, I will be glad to attempt another meeting, but no commitment to serve as counsel can be made until we have had a chance to sit down and discuss the circumstances in greater detail and we have signed a mutually agreeable contract. Any comments offered thus far have been for the purpose of facilitating discussion, but without an opportunity to research the matter or sufficient time to determine the facts, no actual legal advice or opinions on the merits of your claim can be made.

I would also like to remind you that a statute of limitation may limit the amount of time that you have to file a claim. In the event that this time limit lapses, you will be barred from bringing suit and unable to recover any damages to which you may be entitled. In the event that you do not wish to employ this firm but do intend to proceed, I would strongly encourage you to retain other counsel.

If you would like to reschedule an appointment, please contact my office. I look forward to hearing from you.

Sincerely,

[Attorney's Name], Attorney at Law

[Law Firm]

[Date]

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## NON-ENGAGEMENT LETTER: AGREEMENT WITH NON-REPRESENTED

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Non-Representation

File ID:

Dear [Client's Name]:

As you know, [Law Firm] is representing your [Family Member] in connection with the preparation of [his/her] wills and [his/her] general estate plan. Obviously, because of your relationship to your [Family Member] and your status as a potential beneficiary of [his/her] estate, you have a significant personal interest in the decisions that [he/she] makes regarding the ultimate disposition of [his/her] assets.

For some time you have been a client of this firm on various matters, including [General Description of Transaction Type]. You have requested and agreed to our representation of your [Family Member] with respect to planning [his/her] estate, recognizing that we simultaneously handle your own matters. Please understand that your [Family Member] is our only client with respect to [his/her] will and estate plan, and that we are not representing you in connection with, or otherwise protecting whatever interest you may have in, your [Family Member]'s assets. You recognize that during the course of serving of your [Family Member], we might receive information that you would be interested in having. Nonetheless, you also realize that absent [his/her] consent, we are not permitted to share with you any information from or about your [Family Member].

Please sign and return to me at your earliest convenience the enclosed copy of this letter. Thank you.

Sincerely,

[Attorney],

[Law Firm]

[Date]

Signature: \_\_\_\_\_

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



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## **DIS-ENGAGEMENT LETTER: CLOSING LETTER**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Dis-engagement

File ID:

Dear [Client's Name]:

It has been a pleasure representing you in connection \_\_\_\_\_  
\_\_\_\_\_. As you are aware, the case has now concluded with a judgment [Description of Judgment]. Applicable documents have been signed by and filed with the court. A copy has also been enclosed for your personal records. We have contacted [Opposing Party]'s insurance carrier, who should soon be contacting you to make arrangements for payment.

Since all legal work has now been completed for this matter, we are closing our file, removing it from our active accounts list and returning all original records to you. Please note that the final invoice is also enclosed. We suggest that you keep all information relating to the matter in a safe place where it can be easily located. As we discussed in our initial interview, we will store your file for [State Time Period] years from the date of this letter, then the files will then be destroyed.

We truly hope that this matter has been completed to your satisfaction, as it is our goal to meet the expectations of our clients in every matter we handle for them. Enclosed, please find a questionnaire for evaluation of the services provided and a self addressed, stamped envelope for return. We would greatly appreciate your participation as any information provided will allow us to enhance the quality of service offered by the firm.

Thank you again for allowing [Law Firm] to represent you in this matter. If you have any further questions on this or any other issue, please do not hesitate to contact us.

Sincerely,

[Attorney's Name]

[Law Firm]

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## DIS-ENGAGEMENT LETTER: UNPAID FEES

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Dis-engagement

File ID:

Dear [Client's Name]:

Throughout the past [State Time Frame], it has been the pleasure of [Law Firm] to represent you in [Case Name]. In the course of representation, you have paid us approximately \$\_\_\_\_\_ in legal fees and expenses. Unfortunately, contrary to the terms set forth in the engagement agreement, the retainer account has not been replenished in a timely manner. The outstanding balance has now reached \$\_\_\_\_\_ and this amount is [State Time Frame] past due.

[Law Firm] values our relationship and appreciates the opportunity to have served as your counsel in this matter. It is for this reason we have continued representation while your balance continued to increase. Nonetheless, we are unable to finance your case any longer and respectfully request your permission to withdraw. We believe that the tribunal will grant us this permission since there is still sufficient time for you to retain another attorney without jeopardizing the case or adversely affecting the court's calendar.

Please be advised that you should not hesitate in contacting other counsel if you wish to continue pursuit of this matter. Important legal deadlines do exist and failure to meet these time limits will permanently bar your legal claim and any recovery to which you may be entitled. If you do not have another attorney in mind, we recommend that you immediately contact the North Carolina Bar Association's Lawyer Referral Service at (800) 662-7660.

Because of the great deal of time we have invested in researching and preparing for this case, it would be to your advantage to have your new lawyer consult with us. We would be more than happy to do this, but before this can be accommodated we will need to reach an agreement regarding compensation for additional time and expenses incurred. Furthermore, arrangements will need to be made for gradual reduction and payment of the outstanding balance.

Enclosed is a petition to withdraw from the case, which will be filed with the court [State Time Period] from the date of this letter. I would also like to direct your attention to an enclosed form requesting your consent. Should you wish for us to continue representation in this matter, we would be pleased to do so, provided the balance has been settled and the retainer account has been replenished in accordance with our initial agreement.

I look forward to hearing from you and genuinely hope that our relationship can continue.

Sincerely,

[Attorney's Name], Attorney at Law

[Law Firm]

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## **DIS-ENGAGEMENT LETTER: DIVERGENCE OF INTEREST**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Dis-engagement

File ID:

Dear [Client's Name]:

[Law Firm] appreciates the opportunity to have assisted you and [Co-Client's Name] in\_\_\_\_\_. Unfortunately, it is with sincere regret that I write to inform you that we will no longer be able to help you with this matter. A final invoice has been included with this letter to discuss outstanding fees.

As was described in our initial consultation, joint representation requires that all participating clients take common stances as to all issues because of the ethical, professional, and procedural problems that can quickly arise when a firm is asked to support inconsistent positions. Despite the fact that the process has thus far been an amicable one, the inability to agree upon [Problem] necessitates new counsel.

Because of the time that we have already invested in this matter, it would be to your advantage to have your new lawyer consult with us. We would be more than happy to do this, but before this can be accommodated we will need to make arrangements for compensation of additional time invested.

It was also discussed in our initial consultations that the firm would continue to represent the remaining client in the event that the other voluntarily sought alternate counsel. Because the current situation arises from a conflict of interest, however, it is necessary to secure your written consent to do so. Before making such a decision, you may wish to seek independent legal advice about your rights as they now stand.

If there are any questions regarding this matter, please do not hesitate to contact the firm.

Sincerely,

[Attorney's Name]

[Law Firm]

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## DIS-ENGAGEMENT LETTER: NOTIFICATION OF A MALPRACTICE CLAIM

**\*Note:** Please report the matter to Lawyers Mutual in writing and consult with a claims attorney prior to sending this letter to a client.

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Dis-engagement

File ID:

Dear [Client's Name]:

It is with sincere regret that I write to inform you that a timely complaint has not been filed for your medical malpractice claim against [Opposing Party]. Because the statute of limitation has expired, your claim against the hospital has been lost and you are barred from any potential recovery against [Opposing Party].

You may choose to consult with an attorney regarding my failure to suitably file your complaint and your rights as they now stand. However, my mistake in handling your case means that we now have a conflict of interest, and I can no longer serve as your attorney in this matter, nor can I provide you with any further legal advice.

*[Call Lawyers Mutual in advance of sending the letter to discuss the situation along with whether to disclose your malpractice carrier to your client.]*

Again, let me express my sincerest regrets.

Sincerely,

[Attorney's Name]

[Law Firm]

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## **DIS-ENGAGEMENT LETTER: DECLINING FURTHER REPRESENTATION**

[Date]

[Client Name]

[Client Address]

[Client Address]

Re: Confirmation of Dis-engagement

File ID:

Dear [Client's Name]:

[Law Firm] was pleased to represent you in \_\_\_\_\_. Unfortunately, since I was not able to establish contact with you for the past 60 days, it is our understanding that you no longer wish to proceed with this matter and no longer wish for [Law Firm] to represent you. For that reason, I am now closing my file and will take no further action regarding this lawsuit.

An invoice has been sent to the address we have on file to identify the attorney's fees that were deducted from the retainer deposit. The remainder of the fund is being held in a trust account and will be immediately returned to you upon your contact with the firm.

You should also be aware of the existence of important legal deadlines. Should you decide to proceed, you will want to contact another attorney as soon as possible. Failure to do so can result in lapsed time limits that will permanently bar your legal claim and any recovery to which you may be entitled.

I would also like to make you aware of several steps that were taken in an effort to determine your whereabouts. Information that you provided at our initial meeting, including your social security number and driver's license number, was used to determine whether a known change of address occurred. Additionally, a search of public records was performed, the courthouse was contacted, a title search was conducted and known family members were consulted. [Finally, an outside source was hired to execute a search via online resources.]

If you have any questions, please do not hesitate to contact the firm.

Sincerely,

[Attorney's Name]

[Law Firm]

***Note:** This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*