



Serving Illinois Lawyers

**THE FUNDAMENTALS
OF LOSS PREVENTION
FOR LAWYERS**

Lake County Administration Building

Documentation and Case Management

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Documentation and Case Management

File documentation plays several critical roles in the risk management process.

- Lawyers who keep detailed and neat files are less likely to misplace an important paper or skip a deadline.
- Lawyers who correspond regularly with their clients and document all major decisions made by clients are less likely to be sued over a misunderstanding.
- Lawyers who have a complete file will be better prepared to defend themselves against malpractice claims.

Ask yourself this simple question: If you were sued for malpractice on any given matter, would the paper file substantiate the legal services you performed and verify the client's consent to all vital decisions? If not, your file documentation procedures need improving.

Documentation

When a lawyer is sued for legal malpractice documentation is needed to back up their version of events. Otherwise, it becomes a battle of the lawyer's word against the client's — a battle the lawyer rarely wins. To avoid such misunderstandings, lawyers should train themselves to document in the following circumstances:

Document when a client instructs you to proceed in a manner that is against their own best interest

Whenever a client instructs you to take a course of action against their best interests, an alarm should sound in your brain warning you to “document, document, document.” If you don't document these instructions, the client may later regret their course of action and allege that you were not acting with their permission.

Example: Lawyer represents wife in a divorce action. Husband owns stock in a few small, closely held corporations. During a conference at which many subjects are discussed, lawyer advises wife to hire an appraiser to establish a value for the shares. Wife is determined to keep the legal fees to a minimum and instructs lawyer to accept husband's estimate of the stock's value. Lawyer complies and the divorce is finalized.

A year later wife is having financial difficulties and starts to believe that she did not receive her just share in the divorce. Wife believes husband's stock was in fact worth far more than originally estimated. Wife doesn't remember her five-minute conversation with the lawyer regarding the decision not to obtain the appraisals and blames the lawyer. She sues the lawyer for legal malpractice alleging that the assets were undervalued due to the lawyer's negligence. The lawyer does not have any written proof to the contrary. The lawyer should have taken ten minutes and drafted a letter to wife memorializing her decision not to pay for the appraisals.

Lawyers who practice in highly emotional areas such as family law are more exposed to this problem. Clients who are under a great deal of stress or who are emotionally distraught often instruct their lawyer to pursue a particular course of action that they later regret. Common sense therefore dictates that lawyers document the representation more carefully in these situations.

Document the unusual

Get in the habit of identifying and documenting unusual circumstances that arise during your representation of a client.

Example: Farmer owns 9/10ths of the family farm, and his sister owns the other 1/10th. Farmer decides to sell the farm. He instructs his lawyer to divide the proceeds of the sale equally between himself and his sister. Lawyer completes the sale as requested.

Farmer dies a few months after the sale. Farmer's children sue lawyer for legal malpractice, alleging that the lawyer negligently distributed 1/2 rather than 1/10th of the proceeds to their aunt, thereby depriving them of that portion of their father's estate. Lawyer has no documentation to verify the farmer's instructions to him.

This could have been accomplished with a letter to Farmer restating his instructions.

Document the client's consent to all major decisions

Despite the best efforts of any lawyer, sometimes things just don't go your client's way. Unfortunately, many clients cannot accept defeat. Instead, they choose to second guess their lawyer or have selective memories regarding decisions that were made during the representation. Let's look at a few examples:

Example A: Client hires lawyer to represent client with respect to injuries client suffered in a work-related accident. In addition to the worker's compensation claim, the lawyer investigates the merits of a medical malpractice claim against the doctor who treated the client and a products liability claim against the manufacturer that produced the machine that injured client. The client verbally agreed not to pursue either the medical malpractice or the product liability claim because the chances of success seem remote and the cost of pursuing the claims would be significant. After the statute of limitations period has run on these claims, the client sues the lawyer for failing to pursue the additional causes of action. The lawyer has no documentation of the client's decision not to pursue the additional actions.

Example B: Lawyer represents wife in a divorce. The wife instructs the lawyer to waive maintenance because she wants to "preserve her friendship" with the husband. Lawyer complies and the divorce is quickly finalized. A year later, the wife is barely making ends meet and regrets her decision to waive maintenance. She sues the lawyer for legal malpractice alleging that the lawyer was negligent in not recommending that she seek maintenance.

Both claims could have been avoided (or successfully defended) if the lawyers had taken the time to send their clients letters verifying the clients' instructions.

Document all demands/offers and the client's response

All settlement demands and offers should be documented so that a lawyer has proof of what transpired. If demands or counteroffers are conveyed verbally during the heat of battle, write the demand or offer on a piece of paper and have your client sign it, indicating their approval or rejection. At a minimum, confirm the day's events with a letter to the client later that day. If you don't take this precaution and things turn sour, it will be your word against the client's.

Example: Lawyer represented client, disabled from birth, in a suit against hospital. Before trial hospital made a large offer to settle. Lawyer communicated offer to client's guardian, and it was declined. The guardian says the offer was never communicated and if it had it would have been accepted.

The case went to trial and there was a verdict for hospital. Client's guardian then sued the lawyer. The suit against the lawyer went to trial and the lawyer lost. The large verdict was the amount of the offer that the hospital had made but that the lawyer had not communicated in writing to the client.

This precaution is particularly important for defense lawyers who may be dealing with several different corporate representatives. For example, the claims handler who verbally approved a defense strategy yesterday may be gone or outranked by a superior tomorrow.

Increase your documentation for troublesome clients

What do you do with a troublesome client who is second-guessing you every step of the way? Document the representation very carefully (assuming withdrawal is not an option). In our experience, these clients are the first ones to sue you over an unfavorable result or their legal bill.

Send letters to unrepresented parties

As noted in the *Avoiding and Mitigating Conflicts of Interest* chapter of ***The Fundamentals of Loss Prevention for Lawyers***, lawyers who are involved in matters with unrepresented parties are sometimes later sued by an unrepresented party who claims that a lawyer-client relationship in fact existed. To avoid such claims, we recommend that you send a letter to the unrepresented party as soon as possible stating that you do not represent the individual, that the interests of your client are or may be adverse to that individual, and that the unrepresented individual should seek independent legal counsel immediately.

For a [Sample Letter to Unrepresented Party](#), see the Addenda [Sample Letters and Forms](#).

Document telephone calls

Get into the habit of documenting all significant telephone calls, including conversations with clients, witnesses, opposing counsel, and experts. These telephone records will provide proof that you were attentive to the client, particularly if you work on a contingency fee basis and will not have the luxury of producing time sheets.

There are several ways to document telephone conversations. Some lawyers document important calls on the notepad section of their computers. Others keep a pad of paper handy at their desk. When they receive a call, they jot down the date, the caller's name and anything of significance that is said. Still other lawyers use preprinted telephone conference pads on colored paper. They record all significant conversations on these pads and then file them in the client file. If all else fails, keep the "pink slips" your receptionist fills out when a call comes in and write down on the pink slip the date you returned the call and a brief notation on anything of substance that was discussed.

For a sample [Telephone Conference Memorandum](#), see the Addenda [Sample Letters and Forms](#).

Retain a record of your research

Lawyers should maintain notes on the research they perform. While you do not have to retain a copy of every case or statute which you consulted, you should at a minimum keep a list of the citations. Furthermore, if you retain a printout of your [Fastcase](#), Lexis or Westlaw searches, you won't end up re-running those months later when you can't remember exactly how you phrased the search. In addition, by maintaining research notes, others in the office will be able to pick up the file and continue where you left off. Finally, if sued, you will be able to prove that you adequately researched the case or matter in question.

Retain copies of all drafts of agreements and contracts

During contract negotiations, many provisions are revised and/or deleted from the original draft. Retaining copies of prior drafts with notations as to why changes were made will enable you to later prove that critical provisions were revised or deleted at the client's instruction. Some lawyers accomplish this task by making handwritten notes in the margins of draft documents indicating whether the client instructed them to pursue or drop a specific provision. This is particularly important when your client asks you to drop a critical provision because it is a "deal breaker." (Note: You may destroy drafts that contain only typographical corrections.)

Send a disengagement letter when you are withdrawing from representation

Lawyers who withdraw from representation prior to the completion of a matter should send the client a withdrawal letter, even if the client is the one who requested the withdrawal. The withdrawal letter serves as proof of the date the representation ended. This can be important in establishing your innocence if a subsequent lawyer commits malpractice with respect to that file. It also puts the client on notice of their need to seek other counsel.

In addition, never rely on the subsequent lawyer's entrance of an appearance to terminate your representation. You must independently withdraw so there is no confusion as to when representation was terminated.

For [Sample Disengagement Letter](#), see the Addenda [Sample Letters and Forms](#).

File Management

Implementing the following procedures in your office is one of the best ways to reduce the likelihood of a malpractice claim:

Establish routine procedures for file openings

Files should be opened immediately after a lawyer accepts a new matter or client. The new file should contain copies of:

- the [New Client/Matter Intake Form](#);
- the [Engagement Letter or Contingency Fee Agreement](#); and
- the completed [Conflict of Interest Search Form](#).

For sample [New Client/Matter Intake Form](#), [Engagement Letters](#), [Contingency Fee Agreements](#) and [Conflict of Interest Search Form](#), see the Addenda [Sample Letters and Forms](#).

Establish standard subfiles by practice area for all new files

Take an afternoon and make a list of each area in which you practice. Then determine standard file and subfile names for each of these practice areas. For example, a medical malpractice file might contain subfiles for: medical authorizations and records, expert reports, correspondence, pleadings, depositions, and research. Once you have established the standard file categories, your assistant can automatically prepare each new file. If you practice with other lawyers, try to establish standardized files throughout the firm. This process will make filing easier for everyone and insure the quality of the firm's documentation.

Weekly filing

Establish a rule that all new correspondence and other materials must be filed in the appropriate client file by Friday of each week. If the filing is delayed for weeks, a lawyer reviewing the file may miss an important document or piece of correspondence.

Maintain files in a central location. All files should be kept in a centralized location when they are not being used by a lawyer. Require everyone in your firm to fill out a file "out" card when withdrawing a file from the central filing location.

Case Management Systems

ISBA Mutual does not endorse the use or non-use of case management systems or any other on-line providers; but lawyers are encouraged to independently investigate whether the use of such systems may be beneficial to the operation of their practice.

Generally speaking, case management systems can allow lawyers to open new matters, track important dates, track time, process payments, generate accounting reports, and allow the transfer of documents and information with clients through client portals. There can be integration with Gmail, Outlook, Dropbox and systems that allow for on-line payments such as LawPay and PayPal. There is usually a monthly fee and some setup required. Most case management systems allow for the use of demos so that you can see whether the system suits your needs.

[ISBA Advisory Opinion No. 16-06](#) specifically addresses the use of cloud-based case management systems and provides helpful guidance for the lawyer conducting due diligence into third-party vendors of cloud-based services. Opinion No. 16-06 suggests the following reasonable practices and inquiries:

1. Reviewing cloud computing industry standards and familiarizing oneself with the appropriate safeguards that should be employed;
2. Investigating whether the provider has implemented reasonable security precautions to protect client data from inadvertent disclosures, including but not limited to the use of firewalls, password protections, and encryption;
3. Investigating the provider's reputation and history;
4. Inquiring as to whether the provider has experienced any breaches of security and if so, investigating those breaches;
5. Requiring an agreement to ensure that the provider will abide by the lawyer's duties of confidentiality and will immediately notify the lawyer of any breaches or outside requests for client information;
6. Requiring that all data is appropriately backed up completely under the lawyer's control so that the lawyer will have a method for retrieval of the data;

7. Requiring provisions for the reasonable retrieval of information if the agreement is terminated or if the provider goes out of business.

If you are using or later decide to use a case management system, be sure to stay up to date on any changes in their terms of services, as well as any changes in the technology that may alter the services you receive.

Visit the www.isba.org for more resources on choosing case management systems.

Documentation and Case Management Do's and Don'ts

Do...

- ✓ Always document a client's instructions to proceed in a manner against the client's best interests.
- ✓ Document the unusual.
- ✓ Document the client's consent to all major decisions.
- ✓ Increase documentation for troublesome clients.

Don't...

- ⊖ Rely on memory. Document everything.
 - ⊖ Maintain files without subfiles for each practice area.
 - ⊖ Use a case management system without making sure the vendor understands a lawyer's professional responsibilities.
 - ⊖ Forget to send letters to unrepresented parties or disengagement letters when you are withdrawing from representation.
-

To download our entire guide, ***The Fundamentals of Loss Prevention for Lawyers*** or to access Sample Letters & Forms, visit our website www.isbamutual.com.

Addenda: Sample Letters and Forms

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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Client Screening: New Client Intake Form

Date File Opened: _____

File Number: _____ Matter Type: _____

File Name: _____

Client Name: _____

Contact Name and Title (if different): _____

Client Address: _____

Client Telephone Numbers: Work _____ Home _____ Cell _____

Client Fax Number: _____ Email Address: _____

Responsible Lawyer: _____

Billing/Fee Information

- | | |
|--|--|
| <input type="checkbox"/> Retainer: \$ _____ | Billing Cycle: |
| <input type="checkbox"/> Hourly \$ _____ | <input type="checkbox"/> Monthly |
| <input type="checkbox"/> Contingent \$ _____ | <input type="checkbox"/> Other (explain) _____ |
| <input type="checkbox"/> Fixed Fee \$ _____ | <input type="checkbox"/> N/A |

Calendaring Information

File Review Dates:

- Every 30 days
- Every 60 days

Statute of Limitations Date:(Reminders 180, 90-, 60-, 30- and 15-days prior)

Verified by: _____ (Lawyer Initials)

Other Critical Dates to Calendar: _____

Calendaring Information

- Added to Calendaring System
- Conflict Search Completed
- Engagement Letter sent or Contingent Fee Agreement signed

File Opened By: _____ Date: _____

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Conflicts: Common Party Search Checklist – Internal Document

When checking the names of a new client for potential conflict of interest, it is necessary to take your search beyond the names of your current and former clients. The list below suggests other parties that should be included in your search.

ANCILLARY BUSINESSES

- Name of any business in which a firm member has an equity interest or director/officer role

BANKRUPTCY

- Client
- Spouse
- Client's partners
- Client's other businesses
- Client's family members
- Creditors

COMMERCIAL REAL ESTATE BUSINESS/CORPORATE

- Client
- Owner/Spouse
- Key employees
- Buyer
- Seller
- Partners/Shareholders
- Directors/Officers
- Brokers
- Lenders
- Any opposing party in a transaction
- Parcel number/location/address
- Title insurer

CRIMINAL

- Client
- Victim
- Witnesses
- Expert witnesses
- Co-Defendants
- Potential Co-Defendants

DECLINED CLIENTS

- Person declined
- Adverse parties, if known
- Spouse, if known

ESTATE PLANNING

- Testator/Testatrix
- Spouse
- Children/Heirs
- Devisees/Beneficiaries
- Personal representative(s)
- Trustees

FAMILY LAW — DISSOLUTION

- Client
- Spouse (former & current)
- Children
- Expert witnesses
- Witnesses (if any)
- Adverse family members
- Guardian ad litem
- Related parties
- Witnesses
- Experts

LITIGATION

- Client
- Insured
- Plaintiffs
- Defendants

IMMIGRATION LAW

- Insurance carriers
- Client
- Guardian ad litem
- Spouse (former & current)
- Children
- Witnesses (if any)
- Expert witnesses
- Co-Counsel
- Adverse family members
- Co-Plaintiffs/Co-Defendants
- Opposing counsel
- Employers
- Persons residing with client

PATENT

- Client (by name and type of products)

Patent Prosecution:

- Subject matter of patent/trademark
- Inventors
- Research & Development personnel (within reason)
- Assignees of patent/trademark
- Affiliates, subsidiaries, parent & holding companies
- Graduate student assistants
- Foreign patent agents

Patent Litigation:

- Client affiliates, subsidiaries, parent & holding companies
- Opposing parties & affiliates (to the extent identifiable)
- Opposing counsel

RESIDENTIAL REAL ESTATE

- Client
- Owner/Spouse
- Buyer
- Seller
- Brokers
- Lender/Mortgage company
- Any opposing party in a transaction
- Parcel number/locations/address
- Title insurer

WORKERS COMPENSATION

- Client
- Employer
- Insurer

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Conflicts: Conflict of Interest Search Form – Internal Document

To: File Room

Requesting Attorney: _____
Date: _____

Prospective Client Information

Name: _____

Address: _____

Phone: (Work) _____
(Home) _____

Principals: _____

Related Entities: _____

Prior Representation of Client,
Principals or Related Entities: _____

File Name: _____

Adverse Party Information

Name: _____

Address: _____

Principals: _____

Related Entities: _____

Check Completed By: _____

Date: _____

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Conflicts: Letter to Disclose Conflict and Seeking Consent to Continue Representation

[Date]

[Name and Address of Client]

Re: Consent to continued representation

Dear [Client's Name]:

I have been representing you in your claims against _____ for _____. As we discussed, the statute of limitations on your claims of [identify claims] has expired. Your claim of [_____] however, continues to be viable. I would be pleased to continue to represent you in that claim, but the Rules of Professional Conduct [ABA Model Rule 1.7(b) - consult the rule in your jurisdiction] require that I may not represent a client if my representation of that client may be materially limited by my own interests unless I reasonably believe that the representation will not be adversely affected and you consent to my continued representation.

I believe that I can represent you in the [identify claim] claim against [adverse party]. The fact that you may have a claim against me for not filing the [identify claims] claims within the statutory time period will not, in my opinion, materially limit my loyalty to you as my client.

As we discussed, you may consult independent counsel regarding any claim you may have against me and regarding your consent to my continued representation of you in the [identify claim] claim. By executing this letter, you shall be deemed to have (i) consented to my continued representation of you in the [identify claim] against [adverse party]; (ii) understood the potential conflict of interest arising out of that representation; (iii) waived any conflict of interest that has arisen as a result of that representation; and (iv) acknowledge that you have been advised that you may consult with independent counsel regarding the waiver of any conflict of interest and consent to my continued representation of you.

If you consent to the above, please execute this letter in the place indicated below and return a fully executed original to me. If you have any questions or concerns, or wish to discuss any aspect of this letter, please contact me as soon as possible.

Sincerely yours,

[Name of Firm]

By _____

[Name of Attorney]

Accepted On _____

[Date]

By _____

[Client]

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Conflicts: Engagement Waiver Clause – Waiver of Potential Conflicts of Interest Forms

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, there is always a possibility for the existence of such multiple interests 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.

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Conflicts: Waiver Joint Representation

VIA REGULAR MAIL AND VIA ELECTRONIC MAIL

[Client A]

[Client B]

RE: _____
Matter No.: _____
File No.: _____

Dear **[Client A and Client B]**:

We have been asked to represent both of you, Client A ("A") and Client B ("B"), with respect to **[identify nature and scope of the proposed joint engagement]** (the "Joint Engagement").

Although we reasonably believe that the representation of both of you in the Joint Engagement will not adversely affect our representation of either of you, the purpose of this letter is to discuss with each of you the actual and potential risks and consequences of such simultaneous representation, to identify any potential alternative courses of action, and to explain the circumstances under which we would be willing to represent both parties simultaneously if, after full consideration of the consequences, both of you wish us to do so.

Simultaneous representation of parties with potentially adverse interests by the same attorneys involves a number of departures from professional norms and should not be undertaken by any such party without careful consideration. In particular, we want you to be aware of the following.

1. Under applicable rules of professional conduct, a law firm owes each of its clients a duty of loyalty, which would normally preclude any attorney within the firm from undertaking a representation adverse to any client of the firm without the affected client's informed consent. Other rules generally prohibit a firm from undertaking any representation involving an actual or potential conflict of interest without the informed consent of all affected parties. Such a situation may exist when a firm represents two clients simultaneously in a situation in which their interests are actually or potentially adverse.
2. The conflict of interest and the need for informed consent exist no matter how cordial the **[business/family/etc.]** relationship between the two parties currently is or is anticipated to be, and no matter how non-controversial the subject of the engagement is anticipated to be.
3. We recommend that each of you seek the advice of independent counsel of your own choice regarding this written consent. If, however, it is the wish of both clients that we undertake the simultaneous representation of both parties with respect to the **[subject of**

the proposed Joint Engagement], we will undertake to do so under the terms described herein.

4. ***[Explain how the Joint Engagement will mean that (1) the clients' interests will be adverse or (2) there is a significant risk that the lawyer's representation of one client will be materially limited by the lawyer's responsibility to the other. For instance, the Joint Engagement will require that information learned from B shall be kept confidential as between the lawyer and B and may not be shared with A. Identify the Rule(s) of Professional Conduct that are implicated and either quote or summarize the applicable Rule(s).]***
5. ***[Explain the risks of the foregoing to each of A and B.]***
6. ***[Explain alternatives to the foregoing, such as the clients' ability to retain other counsel.]***
7. In light of the foregoing, it may not be possible for a single law firm to represent both of you in the same aggressive manner as would two separate and independent law firms. By giving the consent requested in this letter, you are, in effect, waiving that kind of zealous representation of your individual and conflicting interests with respect to the subject matter of the proposed Joint Engagement. It is possible that each or both of you might be advised by independent counsel to demand or offer different or more favorable terms and conditions with respect to the subject matter of the proposed Joint Engagement than we can or will demand or offer.
5. Moreover, regardless of the terms upon which the matters between the two clients are concluded, the fact that one law firm has been involved in the representation of both parties may give rise to a perception on the part of ***[shareholders/investors/third parties/etc.]*** that different terms might have been arrived at had each of the joint clients had separate representation by independent law firms.
6. Notwithstanding the foregoing, we believe that we will be able to provide competent and diligent representation to each affected client.
7. If a dispute should arise in the future between the two of you concerning the ***[subject of the proposed Joint Engagement]*** or any other aspect of your dealings with each other, we believe we may have to withdraw, or would be disqualified, from representing either of you with regard to that dispute or any other relationship you might then have with each other. You would then each have to retain separate counsel, resulting in additional expense and inconvenience that you might not have incurred had you been separately represented from the outset.

We will be pleased to answer any questions you may have concerning this representation or this requested consent. If you do wish to consent, please sign the enclosed extra copy of this letter and return it to us in the enclosed envelope.

Very truly yours,

[Attorney Name]

Acknowledgement and Consent

Despite any actual or potential conflict of interest which exists now or may in the future, as discussed above, we hereby consent to **[the firm's]** simultaneous representation of both **[Client A and Client B]** with respect to the subject matter of the Joint Engagement as described above. We further agree that **[the firm]** may withdraw its representation of either client or both clients without prejudice should it determine that continued representation will or might violate applicable rules of professional conduct.

[Client A}

[Client B]

By:

By:

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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 _____.

[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: 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 _____

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: 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.

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: 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 \$ _____.]¹

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]***.²

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].³

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.⁴

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]⁵

I acknowledge that I received and read a copy of this agreement on this ____ day of _____, 20__, and understand its provisions.⁶

Client Signature

Print Name

ACCEPTED BY: _____
[Name of Receiving Firm]

ACCEPTED BY: _____
[Name of Referring Firm]

Sincerely,

¹ 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.

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

³ 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.

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

⁵ **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."

⁶ 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] ¹ expenses or make deposits when due will be cause for such termination.

[Optional ²] 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

-
- 1 Do not use this phrase if this is a contingent fee agreement.
 - 2 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

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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:

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.
 - h. _____ I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client before I sign this Agreement.

(Client)

(Attorney)

(Date)

(Date)

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Non-Engagement Letter: Basic

[Date]

[Name and Address of Client]

RE: Consultation of [Date of Consult] Certified Mail No.

Return Receipt Requested

Dear _____:

Thank you for your visit today. As we discussed, although I have not investigated the merits of your matter, I do not feel it would be appropriate for [Name of Firm] to represent you in your possible action against [Name of Company] for [legal matter]. In declining to undertake this matter, the firm is not expressing an opinion on whether you will prevail if a complaint is filed.

Please be aware that whatever claim, if any, that you have may be barred by the passage of time. Since deadlines may be critical to your case, I recommend that you immediately contact another firm for assistance regarding your matter.

Thank you again for your interest in [Name of Firm].

[Name of Firm]

By _____

[Name of Attorney]

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Non-Engagement Letter: Conflict of Interest

[Date]

[Name and Address of Client]

RE: Potential Claim Against [] Certified Mail No.

Return Receipt Requested

Dear [Client]:

Thank you for your visit yesterday. As we discussed during our meeting, before [Name of Firm] could accept representation of your matter, we must investigate whether this representation will adversely affect existing or former clients' interests or there is some other element that would undermine our ability to adequately represent your interests.

After you left our offices yesterday, we performed a formal conflict of interest check and found that our firm does indeed have a conflict of interest involving your intended adversary in this case, [Company that there is a potential claim against]. Unfortunately, this conflict cannot be resolved in a manner that would allow us to represent you in this matter. Consequently, [Law Firm] is formally declining representation of you in your potential action against [Company that there is a potential claim against].

Please be aware that whatever claim, if any, that you have may be barred by the passage of time. Since deadlines may be critical to your case, I recommend that you immediately contact another firm for assistance regarding your matter.

Although we were not able to assist you in this matter, I hope that you will consider [Law Firm] in the event you require legal services in the future. Thank you again for your consideration.

[Name of Firm]

By _____

[Name of Attorney]

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Non-Engagement Letter: Conflict of Interest

VIA REGULAR MAIL, CERTIFIED MAIL¹ RETURN RECEIPT REQUESTED,
AND VIA ELECTRONIC MAIL

[Name]

[Address]

RE: Declination of Representation

Dear **[Name]**:

You contacted our firm **[last week]**² and requested that we represent you in the **[describe case/matter]**. Although we did not discuss the particulars of your legal matters, our review has revealed that we have a possible conflict of interest. We appreciate the confidence you have expressed in our firm; however, because it does not appear that the ethical rules will permit an engagement under these circumstances, we must decline to represent you. **[Enclosed herewith are the documents that you provided to us for review. We have not kept any copies thereof.]**³

In declining to accept your matter, the firm is not expressing an opinion as to the merits **[or value]** of such matter. You should be aware that any advice provided during our consultation were based on a preliminary understanding of the pertinent facts and were not based on a thorough legal analysis.

[It appears that your legal matter is time-sensitive. This means that the failure to take prompt legal action may result in your legal matter being barred by a time limit.⁴ In order to preserve your rights, I strongly recommend that you contact another lawyer regarding this matter immediately.] [Although your legal matter may not be time-sensitive, I recommend that you contact another lawyer promptly should you wish to pursue the matter.]

¹ If the firm is returning documents to the individual or entity seeking representation, or if the statute of limitations is fast approaching, it is recommended that the firm send the letter by certified mail. Because the certified letter may not be accepted by the intended recipient, it should be sent via regular mail, as well. If the individual or entity seeking representation has an email address, the declination letter should be sent via email as well as via regular mail and, under the aforementioned circumstances, via certified mail.

² The nonengagement letter should be sent within a reasonable time after the engagement is first sought, especially if the legal matter for which representation is sought involves time-sensitive matters, such as a statute of limitations.

³ Preferably, the proposed client will not have provided any documentation to the lawyer, as documentation should be obtained only after a conflict-check has been run and a determination that no conflict exists has been made.

⁴ As a general rule, lawyers should not specify the exact date on which they believe a statute of limitations period will expire or even the length of the statute of limitations (i.e., one year, two years). This is because lawyers who are declining a case may not have all of the information necessary to establish either the correct date or the statute of limitations that applies to the matter. Case law suggests that a lawyer who states an incorrect limitations period or date in his nonengagement letter may be held liable for providing negligent advice if the nonclient relies on that advice to her detriment.

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Non-Engagement Letter: Default Judgment Option Clause

[Date]

[Name and Address of Client]

Re: Consultation of [date of consult]

Dear _____:

Thank you for [meeting with me] / [speaking with me by telephone] on _____ to discuss _____. I greatly appreciate the confidence you have expressed in our firm, but we are not in a position to represent you on this particular matter.

OPTION 1 [Please be advised that your claim may become barred by the passage of time as a result of the applicable statute of limitations. Therefore, you should consult another attorney immediately about your claim.]

OPTION 2 [Please be advised a default judgment may be entered against you if an answer or other action is not taken in a timely manner. Therefore, you should consult another attorney immediately about responding to this claim.]

I would also like to emphasize that in declining to represent you, the firm is not expressing an opinion on the merits of your case. We neither had an opportunity to investigate the facts in this matter nor to research the applicable law.

[Since we did not undertake to provide you with any legal advice regarding this matter, no charge is being made for any legal fees or expenses.]

[I am enclosing all the original documents and materials you left with me following our meeting.]¹
In the future should you require legal assistance regarding some other matter, I hope you will contact me.

Sincerely yours,

[Name of Firm]

By _____

[Name of Attorney] _____

¹ Keep a copy of any documents which establish basic information on the case including the statute of limitations.

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Non-Engagement: Lost Client

[Date]

[Name and Address of Client]

Re: [LEGAL MATTER]

Dear [Client]:

We have been pleased to have represented you for the past [TIME FRAME] in [LEGAL MATTER]. We have not heard from you, however, for the past [TIME FRAME]. We have attempted to communicate with you by letter and telephone, but we have not been successful. Our letters [ARE RETURNED], and [OUR TELEPHONE CALLS GO UNANSWERED] [YOUR TELEPHONE HAS BEEN DISCONNECTED].

Because we are unable to communicate with you, we must assume that you no longer wish us to represent you in this matter.

Because your case is pending before the court, we may only withdraw with the court's permission. Enclosed is a copy of the motion we intend to file within [number] days from the date of this letter. We believe the court will grant our request for leave to withdraw. You should begin looking for another attorney immediately so that the transition may be as smooth as possible and to insure that no time deadlines are missed. Your failure to take some action regarding this matter may result in [your claim being forever barred] [a default judgment being entered against you].

Of course, we will cooperate with the attorney you choose. If your new lawyer wishes to discuss this case with us, we will do so only if you agree to pay us for the additional time and expense involved in such a consultation. We will also turn over our file to your new lawyer if we have a reasonable assurance that you will pay the outstanding fees and costs for the services we have provided through this date. Without such an assurance, the law allows us to assert a retaining lien on your file until you have either paid the fees owed or posted security for payment unless our retention of the documents would cause prejudice to your case.

If you desire that we continue to represent you, we will do so if you contact us immediately upon receipt of this letter. If you do not contact us within [number] days, we will file the motion to withdraw. I look forward to hearing from you and hope that we can continue representing you in this matter.

[Name of Firm]

By _____

[Name of Attorney]

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Non-Engagement: Letter to Unrepresented Party

[Unrepresented Party Name]

[Address]

RE: ***[Identify Matter]***

Dear ***[Name]***:

As you know, I represent ***[Client Name]*** with respect to ***[describe matter]***. I understand that you have decided not to seek the advice of legal counsel and will be representing yourself in this matter at this time. Because I do not represent you, I cannot provide you with legal advice and I will be unable to answer any legal questions you may have. I urge you to seek independent legal counsel immediately to protect your interests and represent you on this matter.

Should you obtain legal counsel relative to this matter in the future, I ask that you please have your counsel contact me as soon as possible.

If you do not have a local lawyer, you may want to use the Illinois Lawyer Finder, which can be found at <http://www.isba.org/public/illinoislawyerfinder>.

Sincerely,

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Disengagement Letter: Sample

Removing yourself from a case/matter after having accepted it but before the matter has concluded^{vii}

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Client Name]
[Client Address]

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

Dear ***[Name]***:

The purpose of this letter is to inform you that this firm, ***[name of firm]***, is terminating its representation of you with respect to ***[identify matter]***.^{viii} ***[Briefly describe the reason for the termination. If you are withdrawing due to unpaid legal fees, use “Sample Disengagement Letter-Unpaid Fees”.]***

[Include language from one of the four options below].

Option 1: Matter in litigation where leave to withdraw is required.

In accord with the applicable rules of ***[identify jurisdiction]***, we will promptly file a motion for leave to withdraw as your counsel and we will provide you with a copy thereof. We will continue to serve as your counsel until the court grants our motion. In the event that our motion is granted, our lawyer-client relationship will be immediately terminated, and we will cease to provide legal services to you.

Several items remain pending with regard to your case/matter. Specifically, ***[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]***.^{ix} You should therefore seek other counsel to represent you on this matter immediately. I will of course cooperate in the smooth transition of your files to another lawyer of your choosing. With this correspondence, we are returning the ***[personal property, including original records and documents]*** which you previously provided to us.^x

Option 2: Matter in litigation where substitution of lawyer must be filed with court.

In accord with the applicable rules of ***[identify jurisdiction]***, we will work with your new counsel to file with the court a substitution of lawyers form that, when approved by the court, will automatically substitute your new lawyers for our firm as counsel of record on your behalf. We will continue to serve as your counsel until the court approves the substitution. In the event that the court approves the substitution, our lawyer-client relationship will be immediately terminated, and we will cease to provide legal services to you.

Several items remain pending with regard to your case/matter. Specifically, ***[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]***.³ You should discuss these matters with your new counsel. I will of course cooperate

in the smooth transition of your files to your new counsel. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.

Option 3: Non-litigation matter where new/successor counsel has been retained by client.

You have informed us that the law firm of **[name of firm]** will be serving as your successor counsel in connection with the matter identified above. Accordingly, we are terminating our lawyer-client relationship immediately. We will work with your successor counsel to ensure a smooth transition of legal services. Unless you direct otherwise, we will promptly transfer all appropriate files to your successor counsel. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.

Several items remain pending with regard to your case/matter. Specifically, **[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]**.³ You should discuss these matters with your new counsel.

Option 4: Non-litigation matter where client has not identified new/successor counsel.

Several items remain pending with regard to your case/matter. Specifically, **[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]**.³ You should therefore seek other counsel to represent you on this matter immediately. I will of course cooperate in the smooth transition of your files to another lawyer of your choosing. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.

[Additional statement where outstanding fees are owed]⁴

Fees for our legal services are paid through **[Month, Day, Year]** and unpaid through **[Month, Day, Year]**.^{xi}

Sincerely,

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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.^{xii}

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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Disengagement Letter: Termination of Representation – Case Closed

[Date]

[Name and Address of Client]

RE: Termination of Representation

FILE: [FILE NUMBER]

Dear [Client's Name]:

We are pleased to have had the opportunity to represent you in connection with your [LEGAL MATTER]. The case is now concluded. Since we have completed our legal work, we are closing our file and removing it from our active files list.

Enclosed are the documents from your file, which are being returned to you. We are in possession of no other funds or property belonging to you. We suggest that you keep all of the contents of your personal file in a safe place where you can easily find them. We periodically clean out and destroy our closed files. Unless we hear from you to the contrary in writing, our file regarding this will be destroyed on our regular schedule.

There is some follow up required in this matter, specifically [SUMMARIZE DETAILS] (e.g., filing of continuation statements within five years of the date of the original financing statements were filed; changing beneficiaries on the life insurance policies, discharging the liens in bankruptcy, etc.). Our firm will not be doing those tasks, and you will need to take the further action, as appropriate.

Again, it was our pleasure representing you. Thank you for your confidence in us. Please contact us if we can be of service to you in the future.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

Enclosures

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Disengagement: Termination of Representation – Permissive Withdrawal

[Date]

[Name and Address of Client]

Dear [Client's Name]:

This letter will confirm our understanding that effective [DATE] this firm will no longer represent you in connection with [LEGAL MATTER].

I urge you to promptly retain other counsel to represent you in this matter. I will cooperate with your new counsel during the transition process and will provide him/her with any original documents [keep copy for yourself], correspondence, pleadings, investigative reports and records, which I have not previously sent to you.

[WHERE COUNSEL OF RECORD] I will notice the Court and have prepared the enclosed Order releasing me as counsel of record. Please endorse the Order releasing me and return it in the enclosed stamped envelope so I may present it to the Court for entry. Without your signature, it will be necessary for you to appear at the hearing. If you have already retained new counsel, please let me know who it is so I may forward the appropriate Order to your new attorney.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

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Disengagement: File Closing Letter (Form ER03)

[Date]

[Client Name]

[Address]

[City, State, Zip]

Dear [Client Name]:

This letter will serve to confirm our recent conversation of [Date] regarding the conclusion of our representation in the matter of [name of matter], as settlement was reached on [Date] and the matter has thus reached its natural conclusion. I want to again express my gratitude for the opportunity to represent you in this matter and my appreciation for your business and your confidence in this firm's work.

As a reminder, our firm will retain the complete file for this matter for a minimum of 10 years but may destroy the file after 10 years have passed without further notice to you. All original documents you provided to me were returned to you at our meeting of [Date], but the rest of the file remains at our office and will soon be placed in storage. You are welcome to pick up the file at any time, but please be advised that we will need advance notice in order to retrieve the file from storage and copy the documents, per our retainer agreement, at your expenses. If you choose not to collect the file in the next 10 years, it will be destroyed in accordance with our file destruction policy, taking care to preserve your confidentiality and conform to environmental standards without further notice to you.

Thank you again for entrusting this matter to our firm, it has been my pleasure to work with you and your family. If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

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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**

TOTAL SERVICES AND COSTS for February, 2022 **\$595.00**

DRAWN FROM TRUST ACCOUNT on February 27, 2022 **\$595.00**

CURRENT BALANCE IN TRUST ACCOUNT	\$905.00
---	-----------------

AMOUNT DUE THIS STATEMENT	\$0.00
----------------------------------	---------------

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

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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]

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Documentation: File Closing Checklist

Client: _____

Matter Name: _____

Matter No.: _____

Responsible Lawyer: _____

Signature: _____

Date: _____

Responsible Party	Initials	Date	Task
Lawyer			Work on behalf of client is complete.
Lawyer			If a litigation matter, has matter concluded or withdrawal been granted?
Lawyer			Any deeds, judgments, <i>lis pendens</i> , liens, orders, contracts that must be filed or recorded before engagement is complete have been filed or recorded as necessary.
Lawyer			Final accounting/invoice has been issued to client or other responsible party.
Lawyer			Final bill is paid. (If not, either keep file open or document write-off and proceed with file closure.)
Lawyer			All firm costs have been paid and, if necessary, reimbursed by client or other responsible third party.
Lawyer			Trust account balance has been zeroed.
Lawyer			Correspondence sent to client doing the following: <ol style="list-style-type: none"> 1. Identifying any work that was not completed. 2. Identifying any pending dates or future actions that are the client's responsibility. 3. Identifying any limitations upon the work performed by the firm. 4. Identifying any other outstanding issues. 5. Confirming conclusion of engagement.
Lawyer			Client has been informed in writing of file retention and destruction policy.
Lawyer			All documents of particular legal significance, such as wills, trusts and documents for which the authenticity could reasonably be disputed have been copied and the originals returned to the client.

Responsible Party	Initials	Date	Task
Lawyer			Relative to other original documents: <ol style="list-style-type: none"> 1. All such documents have been returned to client; or 2. Client has approved, in writing, of file-retention and destruction policy as it applies to original documents.
Lawyer			All third-party document returned and/or destruction requirements have been complied with. (For instance, medical records obtained pursuant to HIPAA authorization or documents obtained pursuant to protective order often must be returned or destroyed within a certain period of time following the conclusion of a matter).
Lawyer			File has been reviewed for documents that may be added to firm's "forms" bank.
Lawyer			File retention and destruction checklist has been completed and turned in to Assistant [or Administrator].
Assistant [or Administrator]			File retention and destruction checklist has been received.
Assistant [or Administrator]			Deadlines relative to file retention and destruction recoded in calendaring system.
Assistant or Administrator			File has been marked "closed" in file-management system.
Assistant or Administrator			File has been marked "closed" in billing system.
Assistant or Administrator			Matter has been removed from active case list and added to closed case list.
Assistant or Administrator			Matter has been assigned closed file number.
Assistant or Administrator			All pertinent names (client, opponent, etc.) have been added to conflict-check system.
Assistant or Clerk			Hard file contents compiled, and unnecessary items removed from hard file. For instance, notebooks, binder clips, and duplicates of documents.)
Assistant or Clerk			Hard file labeled for storage.

Responsible Party	Initials	Date	Task
Assistant, Administrator, or Clerk			Electronic file contents compiled and saved in accord with firm's policy for retention and destruction of such materials. Check the following for electronic documents/items: <ol style="list-style-type: none"> 1. Local network servers; 2. E-Mail; 3. Cloud storage; 4. Laptops; 5. Portable/removable electronic storage for electronic documents.
Assistant or Clerk			Send hard file to storage
Assistant or Clerk			Place hard copy of completed checklist in file and save copy to file-management system.

Comments/Notes:

Initial

DISCLAIMER: This checklist is intended to be an example that may be useful in developing your own policies and procedures and in creating your own form. The tasks that must be performed upon the closing of a file will depend upon the nature of your practice and your office procedures. This is not intended to be legal advice and should not be relied upon as such.

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Documentation: Notice to Client of Departure of Partner/Associate from Firm

[Date]

[Client Address]

RE: **[Smith v. Jones]**

Dear **[Client Name]**:

On **[date of withdrawal]**, [departing lawyer] [is leaving/left]the law firm of **A B & C, Ltd.** [to join law firm D & E, LLC].

Inasmuch as [departing lawyer] was your designated lawyer on the above matter, we are required by the Illinois Rules of Professional Conduct to inform you that you have the right to choose to have [departing lawyer] continue in [his/her] new capacity to represent you in this matter, or you may have our firm continue to represent you, in which case the file will be handled by [current firm lawyer], or you can choose to retain an entirely new lawyer.

We have appreciated the opportunity to serve you in the past. If you wish to have [departing lawyer] or a new lawyer continue to represent you, arrangements to secure your outstanding account with us will have to be made before the file can be released to [departing lawyer] or new lawyer. [If applicable: You may be liable for fees and costs for services already provided by the firm.] [If applicable: Any retained/unspent fees or costs currently held by the firm will be promptly returned or transferred to [departing lawyer] or [new lawyer] as you designate. Please advise [departing lawyer] and us, as quickly as possible, of your decision so that continuity in your representation is assured. You may do so by indicating your choice below and returning a signed and dated copy in the enclosed stamped envelope. Please retain the additional copy of this designation letter for your records.

Should you have any questions related to these matters, please contact us for further information.
Sincerely,

A B & C, Ltd.

By: _____

Instructions

- I wish my file to stay with A B & C, Ltd.
- I wish my file and trust account balalnce to be transferred to [name of departing lawyer].
- I will retain new counsel and have them contact [name of current firm lawyer].

Comments:

1. See [Illinois Rules of Professional Conduct Rule 1.16](#) for ethical guidelines concerning withdrawal from representation and termination of the lawyer-client relationship.

2. Remember when withdrawing from representation, you must take reasonable steps to avoid foreseeable prejudice to the rights of the client, including the following:
 - a. giving due notice to the client in writing;
 - b. allowing time for employment of other counsel;
 - c. delivering to the client all papers and property to which the client is entitled; and
 - d. refunding promptly any part of the fee that was paid in advance, but which has not been earned.
3. Don't forget to promptly file substitutions of counsel with the court.
4. If the client has decided to retain other counsel, send a closure letter. If the client has opted to move his/her file to your new firm, send an engagement letter.

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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Documentation: Telephone Conference Memorandum

Matter Name/No: _____

Date: _____ Time: _____ A.M. / P.M.

Telephone Call to: _____

from: _____

Notes:

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File Retention & Destruction: File Closing Procedures Checklist – Internal Document (Form ER02)

- _____ Complete original documents concluding matter (Release executed, Dismissal Entry filed, etc.)
- _____ Confirm final invoice if paid in full. Be sure to check on all court costs and other expenses.
- _____ Return original documents and papers to the client. Note: You may not charge the client for copying any documents you wish to retain for your files.
- _____ Copy useful forms for office form file. Do not charge client for copies of file.
- _____ Remove duplicates and “clean out” file for storage.
- _____ Copy all stored electronic data – including all e-mails – related to client matter to DVD disk to be included with file.
- _____ Send closing letter to client.
- _____ Calendar future docket dates such as Uniform Commercial Code and judgment renewals.
- _____ Send client survey to client.
- _____ Enter case into closed file database for future conflicts checks.
- _____ Assign date for review/destruction of file. Ask client if s/he prefers to have the file returned or destroyed after the assigned date.

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File Retention & Destruction: Checklist

Client: _____

Matter Name: _____

Matter No.: _____

Responsible Lawyer: _____

Date: _____

CHECK ONE	AREA OF LAW	RETENTION PERIOD	DESTRUCTION DATE (IF CHECKED)
<input type="checkbox"/>	Antitrust	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Banking	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Commercial Finance	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Bankruptcy	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Collections	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Commercial Litigation	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Commodities	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Contract Actions	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Corporate	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Criminal	Review annually and destroy 10 years after client's release from incarceration	
<input type="checkbox"/>	Employee Benefits	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Estate Litigation	Conclusion of engagement plus 7 years	
<input type="checkbox"/>	Estate Planning and Administration	Indefinite	
<input type="checkbox"/>	Family Law - Adoption	Until adopted child reaches age of majority plus 7 years.	
<input type="checkbox"/>	Family Law - Dissolution of Marriage	If no minors or disabled individuals involved, conclusion of engagement plus 7 years. If minor(s) and/or disabled individuals involved, until the latest of the youngest child reaching the age of majority plus 7 years OR the	

CHECK ONE	AREA OF LAW	RETENTION PERIOD	DESTRUCTION DATE (IF CHECKED)
<input type="checkbox"/>		removal of the disability plus 7 years.	
<input type="checkbox"/>	Family Law - Prenuptial	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Government Regulations or Legislation	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Health Care	If minor(s) and/or legally disabled individuals involved, until the latest of the youngest child reaches the age of majority plus 7 years OR the removal of the disability plus 7 years. Otherwise, conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Intellectual Property	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Joint Ventures	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Juvenile	Until minor reaches age of majority plus 7 years.	
<input type="checkbox"/>	Labor	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Litigation - General	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Litigation - Appellate	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Merger and Acquisition	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Municipal	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Personal Injury - Adults	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Personal Injury - Minors or Legally Disabled Individual	If minor(s) and/or disabled individual(s) involved, until the later of the youngest child reaches the age of majority plus 7 years OR the removal of the disability plus 7 years.	
<input type="checkbox"/>	Products Liability	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Real Estate Transaction	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Regulatory	Conclusion of engagement plus 7 years.	
<input type="checkbox"/>	Securities	Conclusion of engagement plus 7 years.	

Notes:

A legal matter may fall into more than one of the categories set forth above. If so, use the longest retention period.

There are many exceptions to the general guidelines set forth above. For instance, if you or your client have entered into an agreement to maintain certain materials, this should be taken into consideration. Or, if you or your client know or have reason to know that file contents would be material to a potential civil action, the documents should be kept for the purpose of avoiding a spoliation claim or presumption. Moreover, if another law applies, such as the Uniform Preservation of Private Business Records Act., 805 ILCS 410/1, *et seq.*, or the Illinois State Records Act of 1957, 5 ILCS 160/1, *et seq.*, and requires preservation of records for a longer period of time, the longer period should control.

Documents of independent legal significance, such as original wills, trusts or deeds, if not returned to the client should be retained indefinitely.

Before a file is destroyed, the lawyer responsible for the engagement or another responsible lawyer with the firm should review the basis for establishing a file-destruction date, as circumstances may have changed which should necessitate a re-evaluation of the file-destruction date. For instance, if it is known that the client or an intended third-party beneficiary of the engagement became legally disabled after the engagement concluded, the file should be preserved until 7 years after the disability is removed.

DISCLAIMER: This checklist is intended to be an example that may be useful in developing your own policies and procedures and in creating your own file retention and destruction policy. Determining what documents may be destroyed and when, if at all, the documents may be destroyed will turn on the particular nature of each engagement. This is not intended to be legal advice and should not be relied upon as such.

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File Retention & Destruction: File Closing Form – Internal Process

Client Name: _____ File No.: _____

File Title: _____ Matter Code: _____

Responsible Attorney(s): _____ / _____ / _____ Closing Date: _____

Attorney Responsible for Final File Closing Review: _____

<u>Materials Returned to Client</u>	<u>Date</u>	<u>Means of Return</u>
_____	_____ / _____	_____
_____	_____ / _____	_____

Materials to be Retained

Materials to be Destroyed

Date File Closing Letter Sent to Client: _____

Date Signed Acknowledgement Letter Re Returned Materials Received from Client:

Comments/Notes:

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File Retention & Destruction: File Destruction Authorization Form

RE: [File Name and Close File No]

I, _____, the responsible attorney on this case, have reviewed this file and found:

- _____ It has been over ten (10) years since the file was closed.
- _____ I have examined the file and have found no client property in it or have returned any
and all client property found.
- _____ I have examined the file and found no reason to retaining it.
- _____ The pending destruction letter has been sent to the client and the client has either consented or there has been no response from the client.

This file may, therefore, be purged from the closed file archive and destroyed.

[Firm Name]

[Attorney Name]

Date

[Date]

**A & C, Ltd. 111 Main Street
Chicago, IL 60000**

RE: **Smith v. Jones**

Dear **Ms. A:**

- We choose to have **A & C, Ltd.** continue to handle the above-referenced file in the future.
- We choose to discharge **A & C, Ltd.** and transfer the above-referenced file to **B & Associates.**
- We choose to transfer our file to the law firm of **[new law firm]**, thereby discharging the firm of **A B & C, Ltd.**

With respect to any files which we have decided to transfer to **[new law firm]**, please make arrangements to transfer those files promptly in an orderly manner. We recognize that **A B & C, Ltd.** has a compensation claim for services rendered and expenses advanced on our behalf to date.

Signature

Print Name

Date

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Backup Lawyer: Checklist – Annual Review of Backup-Lawyer System

Having a functional backup-lawyer system requires regularly updating your Office Procedures Manual, keeping your backup lawyer apprised of significant changes in your firm, and conducting a yearly self-assessment of your Backup-Lawyer System. Below checklist to aid in your annual review.

- **Is the backup lawyer still the right backup lawyer for you?** Take time to reevaluate your choice of a backup lawyer based on the same criteria used to select the backup lawyer in the first place. Consider the following (see the **Checklist: What to Look for in a Backup Lawyer**):
 - Do you still believe that the backup lawyer is skilled, dependable, and trustworthy?
 - Does the backup lawyer still have a good reputation within the legal community?
 - Has your practice changed? Has the backup-lawyer's practice changed? If so, does the potential backup lawyer still practice in the same area of law for which you and your clients may require their services?
 - Has the backup lawyer moved? Does the backup lawyer still practice in the same geographical area?
 - Has the potential backup lawyer been disciplined by any disciplinary or regulatory authority?
 - Does the potential backup lawyer still carry adequate professional liability insurance?
 - Do you still trust the potential backup lawyer to maintain your legal practice in your absence?

If you no longer believe that the backup lawyer should serve in that role for you, restart the process of selecting a backup lawyer. Remember to terminate the Backup-Lawyer Agreement with the former backup lawyer.
- **Is your Office Procedures Manual current?** Go through the manual and ensure that every item is complete and up to date. For instance:
 - Are you still using the same case-management and docketing/calendaring software or other systems?
 - Do you still have the same vendors?
 - Do you still have the same policies and procedures?
 - Have you kept up on your efforts to memorialize and obtain consent from every client to use a backup lawyer? Does your client/matters list reflect this?
 - Has your will changed?
 - Have your passwords changed?
- **Has your estate plan changed?** If your estate plan has changed, consider how the change will affect your Backup-Lawyer Agreement and take any necessary action.
- **Has there been a significant change in your office staff or office procedures?** If so, consider giving your backup lawyer another tour of your office. Introduce the backup lawyer to new staff. Demonstrate new office procedures to the backup lawyer.
- **Renew your Backup-Lawyer Agreement.** Review the agreement and, if appropriate, update it to address any significant changes in your practice or your backup-lawyer needs.

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Backup Lawyer: Sample Agreement

Below is a sample agreement for use as a template in situations where a backup lawyer will be taking over your law practice in the event of your impairment, disability, or incapacity. This is meant to be a starting point for the drafting of a Backup-Lawyer Agreement that will suit the particular needs of your practice, and which will be appropriate for your backup lawyer, as well.

The sample agreement does not provide for the planning lawyer to provide the backup lawyer with a power of attorney to take actions on the planning lawyer's behalf, including closing the law firm in the event of a permanent incapacity or death, nor does the sample agreement contemplate that the backup lawyer arrangement will survive your death. You should consult with your estate-planning lawyer before including any such provisions in your agreement or preparing a separate agreement to designate another individual to close your law practice. For solo practitioners, we recommend making a provision in your will for the disposition and, if appropriate, closing of your law practice in the event of your death.

Because the backup lawyer will be representing your clients and will thereby owe fiduciary duties to your clients, the backup lawyer should not serve as your lawyer or fiduciary, as conflicts of interest may result. As such, we recommend authorizing another individual to close your law practice in the event of your death or to coordinate with the backup lawyer in closing your practice in the event of a permanent impairment, disability, or incapacity.

The sample agreement contemplates that the backup lawyer will represent your clients and, as such, will receive confidential information from and relating to your clients; however, the backup lawyer will not be an authorized signatory to your financial accounts. We recommend that you enter into a separate agreement with another individual to serve as authorized signatory to your financial accounts.

The sample agreement provides that the backup lawyer will have discretion to determine when you have become impaired, disabled, or incapacitated such that the backup-lawyer's responsibilities under the agreement would commence. Depending upon your circumstances, it may be appropriate to have a spouse or close family member, a trusted member of your office staff or some other person determine when the agreement will become effective.

The sample agreement is not reciprocal in nature.

The sample agreement also does not provide for the funding of your law practice during your impairment, disability, or incapacity, other than to the extent that accounts receivable may be used for such purposes. You may want to consider purchasing a disability insurance policy or other insurance policy and naming your legal practice as beneficiary.

The sample agreement does not include an indemnification provision, whereby the planning lawyer will indemnify the backup lawyer for actions taken in good faith in connection with the backup-lawyer's role under the terms of the agreement. You may want to include such a provision.

The sample agreement also contains no provision restricting or purporting to restrict the backup lawyer from forming their own lawyer-client relationship with any of your clients either during the period of your incapacity or afterwards. You may wish to include such a provision, though you should be aware that agreements that purport to restrict a lawyer's ability to enter into a lawyer-client relationship are, in many cases, unenforceable.

SAMPLE AGREEMENT

This agreement (the “Agreement”) is between [your name] (the “Planning Lawyer”) and [the backup-lawyer’s name] (the “Backup Lawyer”) (the Planning Lawyer and the Backup Lawyer are referred to collectively as the “Parties”) and is intended to protect the Planning Lawyer’s clients and the Planning Lawyer’s legal practice in the event of the Planning Lawyer’s serious impairment, disability or incapacity.

1. Effective Date and Duration. This Agreement shall become effective upon Planning Lawyer’s impairment, disability, or incapacity. This Agreement shall remain in effect during the pendency of the Planning Lawyer’s impairment, disability, or incapacity or until otherwise terminated as addressed in Paragraph 9 herein.

2. Determination of Impairment, Disability, or Incapacity. The Planning Lawyer shall be considered to be impaired, disabled or incapacitated for the purposes of Paragraph 1 where such impairment, disability or incapacity is such that the Planning Lawyer is unable to practice law or is substantially limited in their ability to practice law. A determination whether the Planning Lawyer is impaired, disabled or incapacitated for the purposes of Paragraph 1 shall be made by the Backup Lawyer in their sole discretion. In making such determination, the Backup Lawyer shall act upon any reasonably reliable information, including but not limited to communications with members of the Planning Lawyer’s family and, if available, the written opinion or opinions of one or more licensed physicians or other medical professionals responsible for care of the Planning Lawyer. By this Agreement, Planning Lawyer authorizes the disclosure of Protected Health Information to the Backup Lawyer.⁵ The Backup Lawyer may also rely upon the opinions of other individuals with a close and continuous relationship with the Planning Lawyer, including their spouse, relatives, close friends, colleagues, and office staff.

3. Compensation. Planning Lawyer agrees to compensate Backup Lawyer a reasonable sum for services performed by Backup Lawyer pursuant to this Agreement, including acts of representation of Planning Lawyer’s clients and acts otherwise taken in connection with the administration of Planning Lawyer’s legal practice. Backup Lawyer shall maintain accurate, detailed time records for the purpose of determining the reasonable sum that shall be paid to Backup Lawyer.⁶ Upon the termination of this agreement, Backup Lawyer shall provide to Planning Lawyer or, in the event of Planning Lawyer’s continued impairment, disability or incapacity as defined in Paragraphs 1 and 2, above, or in the event of Planning Lawyer’s death, to Planning Lawyer’s representative, a complete and accurate accounting of the services provided by Backup Lawyer pursuant to this agreement.

4. Rights and Duties of Backup Lawyer. The Planning Lawyer consents to and authorizes the Backup Lawyer to take any action that the Backup Lawyer, in his sole judgment, reasonably deems necessary to represent clients of the Planning Lawyer in the event of the Planning Lawyer’s impairment, disability or incapacity, including but not limited to the following:

⁵ The Planning Lawyer should execute HIPAA Authorizations identifying the Backup Lawyer and authorizing the disclosure of Protected Health Information to the Backup Lawyer upon the Backup-Lawyer’s request.

⁶ You may wish to include a provision mandating that disputes relative to the compensation provision of the agreement shall be submitted to arbitration.

- A. Representation of Clients.** The Backup Lawyer is authorized to represent each of the Planning Lawyer's current clients as of the effective date of this Agreement, subject to the requirement that the Backup Lawyer has conducted a conflict check in accord with Planning Lawyer's conflict-check procedures and has no conflict of interest with such client. Should Planning Lawyer have a conflict of interest with one or more clients, the Planning Lawyer shall take the actions to appoint an Alternate Backup Lawyer as set forth in Paragraph 5 herein as to any such clients and shall continue to represent any clients with whom no conflict exists. Should the Backup Lawyer commence legal representation of any of the Planning Lawyer's clients, the Backup Lawyer shall take reasonable steps to notify any such client of the same.
- B. Litigation and Settlement of Claims.** The Backup Lawyer is authorized to take any necessary action to litigate and/or settle claims on behalf of the Planning Lawyer's clients.
- C. Access to Office and Legal Files.** The Backup Lawyer is authorized to have complete, unfettered access to the Planning Lawyer's office, office equipment, client files and office administrative documents. This includes access to file-management systems, off-site storage, regular and electronic mail, and computer servers. This also includes the right to use the Planning Lawyer's electronic mail and regular mail to send mail as necessary for the representation of Planning Lawyer's clients. The access authorized pursuant to this paragraph and subparagraph does not include direct access to the Planning Lawyer's financial accounts, including client-trust and operating accounts.
- D. Communication with Clients.** The Backup Lawyer shall serve as counsel to Planning Lawyer's clients, subject to the limitations set forth in subparagraph A, above, and shall be entitled to and required to engage in communications with clients as set forth in the Illinois Rules of Professional Conduct and any other applicable disciplinary or regulatory rule.
- E. Maintain and Store Client Files.** The Backup Lawyer is authorized to take any necessary actions to maintain and store client files.
- F. Accounting.** The Backup Lawyer is authorized to provide a financial accounting and/or statement of legal services to any of Planning Lawyer's clients upon request. The Backup Lawyer is authorized to communicate with the authorized signatory to Planning Lawyer's financial accounts to accomplish such purposes.
- G. Return Client Property.** The Backup Lawyer is authorized to return client property upon appropriate request by a client of the Planning Lawyer.
- H. Charge and Collect Fees.** The Backup Lawyer is authorized to charge fees to Planning Lawyer's clients and to take necessary actions to collect fees from Planning Lawyer's clients, assuming no conflict of interest exists.
- I. Administration of Planning Lawyer's Practice and Payment of Business Expenses.** The Backup Lawyer is authorized to take any reasonably necessary action to engage in the day-to-day administration of Planning Lawyer's legal practice, including but not limited to payment of the usual and customary expenses of the Planning Lawyer's business, the employment of office staff and any tasks incident thereto.
- J. Conclude Legal Representation.** The Backup Lawyer is authorized to take any action necessary to conclude legal matters on behalf of Planning Lawyer's clients and to conclude the legal representation of Planning Lawyer's clients.
- K. Communications with Professional Liability Insurer.** Backup Lawyer is authorized to contact Planning Lawyer's Professional Liability Insurer to provide notice of any claims or potential claims. In the event of any such claims or potential claims, the Backup Lawyer shall cooperate with Planning Lawyer's Professional Liability Insurer.

5. Alternate Backup Lawyer. In the event that Backup Lawyer is unwilling or unable to represent any of Planning Lawyer's clients, by virtue of a conflict of interest, lack of experience or competence, or otherwise, the Planning Lawyer authorizes the Backup Lawyer to appoint an alternative backup lawyer (the "Alternate Backup Lawyer") to carry out the purposes of this Agreement. Upon execution of this Agreement, the Alternate Backup Lawyer shall have all of the rights, duties and obligations of the Backup Lawyer under this Agreement, subject to those rights, duties, and obligations exclusive to the Backup Lawyer, except that in no event shall an Alternate Backup Lawyer appoint an alternative backup lawyer.

6. Backup Lawyer Is Not Counsel for Planning Lawyer. Backup Lawyer is not the attorney for Planning Lawyer, and nothing contained within this Agreement shall create an attorney-client relationship between Backup Lawyer and Planning Lawyer. Backup Lawyer may, at their sole discretion, inform the Planning Lawyer's Professional Liability Insurer of any errors or potential errors. Backup Lawyer may also, at their sole discretion, inform clients of Planning Lawyer of any such errors or potential errors and, under such circumstances, shall advise such clients to obtain independent legal advice in connection therewith. Backup Lawyer may also, at their sole discretion, inform any applicable regulatory or disciplinary body of any violations of the Illinois Rules of Professional Conduct or other applicable regulatory or disciplinary rules.

7. Preservation of Client Confidences and Attorney-Client Privilege. Backup Lawyer shall comply with [Rule 1.6](#) of the Rules of Professional Conduct. Backup Lawyer shall take reasonable measures to protect the confidential nature of confidential information learned by or shared with them in the course of their activities as Backup Lawyer pursuant to this Agreement, including in the course of representation of Planning Lawyer's clients. Backup Lawyer is authorized to disclose confidential information to the extent reasonably necessary to carry out the representation of Planning Lawyer's clients.

8. Avoidance of Conflicts of Interest. Before taking any action to represent any of Planning Lawyer's clients, Backup Lawyer shall conduct conflict checks in accord with Planning Lawyer's conflict-check procedures and shall further confirm that there exists no conflict of interest with any such client. This conflict-check procedure shall include a review of Backup Lawyer's own list of clients and client matters. Backup Lawyer shall also create a list of Planning Lawyer's clients with whom an attorney-client relationship is created by virtue of or in connection with this Agreement and Backup Lawyer shall use such list when performing conflict checks relative to Backup Lawyer's own practice. In the event that a conflict of interest is present, Backup Lawyer shall act appropriately to ensure that client confidences are not revealed or shared and shall further give consideration to whether the Backup Lawyer may continue to represent their own client in light of the fact that confidential information has been obtained by virtue of or in connection with this Agreement.

9. Termination of Agreement. This Agreement shall terminate upon (1) the Backup Lawyer's determination that the Planning Lawyer's impairment, disability or incapacity as defined in Paragraphs 1 and 2 has ceased, terminated or concluded and the Backup Lawyer's written notice to the Planning Lawyer of the same; (2) delivery of written notice of termination, with or without cause, by the Backup Lawyer to the Planning Lawyer and the Planning Lawyer's representative; or (3) delivery of written notice of termination, with or without cause, by the Planning Lawyer or the Planning Lawyer's representative, a legally appointed Guardian over the person of the Planning Lawyer, or the Executor or Administrator of the Planning Lawyer's estate to the Backup Lawyer. Termination shall be effective three (3) business days following delivery of such notice. Termination of this Agreement on the foregoing terms is subject to and limited by any legal or ethical requirement that the Backup Lawyer continue the legal representation of one or more of Planning Lawyer's clients undertaken pursuant to this Agreement. Upon termination of this Agreement, Backup Lawyer shall return to Planning Lawyer or, in the event of Planning Lawyer's continued impairment, disability or incapacity as defined in Paragraphs 1 and 2, above, or Planning Lawyer's death, to Planning Lawyer's representative, any files, records or

other property of or relating to Planning Lawyer's legal practice and/or Planning Lawyer's clients. Backup Lawyer shall, and is hereby authorized to, maintain a list of clients that Backup Lawyer represented or whose confidential information Backup Lawyer accessed in connection with this Agreement.

10. Nature of Relationship. The relationship of the Backup Lawyer to the Planning Lawyer as established by and described in this Agreement is that of an independent contractor. Nothing in this Agreement shall be construed to create any agency or employment relationship between the Planning Lawyer or any of its employees, on the one hand, and the Backup Lawyer, on the other hand.

11. Minimum Insurance. At all times during the pendency of this Agreement, the Planning Lawyer and the Backup Lawyer shall maintain in place minimum professional liability insurance with policy limits of \$250,000 per claim and \$500,000 in the aggregate.⁷

12. Notice. All notices to Planning Lawyer, the Planning Lawyer's representative and the Backup Lawyer shall be given by electronic mail as well as overnight courier or certified mail return receipt requested and shall be effective upon receipt, as follows:

If to Planning Lawyer, to: [identify name, address, and email address]

If to Planning Lawyer's representative, to: [identify name, address, and email address]

If to Backup Lawyer, to: [identify name, address, and email address]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated by each signature below.

PLANNING LAWYER

[Planning Lawyer name]

Date

BACKUP LAWYER

[Backup Lawyer name]

Date

⁷ You may wish to require that the Backup Lawyer carry a more significant amount of insurance. If you operate a limited liability legal practice, at a minimum, both you and the backup lawyer should carry sufficient insurance to comply with Illinois Supreme Court [Rules 721](#) and [722](#).

ALTERNATE BACKUP LAWYER

[Alternate Backup Lawyer name] Date

^{vii} See Rule 1.16, Illinois Rules of Professional Conduct, for ethical guidelines concerning withdrawal from representation and termination of the lawyer-client relationship. Specifically, when withdrawing from representation, you must take reasonable steps to avoid foreseeable prejudice to the rights of the client, including the following:

- a. giving due notice to the client in writing;
- b. allowing time for employment of other counsel;
- c. delivering to the client all papers and property to which the client is entitled; and
- d. refunding promptly any part of the fee that was paid in advance, but which has not been earned.
- e.

^{viii} If you are withdrawing from a plaintiff's matter, it is suggested that you provide the client with as much notice as possible before the statute of limitations expires.

^{ix} It is recommended that you provide the client with a summary of the status of his/her matter, including any impending deadlines for uncompleted activities. Example: "Answers to interrogatories are due on or before **[date]**, and the failure to complete them may result in court-ordered sanctions."

^x If you are asserting a retaining lien over the client's file, it may be appropriate to delete this sentence; however, recall that Rule 1.16 requires a lawyer to take reasonable steps to avoid foreseeable prejudice to the rights of a client. Depending upon the circumstances, this may include returning original client documents and/or other client property.

^{xi} It is suggested that you provide a status on your fees. If you are waiving any uncollected fees, state that in your letter. If you intend to assert a retaining lien, we suggest the following language:

"Please be advised that by reason of the outstanding invoice for fees and costs, we have the right to retain certain of your property in our possession in exercise of our retaining lien rights. We would much prefer to work out a mutually agreeable method of payment and delivery of property. Please contact us to achieve that goal."

Disclaimer

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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