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Serving Illinois Lawyers

**THE FUNDAMENTALS  
OF LOSS PREVENTION  
FOR LAWYERS**

**Billing, Collection of  
Fees, and Handling  
Client Funds**



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# Billing, Collection of Fees, and Handling Client Funds

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Fee disputes are at the heart of a significant percentage of all legal malpractice claims each year. When a lawyer sues their client for unpaid fees it is inevitable that the lawyer will be countersued for legal malpractice, or a grievance with the disciplinary agency is filed. In some cases, merely mailing a final bill triggers threats of legal malpractice. To avoid fee disputes, use the following guidelines in billing and collecting fees for legal services:

## ***Don't accept clients who cannot afford your legal services***

As stated in the chapter *Client Screening* in ***The Fundamentals of Loss Prevention for Lawyers***, it is a lose/lose situation to take on a client who is overly concerned about fees and who ultimately will not be able to pay your bills. If you represent such clients, you will be torn between putting in the required number of hours and minimizing the final costs. Learn to Say No to these clients. (To download a copy of ***The Fundamentals of Loss Prevention for Lawyers***, visit [www.isbamutual.com](http://www.isbamutual.com).)

## ***Written fee agreements***

Each engagement letter or contingent fee agreement should contain a clear explanation of the legal fees that will be charged for the work to be performed. In addition, be specific regarding the types of out-of-pocket expenses for which the client will be responsible – for example: filing fees, court costs, expert witness fees, photocopy charges, and computer research. Clients are often astonished by the amount of out-of-pocket expenses incurred on their behalf.

[Sample Engagement Letters and Contingency Fee Agreements](#) can be found in the Addenda [Sample Letters and Forms](#).

## ***Bill monthly***

Lawyers who charge an hourly fee should always bill the client on at least a monthly basis, unless the client has specifically requested another arrangement. Avoid billing the client at the project's completion unless the total cost of the representation has been agreed upon in advance. ***The key to hourly billing is to send bills and collect your fees on a frequent basis to avoid large, unexpected bills.***

## ***Detailed billing statements***

Provide detailed billing statements that describe the work performed by each lawyer, how long it took, and the reason for the work. Entries such as 20 hours for “research” are unacceptable. Rather, the entry should read “research Illinois case law on piercing the corporate veil to support Motion for Summary Judgment.”

## ***Daily time entries***

Every lawyer who bills on an hourly basis should record their time ***daily***. Billing software is preferred and can assist in the creation of invoices. However, manual time keeping remains a viable method as well. It is recommended that each lawyer keep a time sheet or pad of paper on which to record your work. Require each lawyer to submit their time sheets for the preceding

week every Monday morning or more often. Some firms go so far as to impose penalties on lawyers who are delinquent in submitting their time sheets.

### ***Review all bills***

The lawyer responsible for the case or matter should review each bill for errors before it is mailed to the client.

### ***Copy the client on all correspondence and other materials relating to the client's matter***

Ask yourself which client is more likely to pay their monthly bill: the one who hasn't received a single sheet of paper from their lawyer in three months or the one who regularly receives informational copies from their lawyer? Before copying a client on email correspondence, make sure that the client understands that a "reply all" to the email could result in an inadvertent disclosure of information meant to be kept confidential.

### ***Take prompt action on accounts in arrears***

This is the single biggest mistake that lawyers make with respect to fee disputes. Most lawyers joined the legal profession to practice law, not to collect delinquent fees. Unfortunately, the client who can't pay your fee today isn't likely to pay it tomorrow. Lawyers must therefore deal with the delinquent client without delay.

To begin with, the firm's partners should review all past due accounts monthly. Next, the partner responsible for a matter in arrears should contact the client and schedule a face-to-face meeting. At that time, the client should be informed that the firm will withdraw from the matter if the fee issue is not resolved promptly. Beware of clients who promise you money "next month." It usually doesn't materialize. The moral of the story is that it is better to withdraw and cut your losses when you are owed \$1,000 rather than to wait and later sue the client when you are owed \$10,000.

[Sample Disengagement Letters](#) can be found in the [Sample Letters and Forms](#).

### ***Collect retainer fees***

If you are having difficulty collecting fees on a regular basis, require a retainer fee up front.

## **Handling Client Funds**

When so requested, lawyers have a fiduciary duty to hold property of others with care.

According to the ARDC Annual Report 2020, 22% of the complaints filed that year involved claims of improper handling of client funds.

### ***Separate accounts***

Every law firm should have a separate operating account that is only used for firm expenses. This is separate from your personal account.

### ***IOLTA Trust Accounts***

If your firm accepts retainer fees or is entrusted to hold funds for a certain amount of time, those funds must be placed in a client trust account, commonly referred to as an IOLTA account.

[Illinois Rules of Professional Conduct Rule 1.15](#) explains that funds shall be deposited in a separate identifiable interest-bearing client trust account maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person.

Many well-meaning and/or seasoned lawyers find themselves the subject of complaints because they didn't take the time to understand their ethical responsibilities to maintain their IOLTA account. You can learn about the specific requirements for maintaining an IOLTA account by going to the ARDC website at <https://www.iardc.org/EducationAndOutreach/ClientTrustAccounts> where you will find the following resources:

- [Client Trust Account Handbook](#)
- [Client Trust Account FAQs](#)
- [On-Demand CLE programs](#)
- [Articles from Illinois Courts Connect](#)

If there is an overdraft of your client trust account, the financial institution is **required** to report the overdraft to the ARDC. Every year the ARDC receives over 250 overdraft reports. To avoid or at least reduce the risk of being the subject of such a report, read the [Illinois Rules of Professional Conduct](#); review the information on the [ARDC website](#); and review the [Time, Billing & Accounting](#) section of the [Illinois State Bar Association Practice HQ](#) site at [www.isba.org/practicehq](http://www.isba.org/practicehq). You can also work with an accountant to ensure that your client trust account is being properly maintained.

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## ***Billing, Collecting and Handling of Funds Do's and Don'ts***

### ***Do...***

- ✓ Make sure clients sign engagement letters and fee agreements before beginning any work.
- ✓ Every lawyer who bills on an hourly basis should record their time **daily**.
- ✓ The lawyer responsible for the case or matter should review each bill for errors before it is mailed to the client.

### ***Don't...***

- ⊗ Accept clients who can't pay.
- ⊗ Forget to send invoices monthly.
- ⊗ Try to manage your trust accounts without reviewing the requirements and your ethical obligations.

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To download our entire guide, ***The Fundamentals of Loss Prevention for Lawyers*** or to access Sample Letters & Forms, visit our website [www.isbamutual.com](http://www.isbamutual.com).

# Addenda: Sample Letters and Forms

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NOTE: This material is intended as only an example, which you may use in developing your own letters and forms. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ISBA Mutual Insurance Company be liable for any direct, indirect, or consequential damages resulting from the use of this material.



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## Engagement Letter: Contingent Fee

[Date]

[Name and Address]

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

It was a pleasure meeting with you on \_\_\_\_\_ to discuss \_\_\_\_\_ representation of you regarding your personal injury claim. The purpose of this agreement is to set forth the terms upon which \_\_\_\_\_ agrees to represent you, in order to establish and maintain a mutual understanding of the goals and respective responsibilities of you, as client, and \_\_\_\_\_.

### Scope of Service

You have retained \_\_\_\_\_ (\_\_\_\_\_) to investigate and represent you on your claim for [\_\_\_\_\_] on or about \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_. [As we discussed, \_\_\_\_\_ will not be representing your spouse, \_\_\_\_\_, in this litigation because of potential attorney/client privilege and conflict of interest concerns. I have advised \_\_\_\_\_, by letter dated \_\_\_\_\_, that \_\_\_\_\_ cannot represent her and that she is responsible for retaining separate counsel to pursue her claim for damages arising out of this same automobile accident.] (Conflict of interest acknowledgment)

### Client Cooperation

In order to effectively advocate your interests, you have an affirmative obligation to cooperate with \_\_\_\_\_ during the pendency of this matter. For example, you will be required to furnish certain documents, information and releases and may be required to attend depositions and court appearances. Consequently, you are expected to provide requested documentation promptly to the appropriate firm representative, whether an attorney, paralegal or secretary. You must also be available to work with \_\_\_\_\_ attorneys in preparation for depositions, court appearances and to discuss issues as they arise throughout this matter. A client's non-cooperation is grounds for \_\_\_\_\_ withdrawal.

In return, \_\_\_\_\_ agrees to keep you informed of the status of this matter and to consult with you when appropriate. Copies of significant correspondence and documents will be sent to you for your review and file. In the event that we are out of the office or otherwise unavailable, please leave a message with my secretary disclosing the nature and urgency of the call. Even if the attorney cannot respond directly, someone will return your call with an appropriate response.

### **Legal Fees, Costs and Disbursements**

As compensation for our services, \_\_\_\_\_ will be paid in accordance with the attached Contingent Fee Agreement which is incorporated herein by reference.

### **General Lawsuit Information**

In order to demystify the lawsuit process, \_\_\_\_\_ would like to explain, in some detail, how a lawsuit is handled and what you can expect during the pendency of this action.

A lawsuit is commenced by the service and filing of a Summons and Complaint. The Complaint recites facts upon which the Plaintiff asserts liability against the Defendant, which, in this case, would be for \_\_\_\_\_. The Defendant then has a limited number of days in which to serve and file an answer which typically denies the claims asserted in the Complaint.

After the lawsuit is commenced, both the Plaintiff(s) and Defendant(s) are afforded a limited period of time called "discovery", during which they investigate the strengths and weaknesses of each other's claims. Written questions called "interrogatories" are frequently exchanged which require written responses about the facts and claims asserted by both parties. Oral depositions are also commonly used as a discovery tool. Parties to the action, as well as witnesses, orally answer questions posed by opposing counsel which are simultaneously recorded by a stenographer. Depositions are very important, because the testimony can later be used at trial to perhaps point out inconsistencies between deposition and trial testimony. Also, depositions are helpful in ascertaining the strength and credibility of the deponent. If interrogatories are sent to us, we will explain the procedure and assist you and any other company employees with answering the questions. If your deposition is taken, we will meet with you prior to the deposition to discuss the process and will also be present at the deposition.

If your case does not settle after discovery is terminated, then a trial will take place, usually before a judge and six-person jury. Prior to trial, we will spend considerable time with you and any other witnesses explaining how a trial is conducted and reviewing everyone's testimony. It is entirely possible that several trial dates will be set, only to be continued because of crowded court calendars. It is very important that you understand the delays that often attend suits; they can stretch on for years, which is why your commitment to and patience with this process is imperative.

### **Assignment of Firm Personnel**

I will be primarily responsible for the supervision of your matter, but you are hiring \_\_\_\_\_, not me individually. If necessary, I reserve the right to draw upon the talent and expertise of other partners and associates within the firm and to utilize paralegal staff to handle ministerial tasks.

### **Withdrawal**

You have the right to our representation at any time, subject to payment of any outstanding costs and disbursements. Conversely, \_\_\_\_\_ serves the right to withdraw from representation, subject to the ethical restrictions imposed upon us by the applicable Rules of Professional Responsibility. If \_\_\_\_\_ chooses to terminate representation, notice will be sent to your last known address.

**Binding Agreement**

This Agreement, which incorporates the attached Contingent Fee Agreement, represents the entire agreement between \_\_\_\_\_ and \_\_\_\_\_. By signing below, you acknowledge that this Agreement has been carefully reviewed and its content understood, and you agree to be bound by all of its terms and conditions. Furthermore, you acknowledge that \_\_\_\_\_ has made no representation to you regarding the outcome of this action for which \_\_\_\_\_ has been retained.

If this Agreement reflects your understanding of our relationship, please sign and return the enclosed duplicate copies of both this Engagement Agreement and the attached Contingent Fee Agreement. In conformance with firm policy, we cannot commence work upon your matter until we have received both this executed Agreement and the retainer.

Thank you again for this opportunity to be of service to you.

Sincerely,

\_\_\_\_\_  
[Name]

**ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in the County of \_\_\_\_\_, State of \_\_\_\_\_, as follows:

[Insert appropriate jurisdictional requirements regarding a) selection of arbitration; b) arbitration procedure; c) procedural impact of arbitrator’s decision; d) review rights; and e) costs of arbitration.

I have reviewed and agreed to the above terms of engagement of \_\_\_\_\_.

\_\_\_\_\_

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

[Name]

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## Engagement Letter: Contingent Fee, Short Form

I, \_\_\_\_\_, [on behalf of \_\_\_\_\_,] hereby retain \_\_\_\_\_ to make an investigation of and represent me [on behalf of \_\_\_\_\_], in my [his/her] claim for personal injuries sustained by \_\_\_\_\_ on or about \_\_\_\_\_ at the intersection of \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

I agree to pay \_\_\_\_\_, as compensation for services rendered, a Contingent Fee of \_\_\_\_\_% of the amount finally awarded either by way of settlement, trial or appeal. No settlement of [\_\_\_\_\_'s] claim may be made without my express authorization. I acknowledge that \_\_\_\_\_ has explained to me the right to engage any attorney(s) of my choice and that I have the choice of alternative fee arrangements for compensating \_\_\_\_\_.

If my case is resolved on a structured basis (a lump sum cash payment plus periodic cash payments), I further agree that the fee payable to \_\_\_\_\_ shall be payable in full on the date of the first cash payment and shall be based upon the then present cash value of the entire structured settlement.

I will also reimburse \_\_\_\_\_ for any out-of-pocket expenses advanced by it for investigation or litigation on my [\_\_\_\_\_'s] behalf. These expenses include, but are not limited to, filing fees, investigators, expert witness fees, depositions, court costs, travel and other out-of-pocket expenses. Costs exceeding \$100 may be billed directly to me and I agree to promptly and directly pay these costs. I will send notice to \_\_\_\_\_ of all such payments. Otherwise, \_\_\_\_\_ agrees to contact me prior to advancing any cost exceeding \$300.

I agree to pay \_\_\_\_\_ a deposit of \$\_\_\_\_\_, as a partial advance against anticipated costs and disbursements. \_\_\_\_\_ will send me monthly itemized statements of costs and disbursements, which once the deposit is depleted; I agree to pay within thirty days of the invoice date. I understand that \_\_\_\_\_ reserves the right to charge me interest, not to exceed \_\_\_\_\_% per annum, on any bill outstanding for more than thirty days. This deposit will be refunded to the extent it has not been utilized in this matter.

In the event that a recovery is made by settlement, trial or appeal, the expenses shall be deducted from my share of the recovery after the attorneys' fees have been calculated and deducted from the recovery. I understand that a recovery cannot be guaranteed and that I remain responsible for any out-of-pocket expenses regardless of the outcome.

I understand that in the event that \_\_\_\_\_ concludes at any time that there is not sufficient likelihood of recovery to justify further time and effort, \_\_\_\_\_ shall have the right to withdraw from employment, which shall terminate their right to compensation for professional services, except for any outstanding costs and disbursements.

\_\_\_\_\_ acknowledge that if no recovery has been made upon the final conclusion of my claim, \_\_\_\_\_ will not be entitled to any compensation for professional services rendered, and I will have no obligation beyond reimbursement of costs.

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

On behalf of \_\_\_\_\_

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

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## Engagement Letter: Contingent Fee, Long Form

\_\_\_\_\_ (“Lawyer”) will provide legal services to \_\_\_\_\_ (“Client”), according to the terms set forth below.

1. **CONDITIONS.** This Agreement will not take effect, and Lawyer will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit (advanced fee), if any, called for under Paragraph 5.
2. **SCOPE OF SERVICES.** Client is hiring Lawyer to represent Client in the matter of Client’s claims against \_\_\_\_\_ and possibly others as future investigation may indicate, arising out of \_\_\_\_\_, which occurred on, or about \_\_\_\_\_.

Lawyer will represent Client until a settlement or judgment is obtained by way of negotiations or arbitration or trial. Lawyer will oppose any motion for a new trial or any other post-trial motions filed by an opposing party or will make any appropriate post-trial motions on Client’s behalf. After judgment, Lawyer will not represent Client on any appeal, or in any proceedings designed to execute on the judgment, without such additional compensation as may be agreed upon in a separate Agreement.

3. **CLIENT.** The lawyer is representing the Client \_\_\_\_\_ only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or otherwise in this matter, that lawyer’s duty is to act in the best interest of the Client and lawyer cannot share information about Client’s case with anyone other than Client without express permission.
4. **RESPONSIBILITIES OF THE PARTIES.** Lawyer will provide those legal services reasonably required to represent Client in prosecuting the claims described in Paragraph 2. Client agrees to appear at all legal proceedings (including depositions, hearings including but not limited to trial) when Lawyer deems it necessary. Client further agrees to be truthful with and to generally cooperate fully with Lawyer in all matters related to the preparation and presentation of Client’s claims (including but not limited to interrogation, written discovery, trial preparation, client interview) and to keep Lawyer informed of any information or developments which may come to Client’s attention. Further, while it is impossible to predict the course of a representation, it may be important for Lawyer to contact Client immediately, or upon short notice, to confer with Client regarding the status of Client’s case. An inability to do so may result in Client’s case being prejudiced and detrimentally affect the outcome of the case. Accordingly, Client agrees to keep Lawyer informed of Client’s current address, phone number and whereabouts. If Client leaves town, for example, to travel on

business or vacation, Client agrees to notify Lawyer before leaving of the expected duration of the trip and how Client may be contacted in the meantime.

5. **DEPOSIT (ADVANCED FEE).** Client agrees to pay Lawyer an initial deposit (advanced fee) of \$\_\_\_\_\_, to be returned with this signed Agreement. Lawyer will hold this initial deposit (advanced fee) in a trust account. Client hereby authorizes Lawyer to use that deposit to pay the costs and other expenses incurred under this Agreement.

When Client's deposit (advanced fee) is exhausted, Lawyer reserves the right to demand further deposits (advanced fees). Once a trial or arbitration date is set, Lawyer will require Client to pay all sums then owing, and to deposit the costs Lawyers estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees, court costs or arbitration fees likely to be assessed. Those sums may exceed the deposit (advanced fee).

Client agrees to pay all deposits (advanced fees) required under this Agreement within \_\_\_\_\_ days of Lawyer's demand. Any deposit (advanced fee) that is unused at the conclusion of Lawyer's services will be refunded.

6. **LEGAL FEES AND BILLING PRACTICES.** Lawyer will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs and expenses, as described in Paragraph 7.

#### **ALTERNATE ONE**

The fee to be paid will be a percentage of the "gross recovery," depending on the stages at which settlement or judgment is reached. The term "gross recovery" means the total of all amounts received by settlement, arbitration award or judgment, including any award of lawyer's fees. The fee will be calculated before the deduction of any costs and expenses as set forth in Paragraph 7, and the costs and expenses will remain the responsibility of Client to be paid from the portion of any amounts received by Client after deduction of the fee.

Upon conclusion of the matter, Lawyer will provide Client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to Client and the method by which the remittance was calculated.

#### **ALTERNATE TWO**

The fee to be paid will be a percentage of the "net recovery," depending on the stage at which settlement or judgment is reached. The term "net recovery" means: 1) the total of all amounts received by settlement, arbitration award or judgment, including any award of lawyer's fees; 2) minus all costs and expenses as set forth in Paragraph 7.

Upon conclusion of the matter, Lawyer will provide Client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to Client and the method by which the remittance was calculated.

Lawyer's fee shall be calculated as follows:

- (i) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Lawyer's fee will be \_\_\_\_\_ percent (\_\_\_\_%) of the net recovery;
- (ii) If the matter is resolved prior to days before the date initially set for the trial or arbitration of the matter then Lawyer's fee will be \_\_\_\_\_ percent (\_\_\_\_%) of the net recovery; and
- (iii) If the matter is resolved after the times set forth in (i) and (ii), above, then Lawyer's fee will be \_\_\_\_\_ percent (\_\_\_\_%) of the net recovery.

In the event of Lawyer's discharge or withdrawal for cause as provided in Paragraph 12, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Lawyer shall be entitled to be paid by Client a reasonable fee for the legal services provided the extent to which Lawyer's services have contributed to result obtained. Such fee shall be determined by considering the following factors:

## 7. COSTS AND EXPENSES

Lawyer will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs and expenses paid or owed by Client in connection with this matter, or which have been advanced by Lawyer on Client's behalf and which have not been previously paid or reimbursed to Lawyer. Costs and expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses and consultants' fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Lawyer's cost.

In-office photocopying \_\_\_\_\_ /page

Facsimile charges \_\_\_\_\_ /page

Mileage \_\_\_\_\_ /mile

Other: \_\_\_\_\_

### **ALTERNATE ONE**

**Experts, Consultants and Investigators.** To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or



investigators. Client agrees to pay such fees and charges. Lawyer will consult with client on the selection of any expert witnesses, consultants, etc., to be hired and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

### **ALTERNATE TWO**

**Experts, Consultants and Investigators.** To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Lawyer will select, in consultation with client, any expert witnesses, consultants or investigators to be hired and Client will be informed of persons chosen and their charges.

Client authorizes Lawyer to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Lawyer's judgment unless one or both of the clauses below are initialed by Lawyer.

Lawyer shall obtain Client's consent before incurring any costs in excess of \$\_\_\_\_\_.

Lawyer shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

If an award of fees and/or costs is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Lawyer is entitled to charge its clients or that only the fees and/or costs which were allowed were reasonable. Client agrees that, whether or not lawyer's fees or costs are awarded by the court in Client's case, Client will remain responsible for the payment, in full, of all lawyer's fees and costs in accordance with this Agreement.

8. **BILLING STATEMENTS.** Lawyer will send Client periodic billing statements for costs and expenses incurred in connection with this matter. Each statement is to be paid in full within \_\_\_\_ days of the date of such statement.
9. **DISCHARGE AND WITHDRAWAL.** Client may discharge Lawyer at any time, upon written notice to Lawyer. Lawyer may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no court action has been filed, for good cause and upon reasonable notice to Client. Good cause includes Client's breach of this Agreement, refusal to cooperate with Lawyer or to follow Lawyer's advice on a material matter or any fact or circumstance that would render Lawyer's continuing representation unlawful or unethical.

Notwithstanding Lawyer's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Lawyer for

all costs incurred prior to the termination. In the event that there is any recovery obtained by Client after conclusion of Lawyer's services, Client remains obligated to pay Lawyer for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

Lawyer will maintain Client's file for \_\_\_\_ years after this matter is concluded. Client may request the file at any time during, upon conclusion of, or after conclusion of, this matter. \_\_\_\_ years after the conclusion of this matter, the file may be destroyed without further notice to Client.

10. **DISCLAIMER OF GUARANTEE AND ESTIMATES.** Nothing in this Agreement and nothing in Lawyer's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Lawyer makes no such promises or guarantees. Lawyer's comments about the outcome of the matter are expressions of opinion only. Client acknowledges that Lawyer has made no promise or guarantees about the outcome.
11. **NEGOTIABILITY OF FEES.** The rates set forth are not set by law but are negotiable between a lawyer and client.
12. **APPROVAL NECESSARY FOR SETTLEMENT.** Lawyer will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client has the absolute right to accept or reject any settlement. Client agrees to seriously consider any settlement offer Lawyer recommends before making a decision to accept or reject such offer. Client agrees not to make any settlement or compromise of any nature of any of Client's claims without prior notice to Lawyer.
13. **LIMITATION OF REPRESENTATION.** Lawyer represents Client only on the matter described in Paragraph 2 (Scope of Services). Lawyer's representation does not include independent or related matters that arise, including, among other things, claims for property damage, worker's compensation disputes with health care providers about the amount owed for services, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy.

In the event there is a dispute between Client and a third party regarding any amounts allegedly owed by Client to the third party and there is a colorable claim to a lien on any proceeds in Lawyer's possession by the third party, Lawyer will interplead those proceeds to the court for resolution of the dispute, if Client and the third party are unable to resolve the dispute amicably after a reasonable amount of time.

This Agreement does not include defending Client against or representing Client in any claims that may be asserted against Client as a cross-claim or counter-claim in Client's case. This Agreement does not apply to any other legal matters. If any such matters arise later, Lawyer and Client will either negotiate a separate Agreement if Client and Lawyer agree that Lawyer will perform such additional legal work or Client engage separate counsel with respect to cross claims or counter claims or additional legal work.

Client may have other possible causes of action arising from the facts and circumstances giving rise to this representation. As Lawyer does not represent Client on these other possible claims, Client should seek independent representation if Client wishes to pursue a remedy. Delay or failure to do so may result in Client being barred by a statute of limitations from being able to recover under these other causes of action.

14. **CONCLUSION OF SERVICES.** When Lawyer's services conclude, all previously approved costs and expenses will immediately become due and payable. Lawyer is authorized to use any funds held in Lawyer's trust account as a deposit (advanced fee) against costs to apply to such unpaid costs and expenses. After Lawyer's services conclude, upon request, Client's file and property will be delivered to Client, whether or not Client has paid any fees and/or costs owed to Lawyer. Client understands that to the limited extent Lawyer has paid out-of-pocket expenses for items, which have not yet been reimbursed by Client, Lawyer may be reimbursed for that particular expense before releasing that item.
15. **LIEN.** Client hereby grants Lawyer a lien on any and all claims or causes of action that are the subject of Lawyer's representation under this Agreement. Lawyer's lien will be for any sums owing to Lawyer for any unpaid costs, or lawyer's fees, at the conclusion of Lawyer's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.
16. **RECEIPT OF PROCEEDS.** All proceeds of Client's case shall be deposited into Lawyer's trust account for disbursement in accordance with the provisions of this Agreement. No disbursement may be made until the settlement/or recovery check has cleared the bank.
17. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.
18. **SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.
19. **MODIFICATION BY SUBSEQUENT AGREEMENT.** This Agreement may be modified by subsequent Agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.
20. **EFFECTIVE DATE.** This Agreement will govern all legal services performed by Lawyer on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Lawyer the reasonable value of any services Lawyer may have performed for Client.

**THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.**

Dated: \_\_\_\_\_

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

DATED: \_\_\_\_\_

LAW FIRM

By \_\_\_\_\_

[Name], Partner

## **OTHER CLAUSES FOR CONSIDERATION IN FEE AGREEMENTS**

### **1. RESOLUTION OF A FEE DISPUTE**

If a dispute concerning fees or expenses should occur during or at the conclusion of this matter, if the Lawyer and Client are not able to resolve the dispute, the parties agree to use the services offered by the Fee Dispute Resolution Program in their jurisdiction. The services provided by the fee dispute resolution program are offered at no cost to the Lawyer and Client unless either party wishes to be represented by counsel at their own expense. The Lawyer will inform the Client about how to start the proceedings and the differences between mediation and binding arbitration.

If Lawyer and Client agree to binding arbitration, they waive their right to have the fee dispute decided in Court. Binding arbitration does not absolve the Lawyer from liability or limit liability.

By initialing below, Client confirms that s/he has read and understands the options that are available should a fee dispute arise, and Lawyer and Client voluntarily agree to participate in the services offered by the Fee Dispute Resolution Program.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.**

\_\_\_\_\_  
(Client's Initials)

\_\_\_\_\_  
(Lawyer's Initials)

### **2. INTEREST CLAUSE**

If a billing statement balance is not paid in full when due, interest will be charged on any unpaid balance that remains past due beginning on the first day it is past due and continuing until paid at the rate of \_\_\_\_ percent (\_\_\_\_%) per annum (or the maximum lawful rate if less.)

### **3. REPLENISHING DEPOSIT (ADVANCED FEE)**

To commence the representation, Client has provided [must provide] Lawyer with a \$\_\_\_\_\_ deposit (advanced fee). Lawyer will hold the deposit (advanced fee) in Lawyer's trust account and apply it to each statement when rendered by Lawyer. Client will pay any additional balance due upon receipt of Lawyer's statements each month and also will replenish the deposit (advanced fee) each month in the amount of all payments made to Lawyer from the deposit (advanced fee). At the conclusion of the matter, the deposit (advanced fee) will be applied to the final statement, in which event Client will be

responsible for any amount due over and above the deposit (advanced fee) or be entitled to a refund of any amount remaining after the final statement is satisfied in full.

**4. OTHER PAYOR CLAUSE-PERSONAL**

Client has informed Lawyer that Client has arranged for [employer/relative-name and relationship] to be responsible for some or all of Lawyer's fees which may become due under this Agreement. It is understood that should [name] fail for any reason to pay Lawyer's statements as they become due, Client shall remain responsible for paying all Lawyer's statements as they are rendered upon the billing and payment terms set forth in this Agreement.

[Provide signature line for employer/relative in Agreement.]

**5. "OTHER LAWYER" CLAUSE-CONTINGENCY**

It is agreed that Lawyer will divide the lawyer's fees in this case with another lawyer, [name], who will be compensated out of the fees which Lawyer otherwise will earn under this Agreement. The total fee to Client will not be increased. Lawyer \_\_\_\_\_ has agreed to assume joint responsibility for this matter. (This will require a second signature by the associated lawyer.)

**6. SUCCESSOR LAWYER CLAUSE**

Client agrees that a successor lawyer maybe appointed to temporarily assist with the case in the event of the lawyer's illness, vacation, or other similar absences. In the event of Lawyer's death, disability, impairment, or incapacity, the Client agrees that a successor lawyer can review the Client's file for the limited purposes of protecting the Client's rights and can assist with the closure of Lawyer's law practice. Client maintains the right to select a Lawyer to represent him/her.

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## Engagement Letter: Contingency Fee Agreement for Legal Services – With Referral Fee

***I, the undersigned client, do hereby retain and employ [name of firm] (the “Firm”) as my lawyers to represent me [describe case or matter – see options provided below]***

Option 1: ***[concerning injuries I received arising from an accident that occurred on***

***\_\_\_\_/\_\_\_\_/\_\_\_\_***

***at \_\_\_\_\_]***

Option 2: ***[in a claim for the death of \_\_\_\_\_]***

***arising out of incidents that occurred \_\_\_\_\_]***

Option 3: ***[in a claim against \_\_\_\_\_ regarding***

***\_\_\_\_\_]***

As compensation for the services rendered by ***[name of firm]***, I agree to pay ***[name of firm]*** ***[describe contingency fee – see options provided below]***.

Option 1: ***[ \_\_\_\_ % of whatever may be recovered from said claim whether through settlement, trial, arbitration, or mediation.]***

Option 2: ***the following contingency fee based on whatever proceeds are recovered:***

***\_\_\_\_\_ % if settled without suit being filed;***

***\_\_\_\_\_ % in the event suit is filed;***

***\_\_\_\_\_ % in the event a second trial or an appeal becomes necessary.]***

Option 3: ***[ \_\_\_\_ % of the first \$ \_\_\_\_\_;***

***\_\_\_\_\_ % of the next \$ \_\_\_\_\_;***

***\_\_\_\_\_ % of any amount of proceeds recovered over \$ \_\_\_\_\_.]<sup>1</sup>***

I understand and agree that the firm of \_\_\_\_\_ ***[name of referring lawyer or firm]*** will receive a fee of \_\_\_\_\_ for referring this matter to ***[name of your firm]***. This fee shall be paid from the total agreed contingent fee identified in the foregoing paragraph and shall not impact the client’s share of the amount recovered. ***[Name of referring lawyer or firm]*** agrees to assume the same legal responsibility for the performance of the services in question as would a partner of ***[name of your firm]***.<sup>2</sup>

I understand and agree that the court may review contingent fee agreements for fairness, and that, in special circumstances where a lawyer performs extraordinary services involving more than

usual participation in time and effort, lawyers may apply to the court for approval of additional compensation.

I further agree that the expenses and other costs associated with this matter will be deducted from the sum recovered **after the lawyer fee is deducted**. Such expenses may include but are not limited to items such as costs of investigation, subpoena fees, court fees, expenses for consultants, experts and other witnesses, deposition costs, postage, photocopy fees and travel costs. Other costs may include required reimbursement of others pursuant to valid liens.

In the event no recovery is made, I understand and agree that I will still be responsible for the payment of such expenses but will not be responsible for the payment of any lawyer fees. At the time the **[case/matter]** is closed, **[name of firm]** will provide me with an accounting of the disbursements made in my **[case/matter]**.

**[Optional retainer fee provision:**

**We require that you pay a security retainer of [enter dollar amount] before we will commence any work on your behalf. We will place the security retainer in our client trust account and the retainer funds shall remain the property of the client until applied to our expenses. Charges will be made against the retainer as out-of-pocket expenses are incurred on the file until such time as the retainer is exhausted. The retainer must be received by [insert date].<sup>3</sup>**

I acknowledge that the Firm has suggested that I should keep a copy of all of the documents related to my claim in a file folder that the Firm has provided to you. After the matter is closed, I may obtain copies of my file by paying the Firm's standard photocopying charges and a minimum fee to compensate the Firm for the time necessary to duplicate the file.<sup>4</sup>

I agree that the Firm has made no promises or guarantees regarding the outcome of my claim. I understand that the firm will investigate my claim and if, after such investigation, the claim does not appear to them to have merit, the Firm shall have the right to cancel this agreement and shall have the right to withdraw from any lawsuit by giving me notice by regular mail.

I understand that, due to storage constraints, portions of the file may be destroyed upon the conclusion of the engagement.

**[Notice pursuant to Personal Injury Representation Agreement Act]<sup>5</sup>**

I acknowledge that I received and read a copy of this agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and understand its provisions.<sup>6</sup>

\_\_\_\_\_  
Client Signature

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

ACCEPTED BY: \_\_\_\_\_  
[Name of Receiving Firm]

ACCEPTED BY: \_\_\_\_\_



[Name of Referring Firm]

Sincerely

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<sup>1</sup> Note Regarding Medical Malpractice Claims: Pursuant to Illinois law (735 ILCS 5/2-1114), the total contingent fee for plaintiff's lawyers in all medical malpractice actions shall not exceed 33 1/3% of all sums recovered.

<sup>2</sup> See [Illinois Rules of Professional Conduct Rule 1.5](#) regarding referral fees.

<sup>3</sup> If you use the suggested retainer language, calendar the retainer due date. If the retainer is not received by that date, send a nonengagement letter. This will avoid a situation in which the potential client forgets or ignores the retainer request but still believes that a lawyer-client relationship exists.

<sup>4</sup> For a more detailed discussion on file retention issues, see [File Documentation, Management and Retention](#).

<sup>5</sup> **NOTICE OF PERSONAL INJURY REPRESENTATION AGREEMENT ACT**

The law in Illinois (815 ILCS 640/1) regarding Personal Injury Agreements provides:

“Any person who makes an agreement with any other person to represent him in his claim for settlement of a personal injury claim within 5 days after the occurrence which gives rise to the claim may, within a 10-day period after the occurrence, elect to avoid the agreement by notifying the other person in writing of the election by registered or certified mail, return receipt requested.”

“The person undertaking the representation of the injured party by such agreement must, at the time of the agreement, furnish the party with whom the agreement is made a copy of the agreement and the address to which the notice may be sent and a copy of this Act, and obtain written acknowledgment of receipt of such from the party represented. If he fails to do so, the 10-day period provided for in this Act does not commence to run until the agreement, address and a copy of this Act are furnished.”

<sup>6</sup> Calendar a follow-up date after sending the letter. If a signed copy of the letter is not received from the client by that date, send another letter. If that is not answered, send a [Non-Engagement Letter](#). This will avoid any misunderstanding as to whether you are representing the client.

DISCLAIMER: This sample form is designed to reduce the likelihood of being sued for legal malpractice. It is not intended to be, nor should it be considered legal advice. It is not the intent of this form to suggest or establish practices standards or standards of care applicable to a lawyer's performance in any given situation. Rather, the sole purpose of this sample form is to assist lawyers insured by ISBA Mutual in avoiding legal malpractice claims, including meritless and frivolous claims. To that end, the intention is to advise lawyers insured by ISBA Mutual to conduct their practices in a manner that is well above the accepted norm and standards of care established by substantive legal malpractice law. The recommendations contained in these materials are not necessarily appropriate for every lawyer or law firm and do not represent a complete analysis of each topic.

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## Engagement Letter: Basic Hourly

[Date]

[Name and Address of Client]

Dear [Client]:

We are pleased to have the opportunity to represent you.

### FEES AND COSTS

Legal services for which you will be billed include time spent on legal research, document review and drafting, correspondence, deposition, court appearances, conferences, telephone calls, travel, negotiations, closing of transactions and other services related to our engagement. Whenever possible, we will consult with you before beginning work on any new areas of the engagement inconsistent with our discussions. Our general practice is to bill clients based on the time expended by the attorneys and legal assistants involved in the matter at each individual's then current hourly billing rate. Our current hourly rates for legal assistants and lawyers range from \$\_\_\_\_\_ to \$\_\_\_\_\_ per hour, depending primarily on the particular lawyer's or legal assistant's background and experience. Currently, it is anticipated that I will have primary responsibility for this engagement. My current hourly rate for this type of engagement is \$\_\_\_\_\_ per hour. These rates are adjusted periodically, usually at the beginning of the calendar year, and any modification of such rates is applicable to legal services performed after the new rates become effective.

I may assign parts of your work to other lawyers or other personnel in the office under my supervision and may use other firm lawyers where specialized help is needed. I will continue to be responsible to you for the entire assignment, however, and will be available to discuss the use of other personnel with you. It is our practice to assign tasks among lawyers, legal assistants and document and docket clerks in such a way as to produce quality work at a reasonable cost to you given the nature of the specific project. Though the extent of our work on a specific assignment is frequently not within our control, I am always prepared to discuss with you the scope of our assignment.

It is not always possible to be immediately available to respond to your questions and concerns about your case. The nature of a litigation practice naturally involves a significant amount of time in court or in depositions during which time we will be unavailable. We will do our best to respond to you as quickly as we possibly can. We will use email to communicate with you with your permission. You should be aware that communications using company email may not be protected by the attorney/client privilege.

Our performance of legal services may involve direct costs that we will incur on your behalf. These disbursements and charges include items incurred and paid by us on your behalf such

as long-distance telephone charges, postage, special mail or delivery charges, recording fees, transportation, meals, lodging and other costs necessary for out-of-town travel, photocopying, and use of other service providers such as printers or experts, if needed. In litigated matters, we include payment we must make for filing fees, court cost, process servers, court reporters, witness fees, and similar costs. These charges may include the actual cost plus administrative charges for the uses of computerized legal research systems, including "Lexis" and "Westlaw" that in our experience significantly reduce lawyer research time. If the time pressures of an assignment require overtime work by our nonprofessional staff that is directly attributable to that assignment, we charge the client for the cost that we incur. We may also incur charges from local counsel from whom we seek information on your behalf. Where we pay these charges, they will be included in your invoice. However, to the extent practical we may ask you to pay charges directly to outside vendors.

We customarily send monthly invoices for services rendered and other charges incurred for your account during the previous month. The monthly invoice details the work performed and the type of charges incurred. Payment will be due thirty (30) days after the date of our invoice. Payments should be made in U.S. dollars, in checks or drafts payable to "\_\_\_\_\_". While we will not require a retainer, interest will be charged on all invoices unpaid after thirty (30) days at the rate of eight per cent (8%) per annum. You agree to pay all costs of collection (including attorney's fees) that we may incur in connection with unpaid invoices.

## **ADDITIONAL TERMS**

In undertaking this representation, we have taken precautions to determine whether the firm has any conflicts of interest with other clients. While we are a relatively small firm, we represent many other companies and individuals. It is possible that some of our present or future clients will have disputes or transactions with you during the time that we are representing you. Therefore, as a condition to our undertaking the representation described herein, you agree that this firm may continue to represent or may undertake in the future to represent existing or new clients in any manner that is not substantially related to our work for you described herein, including legal proceedings, even if the interest of such clients in those other matters are directly 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 the result of our representation of you we have obtained sensitive, proprietary or other confidential information of a non-public nature that, if known to any such other client of ours, could be used in any such other matter by such client to the material disadvantage of you.

## **SECURITY AND INTEGRITY OF COMMUNICATIONS**

During the course of our representation, each of us may have the opportunity to correspond using numerous communication mediums. In addition to traditional delivery methods, such as postal service and telephone, constantly developing technology offers further means that are generally accepted and used by individuals and businesses. For convenience and expediency, each of us may utilize these other means, which include facsimile, cellular and

cordless telephones, and electronic mail. It is important to understand that these mediums are not necessarily secure from interception or alteration by others and may not receive protection under state or federal law. Transmitted information is capable of interception and immediate reproduction, alteration, and widespread distribution at relatively little cost or effort. (Name of Firm) intends to use these mediums to communicate with you and others during the course of our representation. However, we should each be aware of the security concerns and take these issues into consideration when using these means of communication.

## **PRIVACY POLICY**

Lawyers, as providers of certain personal services, are now required by the Gramm-Leach-Bliley Act to inform their clients of their policies regarding privacy of client information. Our law firm understands your concerns as a client for privacy and the need to ensure the privacy of all your information. Your privacy is important to us and maintaining your trust and confidence is a high priority. Lawyers have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by such Act. Therefore, we have always protected your right to privacy. The purpose of this notice is to explain our Privacy Policy with regard to personal information about you that we obtain and how we keep that information secure.

## **NONPUBLIC PERSONAL INFORMATION WE COLLECT**

We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization or consent.

**WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT OUR CLIENTS OR FORMER CLIENTS TO ANYONE, EXCEPT AS PERMITTED BY LAW AND ANY APPLICABLE STATE ETHICS RULES.**

We do not disclose any nonpublic personal information about, current or former clients obtained in the course of representation of those clients, except as expressly or impliedly authorized by those clients to enable us to effectuate the purpose of our representation or as required or permitted by law or applicable provisions of codes of professional responsibility or ethical rules governing our conduct as lawyers.

## **CONFIDENTIALITY AND SECURITY**

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and to comply with professional guidelines or requirements of law. In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

## **TERMINATION OF REPRESENTATION**

You have the right to terminate our representation of you at any time. If you do so, you will be responsible for charges incurred in connection with our representation up to termination. We also may terminate our representation for any reason consistent with the Virginia Rules of Professional Conduct, including non-payment of fees and expenses.

If you have questions about any aspect of our arrangements or our invoices from time to time, feel entirely free to raise those questions. It is important that we proceed on a mutually clear and satisfactory basis in our work for you.

The foregoing covers the essential elements necessary for the establishment of the attorney-client relationship between [Name of Firm] and you. If you have any questions or comments about the terms of our agreement as herein outlined, please call me to discuss them.

If the scope of the services we are to render to you and terms of the engagement are satisfactorily described above, please indicate your agreement by executing the enclosed copy of this letter and returning it to us. Thereafter, unless we agree in writing to alter these arrangements, we will assume that these terms are acceptable to you for this matter and for all future matters on which you retain [Name of Firm] to serve you.

Thank you for the opportunity to work with you. It is our goal to provide prompt and responsive legal services at all times.

Very truly yours,

[Name]

SEEN AND AGREED TO

this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

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## Engagement Letter: Hourly Rate

### ATTORNEY'S FEES

The attorney's fee in this matter will be set as follows:

Fixed Fee of \$\_\_\_\_\_

Hourly Rate at \$\_\_\_\_\_ per hour plus \_\_\_% of amount\* ( ) recovered saved

Estimated Fee in the range of: \$\_\_\_\_\_ to \$\_\_\_\_\_

Contingent Fee of \$\_\_\_\_\_ ( ) saved ( ) recovered ( ) other

\*Contingent contract and statement of client's rights signed as required

Fee determined on all relevant factors

Minimum retainer of \$\_\_\_\_\_

Number of hours of attorney time covered by retainer is: \_\_\_\_\_

Other: \_\_\_\_\_

This office will bill you:

Monthly on the \_\_\_\_\_ of each month

Upon completion

Other arrangement: \_\_\_\_\_

ALL BILLS ARE PAYABLE UPON RECEIPT. IF YOU DO NOT PAY WITHIN THIRTY (30) DAYS OF RECEIPT, YOUR ACCOUNT WILL BEGIN TO ACCRUE INTEREST CHARGES IN THE AMOUNT OF EIGHTEEN PERCENT (18%) ANNUALLY.

### RETAINERS

Retainer of \$\_\_\_\_\_ is to be applied

towards fee and out-of-pocket expenses.

- towards fee.
- towards out-of-pocket expenses.
- Retainer is refundable.
- Retainer is nonrefundable.

**COSTS AND EXPENSES**

Typical out-of-pocket expenses (**NOTE:** These are not attorney fees) for this matter may include:

- Costs such as court costs, filing fees, process server fees, deposition costs, sheriff or clerk of court fees, investigator’s fees, etc.
- Abstracting charges or title insurance premiums, clerk’s recording fees.
- Photocopying, long-distance telephone, postage, travel costs.
- Other: \_\_\_\_\_
- Estimate for costs and expenses (not including attorney’s fees): \_\_\_\_\_
- Expected to range between \$\_\_\_\_\_ and \$\_\_\_\_\_ .
- Not expected to exceed \$\_\_\_\_\_ .
- No expenses expected.

**NOTE:** This is an estimate for your convenience; it is not a guarantee.

If the above properly sets forth our agreement, please sign below and keep one copy. Return the original together with your check in the amount of \$\_\_\_\_\_ .

We will draw \$\_\_\_\_\_ towards attorney fees and apply \$\_\_\_\_\_ towards out-of-pocket expenses as outlined above. If we do not receive the signed original of this agreement (you retain the copy), and your check within \_\_\_\_\_ days, we shall assume that you have obtained other counsel and shall mark our file “CLOSED” and do nothing further. Thank you.

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

Attorney at Law

The above is understood and agreed to by me.

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

Client



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## Engagement Letter: Hourly Rate Fee

[Date]

[Name and Address]

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

It was a pleasure meeting with you on \_\_\_\_\_ to discuss \_\_\_\_\_ representation of \_\_\_\_\_. The purpose of this agreement is to set forth the terms upon which \_\_\_\_\_ agrees to represent \_\_\_\_\_, in order to establish and maintain a mutual understanding of the goals and respective responsibilities of \_\_\_\_\_ and \_\_\_\_\_.

### SCOPE OF SERVICE AND RETAINER

\_\_\_\_\_ (\_\_\_\_\_) has hired \_\_\_\_\_ (\_\_\_\_\_) to represent it in connection with the prosecution of \_\_\_\_\_ for alleged age discrimination against \_\_\_\_\_ and \_\_\_\_\_. [As we discussed, \_\_\_\_\_ will not be representing \_\_\_\_\_ subsidiary, \_\_\_\_\_ Corporation, in this litigation because of potential attorney/client privilege and conflict of interest concerns. I have advised \_\_\_\_\_ Corporation, by letter dated \_\_\_\_\_ that \_\_\_\_\_ cannot represent it and that \_\_\_\_\_ Corporation is responsible for retaining separate counsel to defend it in this discrimination action.] **(Conflict of interest acknowledgment)**

As is our policy with new clients, we are requesting an initial deposit of \$\_\_\_\_\_. [This retainer is a partial advance against anticipated legal fees and disbursements and must be paid before the firm will commence work upon the file. The retainer will be deposited in the firm's client trust account, subject to IOLTA requirements, and applied against \_\_\_\_\_ bills for legal services and disbursements. If the retainer is exhausted prior to the conclusion of this matter, \_\_\_\_\_ reserves the right to request replenishment of the retainer before additional work is performed. The retainer will be refunded, to the extent it has not been utilized in this matter, immediately upon resolution.] or [This deposit is nonrefundable and is the minimum fee \_\_\_\_\_ will be charged for legal services and

costs associated with this matter. The deposit must be paid before \_\_\_\_\_ will commence work upon the file.] **(Refundable or non-refundable option)**

## **CLIENT COOPERATION**

In order to effectively advocate \_\_\_\_\_ interests, \_\_\_\_\_ has an affirmative obligation to cooperate with \_\_\_\_\_ during the pendency of this matter. For example, \_\_\_\_\_ will be required to furnish certain information and documents and designated \_\_\_\_\_ representatives may be required to attend depositions and court appearances. Consequently, \_\_\_\_\_ is expected to provide requested documentation promptly to the appropriate firm representative, whether an attorney, paralegal or secretary. \_\_\_\_\_ representatives must be available to work with \_\_\_\_\_ attorneys in preparation for depositions, court appearances and to discuss issues as they arise throughout this matter. A client's non-cooperation is grounds for \_\_\_\_\_ withdrawal, and thus, it is essential that we maintain open communication.

In return, \_\_\_\_\_ agrees to keep \_\_\_\_\_ informed of the status of this matter and to consult with \_\_\_\_\_ when appropriate. Copies of significant correspondence and documents will be sent to \_\_\_\_\_ through \_\_\_\_\_ and any other designated personnel. In the event that we are out of the office or otherwise unavailable, please leave a message with my secretary disclosing the nature and urgency of the call. Even if the attorney cannot respond directly, someone will return your call with an appropriate response.

## **GENERAL LAWSUIT INFORMATION**

In order to demystify the lawsuit process, \_\_\_\_\_ would like to explain, in some detail, how a lawsuit is handled and what you can expect during the pendency of this action.

A lawsuit is commenced by the service and filing of a Summons and Complaint. The Complaint recites facts upon which the Plaintiff asserts liability against the Defendant. In this case, \_\_\_\_\_ and \_\_\_\_\_ are alleging that \_\_\_\_\_ terminated their employment exclusively on the basis of age. The Defendant then has a limited number of days in which to serve and file an answer, which typically denies the claims asserted in the Complaint.

After the lawsuit is commenced, both the Plaintiff(s) and Defendant(s) are afforded a limited period of time called "discovery", during which they investigate the strengths and weaknesses of each other's claims. Written questions called "interrogatories" are frequently

exchanged which require written responses about the facts and claims asserted by both parties. Oral depositions are also commonly used as a discovery tool. Parties to the action, as well as witnesses, orally answer questions posed by opposing counsel, which are simultaneously recorded by a stenographer. Depositions are very important, because the testimony can later be used at trial to perhaps point out inconsistencies between deposition and trial testimony. Also, depositions are helpful in ascertaining the strength and credibility of the deponent. If interrogatories are sent to us, we will explain the procedure and assist you and any other relevant \_\_\_\_\_ employees with answering the questions. If depositions are scheduled, we will meet with you or the relevant \_\_\_\_\_ employee/deponent prior to the deposition and discuss the process. We will also be present at every deposition.

If your case does not settle after discovery is terminated, then a trial will take place, usually before a judge and six-person jury. Prior to trial, we will spend considerable time with you and other witnesses/parties explaining how a trial is conducted and reviewing everyone's testimony. It is entirely possible that several trial dates will be set, only to be continued because of crowded court calendars. It is very important that you understand the delays that often attend lawsuits; they can stretch on for years, which is why \_\_\_\_\_ commitment to and patience with this process is imperative.

## **LEGAL FEES, EXPENSES AND BILLINGS**

### ***Fees***

\_\_\_\_\_ agrees to pay fees for services provided on this matter, in excess of those amounts covered by the initial retainer, based upon the following rates:

Shareholder	\$ _____/hour
Associate	\$ _____/hour
Paralegal	\$ _____/hour

The above hourly rates are subject to adjustment in \_\_\_\_\_ of every calendar year without prior notice to \_\_\_\_\_. Current billing rate schedules are available upon request. Hourly billing will be to the tenth (1/10th) of an hour for time spent on \_\_\_\_\_ matter. "Time spent" includes telephone and personal conferences with both \_\_\_\_\_ and assigned firm personnel, legal research, conferences, court appearances, discovery, preparation and review of necessary documents and correspondence.

Although our fees are primarily based upon the value of the time actually spent on your matter, the following factors are also considered when determining our fee: a) the nature of the legal problem, including its novelty, complexity and importance; b) preclusion of other

employment; c) the amount or consequence at stake and the result obtained; d) time limitations imposed by the client or situation; e) the experience, reputation and ability of the attorney(s) retained; and f) the skill necessary to handle the matter correctly.

\_\_\_\_\_ understands that personal and telephone consultations with \_\_\_\_\_ attorneys shall be part of its representation and \_\_\_\_\_ may be billed for the time spent on each consultation.

It is difficult to estimate, in advance, the amount of fees which \_\_\_\_\_ will incur in connection with this matter. We anticipate the fees will be in the range of \$\_\_\_\_\_, exclusive of expenses described below. This figure is not, however, a maximum fee, but is simply an estimate to allow \_\_\_\_\_ to budget appropriately. If we see that the fees will be exceeding this estimate by a significant amount, we will notify \_\_\_\_\_.

### **Costs and Disbursements**

\_\_\_\_\_ is responsible for payment of any expenses incurred on \_\_\_\_\_ behalf, including reimbursement of all disbursements advanced by \_\_\_\_\_. Such expenses and disbursements include, but are not limited to, photocopying and facsimile charges, long distance telephone calls, travel expenses and computer research charges. Costs exceeding \$100, such as expert witness fees and deposition costs, may be billed directly to \_\_\_\_\_, for which \_\_\_\_\_ agrees to make prompt, direct payments to the vendor. Notice of payment should be sent to \_\_\_\_\_. Otherwise, \_\_\_\_\_ will attempt to notify \_\_\_\_\_ prior to advancing any cost exceeding \$300.

### **Billing**

Itemized statements of services and disbursements will be sent to \_\_\_\_\_ monthly, with payment to be made within thirty (30) days of the invoice date. \_\_\_\_\_ reserves the right to charge \_\_\_\_\_ interest, not to exceed % \_\_\_\_ per annum, on any bill outstanding for more than thirty (30) days. If \_\_\_\_\_ has any questions regarding the billing format or any information contained therein, please contact me or my secretary. Otherwise, we assume everything is satisfactory.

### **ASSIGNMENT OF FIRM PERSONNEL**

I will be primarily responsible for the supervision of \_\_\_\_\_ matter, but \_\_\_\_\_ is hiring \_\_\_\_\_, not me individually. If necessary, I reserve the right to draw upon the talent and expertise of other partners and associates within the firm and to utilize paralegal staff to handle ministerial tasks.

## WITHDRAWAL

\_\_\_\_\_ has the right to terminate our agreement at any time, subject to payment of any final billings. Conversely, \_\_\_\_\_ reserves the right to withdraw from representation, subject to the ethical restrictions imposed upon us by the applicable Rules of Professional Responsibility. If \_\_\_\_\_ chooses to terminate representation, reasonable notice will be given to \_\_\_\_\_.

## BINDING AGREEMENT

The foregoing represents the entire agreement between \_\_\_\_\_ and \_\_\_\_\_. By signing below, \_\_\_\_\_, by its President, \_\_\_\_\_, acknowledges that this Agreement has been carefully reviewed and its content understood and \_\_\_\_\_ agrees to be bound by all of its terms and conditions. Furthermore, \_\_\_\_\_ acknowledges that \_\_\_\_\_ has made no representations to \_\_\_\_\_ regarding the outcome of the legal matter for which \_\_\_\_\_ has been retained.

If this Agreement reflects \_\_\_\_\_ understanding of our relationship, please sign and return the enclosed duplicate copy. In conformance with firm policy, we cannot commence work upon your matter until we have received both this executed Agreement and the retainer.

Thank you again for this opportunity to be of service to \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

[Name]

## ARBITRATION

Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in the County of \_\_\_\_\_, State of \_\_\_\_\_, as follows:

[Insert appropriate jurisdictional requirements regarding a) selection of arbitrator; b) arbitration procedure; c) procedural impact of arbitrator's decision; d) review rights; and e) costs of arbitration.]

\_\_\_\_\_, by its President, \_\_\_\_\_, has reviewed and agreed to the above terms of engagement of \_\_\_\_\_.

\_\_\_\_\_

[Firm Name]

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

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

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## Engagement Letter: Hourly, Potential Conflict of Interest

[Date]

[Name and Address of Client]

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

I enjoyed meeting with you on \_\_\_\_\_ to discuss your representation by this firm. This letter will confirm our agreement and if after reviewing it, you have no further questions about the terms of my representation, please sign the extra copy enclosed and return it to my office in the postage-paid envelope enclosed for your convenience. Our work will begin when we receive the signed copy of this letter [and required deposit].

I will undertake the following work on your behalf: [set forth the scope of the representation]. [My work will not include {set forth specific matters excluded from the representation if appropriate}].

You will receive an itemized monthly statement of fees and expenses associated with our services. [Payment is due upon receipt.] [The fees and expenses will be deducted from your deposit, and we will advise you from time to time if an additional amount is needed to maintain a sufficient deposit to cover anticipated fees and expenses.] My rate per hour for work is \$\_\_\_\_\_. Often, from time-to-time, other members of the firm as well as our staff may engage in work on this matter, and their rates are as follows: partners, \$\_\_\_\_\_ per hour; associate attorneys, \$\_\_\_\_\_ per hour; legal assistants, \$\_\_\_\_\_ per hour.

Previously, we discussed orally the potential for a conflict of interest in my [firm's] representation of you [client]. As I explained, a conflict may arise whenever the interests of a current client might affect, or be affected by, the personal, business, financial or professional interests of a lawyer, a professional or business associate or relative of the lawyer, another current client, or a former client. When there are such multiple interests, there is always a possibility for the existence to interfere with the lawyer's ability to serve one set of interests without adversely affecting other interests. Whenever such interests become conflicting, it is necessary for the lawyer to withdraw from all attorney-client relationships affected by such conflict, and it is then necessary for each person to hire a new lawyer.

With respect to [describe representation and subject matter], there exists the possibility for the following interests of the following persons to become conflicting: [describe all reasonably foreseeable interests that each client and former client might, in the course of after-the-fact dissatisfaction, claim to have adversely affected the lawyer's judgment or performance, and describe the potential adverse effects on each client].

Despite possibilities for such interests to conflict, you believe one lawyer can adequately represent, advance, or protect each such interest without harming any other such interests. Therefore, you agree that you want me to represent each of you in this matter, and you each refuse to exercise your right to hire a different lawyer and hereby waive the conflicts described.

In addition to the fees set forth above, you will be responsible for expenses incurred in connection with this matter. Such expenses may include, among others, copying, delivery, and telephone charges, fees for professional services, and travel expenses. If the firm makes payment for you, you will need to reimburse us promptly.

[If we have to bring suit against you to collect any balance owed, you agree to pay us an additional amount of \_\_\_\_% of the balance owed as attorney fees. To secure any balance you owe us, you grant us a security interest in any property that may come into our possession in the course of our representation and any claim or cause of action on which we are representing you.]

To achieve the best possible representation of you will need to cooperate with us fully and provide us all the information we need to assist you. I encourage you to keep detailed notes of questions that may arise and of any new information, witnesses, or other important matters that come to your attention. Please call me if something is truly urgent, but otherwise it is best to schedule an appointment to discuss your accumulated questions and concerns. So that we may maintain continuous contact with you throughout the representation, please notify us immediately if there is any change in your address or telephone number.

If at any time you become dissatisfied with our handling of this matter, you should not hesitate to tell me immediately so we can discuss and resolve the problem. It is essential to your representation that we maintain a good relationship throughout. You may terminate our representation at any time. In the event of termination, you will be responsible for payment of any fees earned or expenses incurred. We may terminate this representation only as permitted or required by laws and regulations. Failure to pay [fees or] <sup>1</sup> expenses or make deposits when due will be cause for such termination.

[Optional <sup>2</sup>] In this joint representation, I must and will treat you [both] equally in all regards, including all communications. I will communicate all matters to both of you and will share all communications from each of you with the other.

While the agreement is intended to prevent any confusion of the terms of my representation, should a fee dispute arise you are agreeing pursuant to this paragraph to submit any fee dispute between us to \_\_\_\_\_ arbitration with [your bar's program name]. You understand that you have the right to use other court forums to address fee disputes, but we are both agreeable to compromising those rights to submit to binding arbitration. Any decision made by the arbitration panel whether for you or me will be final and non-appealable. It has the same effect and enforceability as if rendered by a court of law. The arbitration panel would hear us in [locality] and would be composed of those individuals, two attorneys and one layman. The [local bar organization] selects the panel from among a list of volunteers who have agreed to hear fee disputes. There are no costs associated with the panelists. You can seek additional independent legal counsel on this issue before signing this agreement, if you wish.

We will use our best efforts in representing you in this matter, but you acknowledge that we can give no assurances as to the final outcome.

If the above terms are acceptable, please sign and return one of the enclosed copies of this letter. I look forward to working with you.

Sincerely yours,

[Name of Firm]



By \_\_\_\_\_  
[Name of Attorney]

I understand and accept the terms of this Agreement.

\_\_\_\_\_  
[Name of Client]

\_\_\_\_\_  
Date of Acceptance

---

<sup>1</sup> Do not use this phrase if this is a contingent fee agreement.  
<sup>2</sup> Use if joint representation.

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## Engagement Letter: Estate Planner Representing Both Spouses

*For use when representing both spouses*

Dear **[Name of Client(s)]**:

I am writing to confirm our agreement to represent both of you jointly regarding your estate plan. Spouses can sometimes have conflicting interests regarding their estate plan. For example, they may have different views as to how much power the surviving spouse should have over the property of a deceased spouse, how assets should be distributed upon the death of one or both of them, and how family assets should be divided between them during their lifetimes. Also, in order to take advantage of available tax benefits, lawyers frequently recommend that family assets be divided between a husband and wife to increase one estate or decrease the other by dividing jointly owned assets or by recommending gifts from one to the other. These are just some examples of potential conflicts that sometimes arise during the estate planning process.

If each of you had your own separate lawyer, you would each have an “advocate” for your position and would each receive totally independent and confidential advice from your own lawyer. Under such an arrangement the information given to your respective lawyers would be confidential and could not be disclosed to your spouse without your consent. This is not the case when one firm advises both of you jointly.

Although we will encourage the resolution of any differences of opinion or conflicting interests, we cannot be an advocate for one of you against the other if we represent both of you. When your individual interests differ, we will attempt to explain to both of you the interests of each of you and the effect on each of you of a particular course of action. Similarly, anything that either of you tells us relating to your estate plan cannot 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 the issues to that individual. Of course, either of you may put questions to us at any time.

By signing this letter, each of you confirm that you have requested and consented to our joint representation of both of you in connection with the preparation of your estate plan and that you each agree that communication and information received from each of you relating to your estate plan will not be kept confidential from the other. Of course, either of you may retain separate counsel at any time. In that event, we will be free to continue to represent the other one of you only with the consent of the one who retained separate counsel.

In very unusual circumstances, a law firm representing both the husband and wife regarding their estate plan confronts a conflict of interest between them that is so serious that the firm can

no longer continue to represent either of them. Although such a situation seems highly unlikely in your case, were it to occur, we would promptly notify both of you that we could no longer continue to represent either of you. In some cases, it may not be possible to disclose to both of you precisely why we have concluded that we should discontinue our representation.

Our fee will be based upon the prevailing hourly rates in effect for our law firm. Currently, these rates range from \$\_\_\_ to \$\_\_\_ per hour, depending upon the experience and position of the individual lawyer. Paralegal services, if reasonably required, will be billed at a rate of \$\_\_\_ per hour. During the period of our representation, it is possible that individual hourly rates in the firm may be increased **[by some modest amount]**. You will be informed of any changes immediately.

You will be billed for all of the time spent handling your matter, including but not limited to time spent on telephone conferences, research and drafting. In addition to our fee for services, you will also be billed for out-of-pocket costs incurred on your behalf such as postage, photocopying, long distance charges, facsimile charges, costs of using computerized legal research facilities, filing fees and messenger fees.

We will bill you monthly for the amount of work that was performed on your file during the preceding month. At this time, it is impossible to estimate the amount of time and expense that will be necessary to adequately represent you in this matter.

During the representation, we will supply you with copies of all substantive correspondence **[as well as a complete set of your estate plan documents upon completion of the matter]**. We suggest that you keep a copy of all of the documents regarding your matter in the file folder we have provided to you. After the matter is closed, you may obtain copies of your file by paying our standard photocopying charges and a minimum fee to compensate us for the time necessary to duplicate the file. **[Due to storage constraints, the file will be destroyed after \_\_\_ years.]**

We understand that we are being retained solely to prepare your estate plan and related documents, that our representation will cease when the documents are signed, and that thereafter you prefer that we not advise you of changes in the law or provide additional or ongoing services, except at your specific request. Because estate taxes and other relevant laws change from time to time and your estate planning goals may also change, we would be pleased to review your estate plan in the future upon your request. We urge that you consider such a review at least once every five years.

Your primary contact for this matter will be \_\_\_\_\_. If you have any questions regarding this matter, please feel free to contact \_\_\_\_\_ directly at (###) ###-####.

If you disagree with any of the terms and conditions set forth above, please contact me immediately. We will not commence any work on your behalf until we have received a copy of this letter with both of your signatures acknowledging agreement. We look forward to representing you in the preparation of your estate plan.

Sincerely,

Agreed to:

---

Signature

---

Print Name

---

Date

---

Signature

---

Print Name

---

Date

NOTE: This material is intended as only an example, which you may use in developing your own form. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ISBA Mutual Insurance Company be liable for any direct, indirect, or consequential damages resulting from the use of this material.

## Engagement Letter: Limited Scope Representation

**Identification of Parties:** This agreement, executed in duplicate with each party receiving an executed original, is made between \_\_\_\_\_, hereafter referred to as “Attorney,” and \_\_\_\_\_, hereafter referred to as “Client.”

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

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2. **Client Responsibilities and Control:** Client shall remain responsible for the conduct of the case and understands that he/she will remain in control of and be responsible for all decisions made in the course of the case. Client agrees to:

- a. Cooperate with Attorney or office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
- b. Keep attorney or office advised of Client’s concerns and any information that is pertinent to Client’s case;
- c. Provide Attorney with copies of all pleadings and correspondence to and from Client regarding the case;
- d. Immediately provide Attorney with any new pleadings or motions received from the other party;
- e. Keep all documents related to the case in a file for review by Attorney.

3. **Services to be performed by Attorney:** Client and Attorney have agreed that Attorney will provide the following services, indicated by writing ‘YES’ or ‘NO’ [Attorney will not perform any services indicated by the word ‘NO’]:

- a. \_\_\_\_\_ Legal advice: office visits, telephone calls, fax, mail, email;
- b. \_\_\_\_\_ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
- c. \_\_\_\_\_ Evaluation of Client’s self-diagnosis of the case and advising Client about legal rights and responsibilities;
- d. \_\_\_\_\_ Guidance and procedural information for filing or serving documents;

- e. \_\_\_\_\_ Review pleadings and other documents prepared by Client;
  - f. \_\_\_\_\_ Suggest documents to be prepared;
  - g. \_\_\_\_\_ Draft pleadings, motions and other documents;
  - h. \_\_\_\_\_ Factual investigation: contacting witnesses, public record searches, in-depth interview of Client;
  - i. \_\_\_\_\_ Assistance with computer support programs;
  - j. \_\_\_\_\_ Legal research and analysis;
  - k. \_\_\_\_\_ Evaluate settlement options;
  - l. \_\_\_\_\_ Discovery: interrogatories, depositions, requests for document production;
  - m. \_\_\_\_\_ Planning for negotiations, including simulated role-playing with Client;
  - n. \_\_\_\_\_ Planning for court appearances, including simulated role-playing with Client;
  - o. \_\_\_\_\_ Standby telephone assistance during negotiations or settlement conferences;
  - p. \_\_\_\_\_ Backup and troubleshooting during the hearing or trial;
  - q. \_\_\_\_\_ Referring Client to expert witnesses, special masters or other counsel;
  - r. \_\_\_\_\_ Counseling Client about an appeal;
  - s. \_\_\_\_\_ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
  - t. \_\_\_\_\_ Provide preventive planning and/or schedule legal check-ups;
  - u. \_\_\_\_\_ Other
- 

4. **Attorney's Responsibilities:** Attorney will exercise due professional care and observe strict confidentiality in providing the services identified by the word "YES" in Paragraph 4 above. In providing those services, Attorney WILL NOT:
- a. Represent, speak for, appear for, or sign papers on the Client's behalf;
  - b. Become attorney of record on any court papers or litigate on Client's behalf;
  - c. Provide services which are not identified by the word 'YES' in Paragraph 4;
  - d. Make decisions for Client about any aspect of the case;

- e. Protect Client's property by means of restraining orders while discovery and/or negotiations are in progress.
- f. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement, and initialed and dated by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact, and the Attorney's additional responsibilities in the Client's case.
- g. **Right to Seek Advice of Other Counsel:** Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in paragraph 3, which are identified with the word 'NO' at any time during or following this Ongoing Consulting Agreement.

5. **Method of Payment for Services:**

a. **Hourly Fee:**

The current hourly fee charged by Attorney for services under this agreement is \$\_\_\_\_. Unless a different fee arrangement is established in clause b) of this Paragraph, the hourly fee shall be payable at the time of the service. Attorney will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour.

If, while this agreement is in effect, Attorney increases the hourly rate(s) being charged to clients generally for Attorney's fees, that increase may be applied to fees incurred under this agreement, but only with respect to services provided thirty days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rate(s), Client may terminate Attorney's services under this agreement by written notice effective when received by Attorney.

b. **Payment from Deposit:**

For a continuing consulting role, Client will pay to Attorney a deposit of \$\_\_\_\_, to be received by Attorney on or before \_\_\_\_\_, and to be applied against Attorney's fees and costs incurred by Client. This amount will be deposited by Attorney in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as they are incurred by Client. Any interest earned will be paid, as required by law, to the Illinois IOLTA Fund. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by Client for Attorney's fees and costs is less than the amount of the deposit, the difference will be refunded to Client.

**Costs:** Client will pay Attorney's out of pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with Client's case including filing fees, investigation fees, deposition fees and the like will be paid directly by Client. Attorney will not advance costs to third parties on Client's behalf.

**Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this agreement.**

- c. Should it be necessary to institute any legal action for the enforcement of this agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney fees incurred in such action from the other party.
6. **Discharge of Attorney:** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided and to reimburse Attorney for all costs incurred prior to such discharge.
7. **Withdrawal of Attorney:** Attorney may withdraw at any time as permitted under the Illinois Rules of Professional Conduct. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: a) The client consents; b) the client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and c) the client fails to pay Attorney's fees or costs as required by his or her agreement with the Attorney.

Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided, and to reimburse Attorney for all costs incurred before the withdrawal.

At the termination of services under this agreement, Attorney will promptly release all of Client's papers and property to Client on request.

#### 8. **Resolving Disputes Between Client and Attorney**

- a. **Notice and Negotiation:** If any dispute between Client and Attorney arises under this agreement regarding the payment of fees, Attorney's professional services rendered to or for Client, and any other disagreement, regardless of the nature of the facts or legal theories involved, 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, Client and Attorney will 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 the Attorney and Client cannot agree on a neutral mediator, they will request that the \_\_\_\_\_ 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 the mediation, provided that the payment of costs and any attorney's fees may be mediated. Nothing in this provision shall constitute a waiver of Client's rights to State Bar fee arbitration or a trial de novo after a State Bar fee arbitration.
9. **Amendments and Additional Services:** This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and attached to this agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 4, a photocopy of Paragraph 4 which clearly denotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.
10. **Severability in Event of Partial Invalidity:** If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.
11. **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:
- a. \_\_\_\_\_ I have accurately described the nature of my case in paragraph 1.
  - b. \_\_\_\_\_ I will be responsible for the conduct of my case and will be in control of my case at all times as described in paragraph 2.
  - c. \_\_\_\_\_ The services Attorney has agreed to perform in my case are identified by the word 'YES' in paragraph 3. I take responsibility for all other aspects of my case.
  - d. \_\_\_\_\_ I understand and agree to the limitations on the scope of Attorney's responsibilities identified in paragraph 4 and understand Attorney will not be responsible for my conduct in handling my case.
  - e. \_\_\_\_\_ I will pay Attorney for services as described in paragraph 5.
  - f. \_\_\_\_\_ I will resolve any disputes I may have with Attorney under this Agreement in the manner described in paragraph 8.
  - g. \_\_\_\_\_ I understand that any amendments to this Agreement shall be in writing, as described in paragraph 9.



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## Disengagement Letter: Unpaid Fees

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[Date]

**[Client Name]**  
**[Client Address]**

RE: Withdrawal of Legal Representation  
**[State name of Case/Matter]**

Dear **[Name]**:

During the past **[\_\_years/months]**, it has been our pleasure to serve you as counsel in **[case/matter]**. In the course of that representation, you have paid us **[dollar amount currently paid]** in legal fees and expenses. Unfortunately, contrary to our Engagement Agreement, you have not paid our statements in a timely manner for the past few months.

At this time, the outstanding and overdue fees and expenses total approximately **[dollar amount currently owing]**. Our firm desires to continue our relationship but does not have the ability to finance your case. Moreover, you expressly agreed that the hourly fees and expenses in this matter would be kept current.

We have continued to represent you for the past **[time]**, even though each month the outstanding fees and expenses increased. We did so because we value our relationship with you and would like to continue representing you.

At this point, in our opinion, the trial court will permit us to withdraw. There is still sufficient time for you to retain other counsel without jeopardizing your case or adversely affecting the court's calendar. However, if we wait several more months, it is possible that one of these conditions for withdrawal may not exist.<sup>1</sup>

Your new counsel may wish to discuss this case with us. That would be to your advantage both substantively and economically. We are willing to do so as long as satisfactory arrangements are made to compensate us for the additional time and expense which will be incurred. In addition, it will be necessary to agree on a plan to gradually reduce the outstanding fees and expenses. We also have certain work product which has been generated during the past **[time]**. We are willing to share it with your new counsel to the extent our legal obligations require us to do so in the absence of full payment of our fees and expenses.

I enclose a petition for leave to withdraw which will be filed with the court ten days from your receipt of this letter. In the meantime, if you wish us to continue representing you, we would be pleased to do so if satisfactory arrangements are made to take care of the outstanding and

overdue fees and expenses, as well as to take care of the future fees and expenses. I look forward to hearing from you and remain hopeful the representation can continue.

Sincerely,

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## Billing: Status of Activity Letter

[Date]

[Client Name]

[Address]

[City, State, Zip]

RE: [Matter]

File Number: [File Number]

Dear [Client Name]:

In order to keep you informed on a regular basis regarding your matter, I will send status reports on a [regular/weekly/monthly] basis. As always, though, feel free to contact me at any time for more detailed information concerning the progress of your case.

Since our last meeting or report on [Date], the following has occurred:

[Status Report]

I have enclosed copies of correspondence, filings, and any other documents [I have] [our firm has] prepared on your behalf since my last status report. I have also enclosed the monthly bill for services. Please remit payment if the bill reflects a payment due.

Thank you for your trust in me as your attorney. [ I ] [We] will continue to work on your behalf and provide reports as the case continues.

Sincerely,

[Attorney Name]

[Firm Name]

Enclosure[s]

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## Billing: Monthly Status Letter

[Date]

[Client Name]

[Address]

[City, State, Zip]

Re: File Number \_\_\_\_\_

Dear [Client Name]:

In order to keep you informed on a regular basis regarding your case, I will be sending you status reports such as this one on a monthly basis. Please do not hesitate to contact me at any time for more detailed information concerning the progress of your case.

Since our last meeting [last status report] on \_\_\_\_\_, the following has happened: (specify court appearances, discovery, motions filed, etc.)

I have enclosed copies of correspondence, filings, other documents our firm has prepared on your behalf since our last status report, and a monthly bill for our services, which I trust you will find in order.

Thank you for allowing our firm to represent you in this matter. We will continue to apply our best efforts on your behalf and report to you as your case continues.

Very truly yours,

\_\_\_\_\_  
[Attorney Signature]

[Insert Attorney Name]

[Insert Firm Name]

Enclosure[s]

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## Billing: Sample Billing Statement Letter

[Law Firm Letterhead]

[Date]

[Client Name]

[Address]

[City, State, Zip]

### **Legal Services Rendered**

February 2, 2009

Initial office consultation with client. Discussed fact situation and relative merits of complaint. Agreed to and signed representation agreement. NO CHARGE.

February 3, 2009

Drafted Notice of Acceleration. (.5 hour)

February 16, 2009

Arranged for title search to determine any additional parties in interest. (.25 hour)

February 17, 2009

Drafted foreclosure Complaint and Notice of Lis Pendens. (1.0 hour)

February 26, 2009

Telephone conference with defendant's attorney re possibility of agreeing to conditional judgment for purposes of allowing additional time for refinancing. (.5 hour)

**Total fee for legal services** **\$270.00**

### **Costs Incurred**

February 16, 2009

Title search w/AAA Corporate Services \$100.00

February 18, 2009

Filing fee – Complaint \$150.00

Service of Process \$75.00

**Total costs incurred** **\$325.00**

**BALANCE IN TRUST ACCOUNT as of February 1, 2022** **\$1,500.00**

<b>TOTAL SERVICES AND COSTS for February, 2022</b>	<b>\$595.00</b>
<b>DRAWN FROM TRUST ACCOUNT on February 27, 2022</b>	<b>\$595.00</b>
<b>CURRENT BALANCE IN TRUST ACCOUNT</b>	<b>\$905.00</b>
<b>AMOUNT DUE THIS STATEMENT</b>	<b>\$0.00</b>

Please contact this office immediately if you have any questions. Thank you!



NOTE: This material is intended as only an example, which you may use in developing your own form. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ISBA Mutual Insurance Company be liable for any direct, indirect, or consequential damages resulting from the use of this material.

## Billing: 30-Day Follow-up

[Date]

[Client Name]  
[Address]  
[City, State, Zip]

Dear [Client Name]:

In reviewing our accounts receivables, I noticed that we have not received payment in the amount of \$\_\_\_\_\_ for invoice #\_\_\_\_\_, dated \_\_\_\_\_.

I am sure this is just an oversight on your part. If, however, you have a problem with the service we have provided, please contact me immediately so we can discuss the matter.

If I do not hear from you, I will assume that you have no difficulty with the service or with paying the invoice and will look for payment by [date].

Sincerely yours,

[Lawyer's Name]  
[Firm Name]

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## Billing: Retainer Collection Letter

[Date]

[Client Name]  
[Address]  
[City, State, Zip]

Dear [Client Name]:

This is a reminder that the firm still has not received your retainer check in the amount of \$\_\_\_\_\_.

In order for us to continue representing you on the (specify) matter, your file must be current. If we do not receive your retainer within seven (7) days, we will assume that you are no longer interested in our continued representation of you in this matter. If this is the case, we will withdraw from your matter and will bill you for time already spent on it.

We would like you to remain a client of the firm and are anxious to mark your account current. Please attend to this matter today. I have included a self-addressed, stamped envelope for your convenience. If you have already sent us a check, we thank you.

If you have any questions or are not able to send payment immediately, please call me at [telephone number] today. Thank you.

Sincerely,  
[Lawyer's Name]  
[Firm's Name]

# Disclaimer

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This booklet includes loss prevention techniques designed to reduce the likelihood of being sued for legal malpractice. It is not the intent of these materials to suggest or establish practice standards or standards of care applicable to a lawyer's performance in any given situation. Rather, the sole purpose of these materials is to assist lawyers insured by ISBA Mutual in avoiding legal malpractice claims, including meritless and frivolous claims. To that end, the intention is to advise lawyers insured by ISBA Mutual to conduct their practice in a manner that is well above the accepted norm and standards of care established by substantive legal malpractice law. The recommendations contained in these materials are not necessarily appropriate for every lawyer or law firm and do not represent a complete analysis of each topic.

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