DON'T COME TO MY OFFICE WITH SUING ME ON YOUR MIND - ETHICAL ENGAGEMENT LETTERS

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State Bar of Texas
16TH ANNUAL
BUILDING BLOCKS OF WILLS, ESTATES AND PROBATE
2015 COURSE
January 9, 2015
Webcast

CHAPTER 1.2

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Experience:

Moorman, Tate, Haley, Upchurch & Yates, L.L.P. – Partner, November 1976 to present.

Estate Planning Practice

Planned estates ranging in size from modest estates to estates in excess of $100 million. Counseled numerous clients in estate planning and probate matters. Prepared hundreds of complex wills, containing provisions for testamentary trusts, marital deduction trusts, generation skipping trusts, life insurance, and powers of appointment (both general and special). Prepared and filed numerous federal estate (Form 706) and federal gift tax(Form 709) returns. Prepared family limited partnerships, grantor retained annuity trusts (GRAT), qualified personal residence trusts (QPRT), *Graegin* notes, intentionally defective grantor trusts (IDGT), corporations, private foundations, charitable trusts, limited liability companies, revocable and irrevocable trusts, pourover wills, insurance trusts, *Crummey* trusts, durable general and health care powers of attorney, buy-sell agreements, directives to physicians, and guardianship designations. Counseled clients in business succession planning. Handled both intestate and testate probate administrations from beginning to end. Represented taxpayers in audits of estate tax returns. Successfully obtained private letter rulings in the estate tax area. First chair experience in trying will contests and contested guardianships as well as other contested probate proceedings to juries and judges. Sought and obtained judicial modification of trusts. Prepared qualified income trusts, special needs trusts, and advised clients on Medicaid qualification.

Civil Trial Practice

First chair bench and jury trial experience in personal injury, contract, commercial, condemnation, deceptive trade practice, will contest, oil and gas, and other areas of law in district and county courts. Litigation in both state and federal courts. Represented clients in alternate dispute resolution including both arbitration and mediation. Served as an arbitrator. Participated in contested case hearings as a member of the Texas Air Control Board, the former Texas agency responsible for regulating air pollution in Texas.

Honors

Mr. Moorman has been listed in *Best Lawyers in America* each year since 2001. This distinction is awarded by consensus opinion of lawyers in the same geographical area and legal practice area. He has been named Lawyer of the Year – Trust & Estate Litigation for the Houston area for the year 2013. This is an honor awarded to only one lawyer in the Houston region for this area of law. Mr. Moorman appeared on the charter listing of *Texas Super Lawyers* in *Texas Monthly* magazine and has been named on the *Super Lawyers* list every single year this award has existed. Much like the *Best Lawyers* distinction, this award is voted upon by members of the bar. The selection process includes independent research, peer nominations and peer evaluations.

Board Certifications:

Civil Trial Law, Texas Board of Legal Specialization.
Estate Planning and Probate Law, Texas Board of Legal Specialization.

High School Education:

Brenham High School, Valedictorian; President – Student Council

College Education:

Massachusetts Institute of Technology, B.S. - Civil Engineering. President and Scholarship
Chairman - Delta Tau Delta Fraternity; Inter-Fraternity Conference Community Relations Chairman

Legal Education:

Southern Methodist University, J.D. cum laude (1976). Associate Editor Journal of Air Law and Commerce; The Barristers; Order of the Coif; Corpus Juris Secundum Award for Significant Legal Scholarship; Five American Jurisprudence Awards for highest grade point average in the class.

Engineering Experience:

P.G. Bell Co. – Construction Contractors. Field engineer.
Turner, Collie & Braden, Inc. – Consulting Engineers. General civil engineering design and planning.

Other Activities:

Fellow:	The American College of Trust and Estate Counsel (State Chair 2009- 2013; Regent 2012 -); Texas Bar Foundation
Board Member:	Texas Board of Legal Specialization 2010 – 2016; Chairman, Texas Board of Legal Specialization 2014 –
Examiner:	Estate Planning & Probate Specialization Exam – Texas Board of Legal Specialization 1998-2001 – wrote and graded one-fourth of the exams lawyers take to become certified
Course Director:	2011 Advanced Estate Planning Strategies Course; 2002 Advanced Estate Planning and Probate Course; 2003 & 2004 Nuts & Bolts of Estate Planning and Probate Institute; 2004 – 2011, 2013 – 2015 Annual Building Blocks of Wills, Estates and Probate Course – all State Bar of Texas courses
Editor:	Real Estate, Probate and Trust Law Reporter, State Bar of Texas – 2006 – 2009
Author/ Speaker	"Now You See It, Now You Don't: The Impact of Contracts and Constraints on Disposition of Assets at Death" – 18th Advanced Estate Planning Strategies Course – 2012
Author/ Speaker	"Effective Use of 867 Trusts and Issues Pertaining to Competency" – Trust Administration Seminar – 2012
Author/ Speaker	"No Sex, No Lies, Engagement Agreements and Other Issues in Light of the New/Proposed Disciplinary Rules: - 34th Annual Advanced Estate Planning and Probate Course – 2010; "Rules of Engagement: Applying the Disciplinary Rules to Your Probate and Estate Planning Practice – 35th Annual Advanced Estate Planning and Probate Course – 2011
Speaker:	"What has Six Years of the Investment UPIA Done, If Anything? Should We 'Draft Around,' 'Modify,' or Just Punt?", American College of Trust and Estate Counsel Fall Meeting – 2011
Co-Author/ Speaker:	"Where the Rubber Meets the Road: How Drafting Affects Discretion in Action" – 20th Annual State Bar of Texas Advanced Estate Planning & Probate Drafting Course – 2009; Docket Call in Probate Court – San Antonio Estate Planning Council – 2011; "Discretion in Action" – 15th Annual State Bar of Texas Advanced Estate Planning Strategies – 2009
Co-Author/ Speaker:	"Alpha to Omega: Life Cycle of an Estate Plan" – The American College of Trust and Estate Counsel Summer Meeting – 2014
Panelist:	"Bucket Lists for Partnerships: Preparing for IRS Audits Before Death" – Attorneys for Family Held Enterprises – 2008
Co-Author/ Speaker:	Family Limited Partnerships: A Practical Guide to Fighting Legal Pitfalls – American Bar Association, Joint Fall Meeting, Tax Litigation and Controversy Committee, 2006
Co-Author:	"Estate Planning is Not Going to Disappear! Services You Will Be Providing Tax Sheltered Estates: When an Estate is Less Than 1 Applicable Exclusion? Less than 2? Greater Than 2 *NOW* but with Repeal a Possibility. 'Just Need A Simple Will, Eh?' Will Your Practice Disappear? Techniques Used to Permanently Tax Shelter an Estate If 'Permanent Repeal' Is Not Adopted?" - Annual Notre Dame Tax and Estate Planning Institute – 2005
Co-Author/ Speaker:	"When the Music's Over – Turn Out the Lights?. . . Estate Planning in a Zero Tax Environment" – State Bar of Texas – Advanced Estate Planning Institute (2005)
Author/ Speaker:	"Don't Come to my Office with Suing Me on your Mind – Ethical Engagement Letters", State Bar Webcast 2006 Annual Wills & Probate Institute, South Texas College of Law; Houston Bar Association 2001-2006; State Bar of Texas Advanced Tax Law Course, 2007; Advanced Estate Planning Drafting Course, 2007; Advanced Real Estate Course, 2008; Annual Seminar of the Estate Planning & Probate Section – Travis County Bar Association – 2011; Advanced Elder Law and Guardianship Law Courses – State Bar of Texas – 2014
Author/	"Can I say "No" to the Next Fund Drive – "I Have a Conflict of Interest"? Ethical Issues for Estate

Speaker:	Planning Lawyers Dealing with Charities and Donors"
Moderator:	State Bar of Texas – Charitable Giving Institute – 2004
Author/ Speaker:	"Searching for WMDs for FLPs: Destroying the Family Limited Partnership on Divorce", State Bar of Texas, New Frontiers in Marital Property Law – 2003
Moderator/ Author:	"Selection of Trustees: How do you pick the right Trustee for your Plan?" Advanced Estate Planning Strategies Course, State Bar of Texas – 2003
Author/ Speaker:	"Fee Contracts: Getting Paid, Keeping Clients Happy and Staying Ethical", Litigation Breakout, 25th Annual Advanced Estate Planning and Probate Course State Bar of Texas – 2001
Author/ Speaker:	"Getting' Down to Bidness A Survey on Economics, Practice Management and Life Quality Issues for Texas Estate Planning and Probate Attorneys at the Turn of the Century", 24th Annual Advanced Estate Planning and Probate Course, State Bar of Texas – 2000
Author/ Speaker:	"Revenge of the Nerds. Automating your Practice". 14th Annual Wills & Probate Institute, South Texas College of Law – 2000
Author:	"When Premarital Agreements May Be Appropriate" 9 Sound Mind Investing 80 – 1998
Speaker:	"Texas Law Update" 1991 State Bar Meeting
Co-Author/ Speaker:	"Fiduciary Selection" – 1991 State Bar Advanced Estate Planning and Probate Course
Speaker:	"Sale or Disposition of Personal Property Collateral," 17th Annual State Bar Advanced Real Estate Law Course
Chairman:	District 8A Grievance Committee, State Bar of Texas, 2001-2002; Committee Member: 1996-2002
Member:	American College of Trust and Estate Counsel-Fiduciary Litigation Committee 2006 –;Sponsorship Committee 2009-;State Chair Steering Committee 2009-2013; State Bar of Texas (Sections and Committees: Litigation, Construction, Taxation, Real Estate, Probate and Trust Law [Council Member 1991-1995; Former Editor – REPTL Reporter; Prior Committee Service: Trust Law Creditors Rights Committee; Guardianship Code Update Committee], College of the State Bar of Texas), American Bar Association (Sections: Litigation: [Condemnation and Commercial & Banking Litigation Committees], Law Practice Management, Real Property, Probate & Trust, Taxation [Business Planning, Tax Litigation and Controversy Committee]; Washington County Bar Association (Past President); American Association for Justice (Sections: Commercial Litigation); National Academy of Elder Law Attorneys; Christian Legal Society.
Civic Activities:	Member: Scott & White – Brenham Board; MIT Education Council; Save our Simon; Past President: Main Street Board; Washington County Chamber of Commerce; Washington-on-the-Brazos State Park Association; Brenham Downtown Association; Past Board Member: Texas Air Control Board (former Texas agency responsible for regulation of air pollution in Texas); Winedale Council; Washington County United Way; Brenham Gun & Rod Club; Former Chairman: Board of Directors – Brenham Christian Academy; Past Class Secretary - MIT Class of 1971 (1976-2006).
Hobbies:	Bicycling, hunting, fishing, languages, and guitar playing.

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"A LAWYER'S TIME AND ADVICE ARE HIS STOCK IN TRADE"

Abraham Lincoln

I. INTRODUCTION AND WARNING.

This quote by Abraham Lincoln hung in my father's office from the time he started practicing law in Brenham in 1954 until he retired in 1984. His practice spanned manual typewriters to word processors, a few law books to computerized legal research, and general practitioners to board certified specialists. Two things that have never changed are the challenge all attorneys face in getting paid for the work they perform and in satisfying their clients. In 1954, malpractice insurance was cheap and claims were rare. Today, attorneys specialize in legal malpractice and in something less than malpractice: a claim for a breach of fiduciary duty that can result in a fee forfeiture for the attorney that has attained an excellent result for a client. The potential for liability is increasing. *See Belt v. Oppenheimer, Blend, Harrison & Tate,* 192 S.W.3d 780, (Tex. 2006) and *Smith v. O'Donnell*, 288 S.W.2d 417 (Tex. 2009).

While my father may have sued a client to collect a fee, our malpractice carriers advise us to never sue our clients for fear of the client bringing a counterclaim for malpractice.

The practice of law has changed dramatically, and, like most things, the pace of that change seems to be increasing. Therefore, it is important to draft fee agreements that are clear, understandable by the client, and in compliance with statutes and the Texas Disciplinary Rules of Professional Conduct ("Tex. D.R." or "D.R."). Even after we do all of that, there is still a risk the court will decide that something else needs to be done to resolve a conflict between an attorney and a client. Another important source to consider is the RESTATEMENT 3D OF LAW GOVERNING LAWYERS (American Law Institute, 2001) ("RESTATEMENT"). The Texas Supreme Court in *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) cites the RESTATEMENT. Like it or not, the RESTATEMENT, written by law professors, federal judges, state court appellate judges and lawyers from larger law firms, may have a great deal of influence on courts in judging attorney's conduct and behavior in the future. Tax practitioners are governed by the provisions of Circular 230 which was most recently revised in June of 2014 (31 S.F.R. §330, et. seq.). For estate planners and transactional lawyers, the ACTEC Commentaries on the Model Rules of Professional Conduct (4th ed. 2006) and the ACTEC Engagement Letters – a Guide for Practitioners (2nd ed. 2007) are useful resources. Another source for guidance is the American Bar Association's EthicSearch. You can call, write, fax or email EthicSearch research lawyers describing your situation and receive citations which will include applicable ABA ethics rules, ethics opinions issued by the ABA, state and local bar opinions, as well as other relevant research material such as case law, law review articles and treatise materials. Most inquiries are handled on a same day basis. There is no charge for an initial consultation or if the EthicSearch lawyer can answer your question immediately. If you decide to ask for additional research you will be charged an hourly rate with a minimum charge. You can contact EthicSearch at 312/988/5323, by mail at EthicSearch, Center for Professional Responsibility, American Bar Association, 541 North Fairbanks Court, Chicago, IL 60611-3314, by fax at 312/988/5491, or email at ethicsearch@staff.abanet.org.

The Texas Center for Legal Ethics and Professionalism has Texas Commission on Professional Ethics ethics opinions online at www.txethics.org/reference_ opinions.asp that are very helpful.

It is often believed that a violation of the Code of Professional Responsibility gives right to a private cause of action. The courts have consistently held, and the Texas Disciplinary Rules expressly provide, that a violation of the Code of Professional Responsibility does not give rise to a private cause of action. *Joyner v. Defriend,* 255 S.W. 3d 281 (Tex. App.-Waco 2008).

Some fine authors have produced great papers on this subject. The October 2012 edition of the Texas Bar Journal is entitled "Attorneys' Fees Some Issues to Consider". It contains articles about getting paid for what you do, preparing an effective engagement letter, problem areas in attorneys' fees, non-refundable retainers, security for fees, the Lodestar Method, Texas and Federal rules, and outside counsel as well as advice to solos about legal fee arrangements and billing practices. All of the articles are excellent and helpful. Also, Mark D. White, *Deadly Sins of Attorney Fee Agreements,* 15th Annual Estate Planning, Guardianship, and Elder Law Conference-2013, University of Texas; Frank Ikard, *Negotiating Fee Contracts and Recovery Fees in Fiduciary Litigation*, presented to the State Bar's 2003 Advanced Estate Planning and Probate Seminar (at Tab 11); D. Diane Dillard, *Engagement Agreements: The Top 20 Country Countdown with Tips for Ethical Compliance*, 2013 State Bar of Texas Advanced Reals Estate Drafting course; Justin M. Campbell, Kenneth J. Fair, and Suzanne E. Goss, *Who's Your Client?*, 2013 State Bar of Texas Advanced Estate Planning and Probate

Course; and Patrick Pacheco, *The Engagement Agreement: One Knee and a Diamond Ring - Lawyer Style*, 2003 State Bar of Texas Drafting: Estate Planning & Probate Course.

II. FEE CONTRACTS.

A. The Attorney-Client Relationship.

When does an attorney-client relationship begin? How does an attorney know who is and isn't his client in an initial interview with someone the attorney has never seen before? Is it established sooner when the prospective client is not very sophisticated? The short answer is the attorney doesn't know. The better course is to negate the attorney-client relationship in a written document given to the prospective client until the client engages the lawyer's services with a written fee agreement.

The court in *Tanox v. Akin, Gump, Strauss, Hauer & Feld, LLP*, 105 S.W.3d 244 (Tex. App. - Houston [14th Dist.] pet. den.), discussed the factors to look at in determining when an attorney-client relationship is established. The case involved a sophisticated company that was dealing with the Akin Gump law firm. Tanox was conducting a "beauty contest" among a number of lawyers to see which firm it would hire in a high stakes litigation case. The court's opinion on Page 254 contains an excellent review of the factors that establish an attorney-client relationship.

The Akin Gump lawyers worked on the case prior to the time a fee agreement was signed, hoping to receive employment. Tanox argued that there was a fiduciary relationship between the attorney and client regarding preliminary consultations about the possibility of retaining the attorney, citing *Nolan v. Foreman*, 665 F.2d 738, 739 n.3 (5th Cir. 1982). In Nolan, Percy Foreman was retained to appeal a conviction for marijuana trafficking. The attorney argued that there was no attorney-client relationship prior to reaching a fee agreement. The court in *Nolan*, holding that the parties may manifest an intent to create an attorney-client relationship explicitly or by their conduct, found that the attorney's fiduciary duties attached when he entered into a discussion of the client's legal problems with a view towards undertaking representation. *Nolan* at 739.

The court in *Tanox* distinguished *Nolan*. In *Tanox*, the company was considering law firms other than Akin Gump for the representation. Akin Gump's fee agreement stated that "the attorneys have agreed to provide such representation...subject to the following terms, conditions, and understandings". The court, citing The Restatement Section 14 Comment, held that an attorney's agreement to represent a client may be conditioned on the negotiation of a fee agreement. The fee agreement further provided that it was the subject of negotiations with each party having the opportunity to consult with counsel and there was no presumption of construction of the fee agreement against either party. The client in *Tanox* would not allow the lawyers to review proprietary information of the company until they had entered into a fee agreement. Finally, there was a letter from Akin Gump to Tanox expressing Akin Gump's hope that they would enter into a satisfactory arrangement. *Id.* at 255, 256. The court in Tanox held that the evidence did not conclusively establish the existence of an attorney-client relationship and was a question of fact for the arbitrators. *Id.* at 256.

The lessons to be learned from *Nolan* and *Tanox* are many. In my opinion, the sophistication of the client is important. If you have an unsophisticated client, it is extremely important that you tell them in writing that you do not represent them until a fee agreement is signed. Even then, your conduct may contradict the fee agreement. It is better to follow that writing up with a letter each time you meet with someone even if your fee agreement contains similar language to *Tanox*. Appendix V is an example of such a letter. Even if the client is not represented by counsel, you can provide that the fee agreement was the subject of negotiation. The less sophisticated your client, the more likely the court will construe the fee agreement against you and find the existence of an attorney-client relationship before the agreement is signed.

Tanox is worth reading to see the type of problems that sophisticated clients can create for their attorneys. Tanox had its own counsel, and, from the case, it appears that Tanox never intended to pay the law firm the fee that Tanox owed.

In *Sotelo v. Stewart*, 281 S.W. 3d 76 (Tex. App. – El Paso 2008, pet. den.), the court held that an attorney-client relationship can be implied from the party's conduct and from the attorney's gratuitous rendition of professional services. In this case, Attorney Stewart defended a breach of contract suit filed against Daniel Sotelo. Mr. Stewart was Daniel Sotelo's attorney in the case from 1991 until March 9, 1994, when the trial court granted Stewart's motion to withdraw. Maria and Daniel Sotelo were married from 1971 until October 20, 2000. Maria Sotelo's name did not appear as a defendant in the breach of contract case until Stewart added it to the style of his Motion for a Continuance filed in February, 1994. In December 1994, the plaintiff obtained a judgment against defendants Daniel Sotelo and Maria Sotelo for the sum of $82,000.00 even though the plaintiff had not named Maria as a defendant.

No further action was taken on the 1994 judgment until August 2001 when the plaintiff obtained a writ of execution and a subsequent sale of Maria Sotelo's real property.

The Court of Appeals, in overturning a motion for summary judgment in favor of Stewart, found that

Stewart's adding Ms. Sotelo's name to documents that he filed with the trial court created a fact issue on the existence of an implied attorney-client relationship. *Id.* at 81.

You and the person with whom you are speaking may have very different ideas about whether you are their lawyer. It is extremely important to inform a prospective client in writing that you do not represent them, or, if you are waiting for them to pay a retainer, that you do not represent them and that you will not do anything until you have received a signed engagement letter and a retainer fee. Keep these letters in a separate file labeled "Non Representation Letters". They can be invaluable in proving that you never represented someone. They can also motivate your client to fund your retainer and sign the engagement agreement. In addition to Frank Ikard's fine paper, 48-AM JUR Proof of Facts 2d, 525 §§ 7 et seq., 22 et seq., provide an excellent source for understanding the attorney-client relationship. Rather than worry about what the case law holds regarding when the relationship is established, make it clear to everyone you deal with.

B. All Things Being Equal, The Lawyer Loses - Sometimes.

When an attorney-client relationships exists, the attorney is a fiduciary and his contracts are subject to the same scrutiny by the courts as any fiduciary relationship. In *Archer v. Griffith*, 390 S.W.2d 735 (Tex. 1964), a married woman entered into a verbal contingent fee contract with a law firm for her divorce. She abandoned the divorce proceeding, but eighteen months later employed the same firm to reinstitute the divorce and signed a written contingent fee agreement giving the attorney a percentage of the separate and community property recovered in the divorce. She did not own any separate property, and, because of that, the employment of an attorney to institute and prosecute proceedings for divorce and partition of community property was not an incident of her power to manage, control and dispose of her property under the Texas law at the time.

After the divorce was granted, the client signed a deed conveying a portion of the property granted to her in the divorce to the attorney. This deed was attacked because it was held to be a contract between a client and an attorney who had a pre-existing attorney-client relationship.

Even though this principle applies only to those with whom an attorney has had a prior relationship, some attorneys will still make disclosures, as provided in Appendices B and I, that suggest having an independent attorney review the fee contract. Contracts that call for an independent lawyer to review the agreement can help if the proposed client has a lawyer who is referring the case to you. That lawyer can review the contract on the client's behalf. As Barney Jones of Houston points out, what about a proposed client who has no lawyer? Will the lawyer he sees to review your engagement agreement have an engagement agreement that also calls for independent attorney review of the second lawyer's contract? Where does it end? The "independent attorney" review language of your fee agreement may not save you if a court adopts this analysis in litigation over your fee agreement. On the other hand, it may save you with a sophisticated client.

Although courts make a distinction between contracts entered into before and after the beginning of an attorney client relationship, you are well served to review your engagement letters as if anyone signing them is your client. You owe existing clients a fiduciary duty. Draft your contracts and conduct your relationships with your clients as if the fiduciary duty exists.

C. Contract Construction.

It is dangerous to rely on case law that was decided a few years ago to determine how courts will construe attorney fee contracts. In the past, Texas has followed the general rule that attorney fee contracts are subject to the same rule of construction as other contracts. *Stern v. Wonzer*, 846 S.W.2d 939, 944 (Tex. App. - Houston [1st Dist.] 1993, no writ). In *Levine v. Bayne, Snell & Krause, Ltd*. (40 S.W.3d 92; Tex. 2001), the Supreme Court cited, with approval, Section 18(2) of the RESTATEMENT which provides:

> "A tribunal should construe a contract between client and lawyer as a reasonable person in the circumstances of the client would have construed it."

In reviewing cases from other states, the court agreed with the premise that lawyers are more able than most clients to protect and clarify omissions in client/lawyer contracts because lawyers write the contracts, are more familiar with the intricacies of legal representations and with the law in drafting of fee agreements and other contracts.

In *Levine*, Ron and Sarina Levine hired the law firm to sue the grantors of their home (Smiths) for failure to disclose foundation defects in the home the Smiths sold to the Levines. The Smiths owner financed the purchase of the home. Although the court awarded $243,644.00 in damages for the foundation defect along with interest and attorney's fees, it also found that the Smiths were entitled to the balance due on the mortgage, accrued interest and attorney's fees, all of which totaled $161,851.38. The question for the court was whether the fee contract that the Bayne law firm had with the Levines provided for a contingent fee on the net recovery after deducting the counterclaim or

on the gross recovery. In construing the contract, the court held that the risk falls on the lawyer to draft a very clear contract because of the attorney's sophistication, the fiduciary relationship with the attorney's client, and the benefit to the legal system. In this case, the majority opinion does not hold that the contract is ambiguous only that it is contrary to public policy. Justices Hecht and Abbott, in their dissent, note that the majority fails to analyze how a reasonable person would construe the contract.

See *U.S. Denro Steels, Inc. v. Lieck*, 342 SW3d 677 (Tex. App. – Houston [14th Dist] 2011) for a case with similar facts and a similar outcome.

1. Oral Agreements Regarding Fees.

In *David J. Sacks, P.C. v. Haden*, 263 S.W. 3d 919 (Tex. 2008) the Texas Supreme Court reversed the Court of Appeals (222 S.W.3d 580 (Tex. App.-Houston 1st Dist 2007), and held that a written fee agreement was unambiguous and that the parol evidence rule bars an oral agreement to cap the attorney's fees.

It is hard to reconcile the holding in *Levine* with the holding in *Lopez v. Munoz, Hockema & Reed, LLP,* 22 S.W.3d 857 (Tex. 2000). In that case, in construing a contingent fee agreement, the court held that the contract was unambiguous. It further held that when a contract was unambiguous, the court would enforce it as written.

2. The Latest Word in Contract Construction.

In *Anglo-Dutch Petroleum International, Inc. v. Greenberg Peden, P.C.,* 352 S.W.3d 445 (Tex. 2011), the Texas Supreme Court has given us its latest word on the construction of attorney fee agreements. In *Anglo-Dutch*, the court was asked to determine whether a fee agreement was ambiguous, and, in turn, to construe the terms of the fee agreement. The pronouncements by the Courts are most helpful determining how to construe a fee agreement. The Court announced the standards as follows:

> "Whether a contract is ambiguous is a question of law that must be decided by examining the contract as a whole in light of the circumstances presented when the contract was entered. One such circumstance is the existence of a lawyer-client relationship between the parties. Because a lawyer's fiduciary duty to a client covers contract negotiations between them, such contracts are closely scrutinized. Part of the lawyer's duty is to inform the client of all material facts. And so that this responsibility is not a mere and meaningless formality, the lawyer must be clear."

Id. at 449-450.

> "Clarity in fee agreements is certainly important to clients…." Clarity is also important to lawyers.

Id. at 450.

> "Only reasonable clarity is required and not perfection; not every dispute over the contract's meaning must be resolved against the lawyer. But the object is the client be informed, and thus whether the lawyer has been reasonably clear must be determined from the client's perspective. Accordingly, we agree with the Restatement (Third) of the Law Governing Lawyers that "(a) Tribunals should construe a contract between client and lawyer as a reasonable person in the circumstances of the client would have construed it."

Id. at 451.

The court found that other circumstances surrounding the execution of a contract will inform its construction but there are limits to that. The court agreed that an unambiguous contract must be enforced as written and that parole evidence would not be received for the purpose of creating an ambiguity or giving the contact a meaning different from that which its language imports. *Angelo Dutch Pet v. Greenberg Peden P.C.*, 352 S.W.3d 445, 451 (Tex. 2011)

> "Construing client-lawyer agreements from the perspective of a reasonable client in the circumstances imposes a responsibility of clarity on the lawyer that should preclude a determination that an agreement is ambiguous in most instances. Lawyers appreciate the importance of words and 'are more able than most clients to detect and repair omissions in client-lawyer contracts' (Restatement Third of the Law Governing Lawyers Section 18, Comment h). A client's best interests, which its lawyer is obligated to pursue, do not include having a jury construe their agreements."

Id. at 453.

Where does that leave a lawyer? The agreement must be clear and as unambiguous as possible. What that means for many lawyers, as you can see by the examples in this paper, is that the contract will also be lengthy. Words are how we protect our clients and ourselves. Using more words rather than less to fully explain to a client the circumstances of the engagement can be helpful.

Be specific about what you are and are not going to do. Be specific about who your client is.

Attorneys should exercise special care in drafting fee agreements to take into account all of the circumstances and all of the probable events that can occur in litigation. That may mean that the modern agreement will be 10 pages or more with numerical examples. It will attempt to account for every possible contingency. If the case involves a seven or eight figure fee, no matter how well drafted the agreement is or how well the attorney performed, the agreement has a good probability of being the subject of litigation." *Id.* at 451.

D. Court Review of Attorney's Fees.

1. General Rule

When fees are the subject of an unambiguous contract that clearly states the parties' intent, the court will give effect to the intention of the parties as expressed in the contract. Where the language is plain and unambiguous, the contract is enforced as written. *Stern v. Wonzer*, 846 S.W.2d 939 (Tex. App. - Houston [1st Dist.] 1993, no writ).

2. Statutory Regulation

Well recognized exceptions to this general principle can be found in Sections 351.152 and 1155.051 – 1155.054 of the Texas Estates Code. Contingent fee contracts on behalf of the estate or a ward under a guardianship must be approved by the court. Payment for any professional services, including attorneys, other than a contingent fee contract is covered under Sections 1155.053 and 1155.054 of the Texas Estates Code. Another exception is a bankruptcy proceeding.

The Texas Government Code § 82.065 has been amended. It retains the current requirement that a contingent fee be in writing and signed by the lawyer and the client. It also retains the voidability remedy but it modifies that remedy to also provide a limited quantum meruit recovery.

The section is modified in Paragraph (b) providing that a legal services agreement is "voidable by the client" if obtained by conduct that violates the laws of this state or disciplinary rules regarding barratry by attorneys or other persons. The provisions are another way that a court can void a contract.

There are also remedies for barratry provisions in the Government Code.

Section 82.0651 permits a client to sue to void a contract regarding barratry. Under Section (b) of 82.0651, the client who prevails may recover from any person who committed barratry their fees and expenses paid to that person under the contract, the balance of any fees and expense paid to anyone else under the contract, actual damages and reasonable attorney's fees.

Remedies are also available to a non-client if solicited by conduct violating Texas law or the disciplinary rules regarding barratry. The non-client who prevails can recover from each person who commits barratry a $10,000.00 penalty, actual damages and reasonable and necessary attorney's fees.

Barratry is defined as "the solicitation of employment to prosecute or defend a claim with intent to obtain personal benefit" *State Bar of Texas v. Kilpatrick*, 874 S.W.2d 656, 659 (Tex. 1994). Barratry has always been prohibited, but there are now substantial remedies to deal with this problem.

3. Fraud and Breach of Fiduciary Duty

Another exception that has received a great deal of notice occurs when the attorney is guilty of fraud or a breach of fiduciary duty. *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).

The Burrow case has been thoroughly discussed in numerous papers, seminars, and reported cases decided after it. The court held that the client need not prove actual damages in order to obtain forfeiture of an attorney's fee for the attorney's breach of fiduciary duty to the attorney's client. *Id.* at 240. The court, in determining whether or not to forfeit fees, will first determine whether a lawyer engaged in a clear and serious violation of duty to the client. *Id.* at 241. Depending on the violation, the forfeiture may be part or all of the fees. *Id.* at 241. Paragraph 13 of the fee agreement in Appendix S is the most interesting one in the agreement. It waives the client's right to obtain punitive damages and the remedy of disgorgement of attorney's fees and expenses. The general rule is that a lawyer cannot limit his liability in advance unless it is permitted by law and the client is independently represented (D.R. 1.08(g)). It is unclear in this instance whether this clause will be upheld by a court. The law firm believes it will because it represents sophisticated clients who have their own in house counsel.

Courts have been very specific about the fact that attorneys owe their clients a fiduciary duty.

> "Our legal system has long recognized the vital role of the fiduciary duty that the attorneys owe their clients."

Joe v. Two Thirty Nine Joint Venture, 145 S.W.3d150, 154 (Tex. 2004).

> "The fiduciary relationship between attorney and client requires absolute and perfect and/or openness and honesty and the absence of any concealment or deception."

Lopez v. Munoz Hockema & Reed, L.L.P., 22 S.W.3d 857, 867 (Tex. 2000)

4. An Unconscionable Fee or Breach of Fiduciary Duty

Two authors, Hughes and Castilla, *Ethics and Problems in Drafting Fee Agreements and Resolving Fee Disputes*, January 26, 2001 Telephone Seminar, State Bar of Texas, believe that a dissent written by Justice Gonzales joined by Chief Justice Phillips may be the precursor of another way that lawyers can forfeit their fees. In *Lopez v. Munoz, Hockema & Reed, LLP*, 22 S.W.3d 857 (Tex. 2000), the dissent held that a lawyer breaches his fiduciary duty to the client if he collects an unconscionable fee from his client. *Id.* at 867. The dissent cites the Texas Disciplinary Rules of Professional Conduct (DR) 1.04 as well as the RESTATEMENT. Rule 1.04(a) of DR provides:

> "the lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable."

Section b of DR 1.04 tracks the language that we have all learned in determining the reasonableness of attorney's fees. These include, but are not in exclusion of other relevant factors, the following:

> "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill of requisite that form the legal services properly;
> (2) the likelihood, if apparent to the client, that at the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before legal services have been rendered."

In *Lopez*, the clients did not allege that the 45% appeal rate was excessive when the contract was made or that charge of the additional 5% was a breach of fiduciary duty irrespective of the contract. *Lopez* at 862. Because of that, the majority did not analyze the excessiveness of the fee. The dissent felt it necessary to discuss the issue of the unconscionability of the fees regarding excessiveness. *Lopez* at 867. The dissent cites DR 1.03 and 1.04 as well as Sections 28, 29A, 46, and 47 of the RESTATEMENT. It fails to cite or discuss Section 34 of the RESTATEMENT:

> "A lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law."

It is hard to understand how the dissent could analyze the validity of a contingent fee without a review of Section 34 of the RESTATEMENT.

The RESTATEMENT comments to Section 34 indicate that three questions need to be asked about any fee:

> "First, when the contract was made did the lawyer afford the client a free and informed choice?
> Second, does the contract provide for a fee within the range commonly charged by other lawyers in similar representations?
> Third, was there a subsequent change in circumstances that made the fee contract unreasonable?"

RESTATEMENT § 34, Comment c. At the end of Comment c, there is some hope for the contingent fee lawyer:

> "A contingent fee contract, for example, allocates to the lawyer the risk that the case will require much time and produce no recovery and to the client that the case will require little time and produce a substantial fee. Events within that range or risks, such as a high recovery, do not make unreasonable a contract that was reasonable when made."

This quote seems to contradict the third question.

Immediately after this, an illustration indicates the point of having a contract is very explicit. In the illustration, a bank clerk is charged with embezzlement and retains a lawyer to defend him for a $15,000.00 flat fee. The next day another employee confesses to the crime and the prosecutor, not knowing of the lawyer's retention by the bank clerk, drops the charges. The RESTATEMENT's comments provide that. unless there were special circumstances, such as a prior discussion of this possibility, or the lawyer having rejected other representation, it would be unreasonable for the lawyer to retain the $15,000.00 fee. This is another example of why attorneys' contracts have to be much more explicit than they currently are.

For a recent example of a fee agreement that the El Paso Court of Appeals found to be unconscionable as a matter of law, see *Walton v. Hoover, Bax & Slovacek,L.L.P*., 149 S.W.3d 834 (Texas App. - El Paso 2004, pet. granted), *aff'd in part and rev'd in part*, 2006 WL 3110595 (2006), 50 Tex. Sup. Ct. J.125.

In *Wythe II Corporation v. Stone*, 342 S.W.3d 96 (Tex. Civ. App. – Beaumont 2011) *pet. den.; cert. den.* 132 S.Ct. 1150 (2012), the issues of forfeiture and contingent fee agreements both presented themselves. In this case the attorney entered into a fee agreement with a client that allowed the attorney at the attorney's sole option to switch from an hourly rate contract to a contingent fee contract. The facts that changed things somewhat is that Stone was the lawyer for Wythe Corporation in trying to recover on an insurance settlement. Wythe had separate counsel in a bankruptcy proceeding. The bankruptcy court approved Stone's contract as a contingent fee contract only.

Stone negotiated an acceptable settlement for Wythe. A fee dispute arose between Stone and Wythe. Stone, while still representing Wythe, had intervened in the lawsuit to collect his fee and moved to withdraw his counsel for Wythe. Wythe counterclaimed for fraud and breach of fiduciary duty.

The court held that the sole option provision allowing Stone to convert the case to an hourly rate case was void but that did not void the entire agreement as being unconscionable. It also held as void the termination fee provision that provided that the attorney could get a contingent fee at any time as long as the matter had been settled in its entirety on the date of withdrawal.

In this case, unlike in *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 562 (Tex. 2006), the termination provision allowing a contingent fee even if the lawyer terminated the agreement did not void the Stone's right in this case to a contingent fee because, the court found, he had already earned it.

Secondly, the fee agreement was reviewed by a second lawyer, Wythe's bankruptcy lawyer, and the contingent fee provision was approved by the bankruptcy court.

The court further found that the attorney was not required to bear all the litigation costs and that a client could bear the expenses of the litigation so long as the contract clearly stated what expenses of litigation were the client's responsibility.

Finally, the court held that fee forfeiture is restricted to an attorney's clear and serious violations of duty, citing Section 49 of the Restatement Third of the Law Governing Lawyers. *Id.* at 104. Continuing to cite the RESTATEMENT, the court held that a clear violation of an attorney's duty to a client occurs if a reasonable lawyer knowing the relevant facts and law reasonably accessible the lawyer would have known that the conduct was wrongful. The Court found that there was no fraudulent concealment and that the attorney adequately explained things to the client. *Id.* at 106. Finally, Wythe complained that a condition precedent to recovery was approval by the bankruptcy court of the settlement. The bankruptcy had been dismissed before there was a settlement. Wythe claimed this voided the contract. The court held that when a condition to performance of a contract would impose an impossible result, it is not generally treated as a condition precedent. *Id.* at 106. Because the bankruptcy court no longer had any jurisdiction over the matter, that condition precedent disappeared.

5. No Attorney's Fees Allowed for Time Spent on Motion to Withdraw

In *Lee v. Daniels & Daniels*, 2008 WL 2037309 (Tex. App.-San Antonio May 14, 2008) (NO. 04-07-00096-CV) (unpublished opinion), the court held that an attorney cannot charge the attorney's client for the time the attorney spends on withdrawing from representation, no matter how justified the attorney is in withdrawing. The court reasoned that the services are not rendered for the benefit of the client, but rather for the benefit of the lawyer.

6. Modern Court's Review of Attorney's Fees

A good example of modern court's review of the reasonableness of attorney's fees is found in *Miller v. Kennedy & Minshew Prof. Corp.,* 142 S.W.3d 325 (Tex. App. - Fort Worth 2003, pet. denied). This case involved a complicated set of facts in which the lawyer took a contingent fee contract in a business transaction. The court began its analysis by stating that the reasonableness of attorney's fees in a contract is reviewed at the inception of the contract. In *Miller*, there was an argument about the burden of proof of establishing the fairness and reasonableness of the agreement. The attorneys waived that by failing to object to the trial court's instruction. The appellate court, in a footnote (fn8 at 336) found that the attorney-client relationship began much earlier than the day the contract was signed. The attorneys had an expert, Frank Douthitt, former general counsel for the State Bar of Texas and a former state district judge to testify. It reviewed what the various provisions of D.R. 1.04(b) provided in this instance, and probably something that helped the law firm, was the fact that the firm offered to represent the client on an hourly basis.

El Apple I, Ltd. v. Olivas, 370 S.W.3d 757 (Tex. 2012) set a new standard for the proof required in obtaining attorneys' fees at trial. The Court held that the attorney had the burden to show the hours that were devoted to each task and these hours had to be based on the attorney's time records and other documentary evidence. The Dallas Court of Appeals in *Metroplex*

Maling Services, LLC v. RR Donnelly & Sons Co., 410 S.W.3d 389 (Ct. App.-Dallas 2013, no pet. hist) held that, for the month prior to trial, the attorney did not have to submit documentary evidence but could testify regarding his experience, the total amount of attorneys' fees and the reasonableness of such fees.

7. Depositing Disputed Fee in an Escrow Account.

If an attorney has a fee dispute with a client over a fee that constitutes part of a recovery on the client's behalf, the attorney should never deposit it in his escrow account. By doing so, the attorney has "charged" his client for his services, within the meaning of DR 1.04(a) prohibiting the charge of an illegal or unconscionable fee. *Comm'n For Lawyer Discipline v. Eisenman*, 981 S.W.2d 737 (Tex. App - Houston [1st Dist.] 1998, pet. den.). Although the court held this to be true, part of the reason for its holding was the attorney did not have a written agreement with the client authorizing him to charge the client for the fee that was held in his escrow account. *Id.* at 740. The court held that the attorney's remedy was to sue the client, not retain the fee. *Id.* at 741.

8. Multi Plaintiff Litigation

The issue of court approval of fees has arisen in *Spera v. Fleming, Hoverkamp & Grayson, P.C.,* 25 S.W.3d 863 (Tex. App. - Houston [14th Dist.] 2000, no writ). In Spera, the attorneys were sued by their former clients over their fees in a settlement in a mass tort case. *Id.* at 867. It was not a class action, but the court, *sua sponte*, decided to hold a fairness hearing regarding the contingent fee arrangement. *Id.* at 867. The client sued for breach of fiduciary duty alleging that the attorneys had a duty to advise these clients that there was now a conflict of interest between the clients and the lawyers regarding the fee. The lawyers argued that the trial court's ruling on fees was collateral estoppel. The Houston court held that once that conflict arose, the attorneys had a duty to advise their client of that conflict.

9. Contingent Fee Contract as Evidence of Reasonable Fee

A contingent agreement, standing alone, is not evidence of a reasonable fee. The Supreme Court has held:

> "a contingent fee may indeed be a reasonable fee from the standpoint of the parties to the contract. But, we cannot agree that the mere fact that a party and a lawyer have agreed to a contingent fee means that the fee arrangement is in and of itself reasonable for the purposes of shifting that fee to the defendant."

Arthur Andersen v. Perry Equipment Corp., 945 S.W.2d 812 (Tex. 1997).

10. Non-Refundable Retainer or Prepayment of a Fee

What is the difference between a non-refundable retainer and a prepayment of a fee? How about professional misconduct? In a recent Austin Court of Appeals case, *Cluck v. Commission for Lawyer Discipline*, 214 S.W.3d 736, (Tex. App.-Austin 2007 no pet. hist.), a lawyer learned the difference between the prepayment of a fee and a true retainer. Cluck agreed to represent Smith in a divorce case and had her sign a fee agreement which stated:

> "In consideration of the legal services rendered on my behalf, in the above matter, I agree to pay Tracy D. Cluck a non-refundable retainer in the amount of $15,000 …."

After that sentence, a handwritten provision explains, "Lawyer fees are to be billed at $150 per hour, first against non-refundable fee and then monthly thereafter. Additional non-refundable retainers requested". The contract also provided that no part of the legal fee was to be refunded.

Smith paid Cluck $15,000 on June 28, 2001. Cluck did some work and stopped at Smith's request. One year later, Smith contacted Cluck about resuming work on the case. Cluck asked Smith to sign an amendment to the contract in which Smith agreed to pay an additional $5,000 non-refundable fee and increased the hourly rate to $200 per hour.

Smith fired Cluck and requested a return of the file and an itemization of the fee. There was a dispute about the hours Smith worked, but even the highest figure at $200 per hour only produced a fee of $5,700.

The appellate court held that the Cluck's fee was a prepayment for services which should have been placed in Cluck's trust account . It held that a retainer is not a payment for services but an advance fee to secure a lawyer's services and to pay the lawyer for loss of the opportunity to accept other employment.

Cluck's contract should have provided that the money was paid to secure the lawyer's availability and to pay him for the loss of other employment opportunities. If the money paid was not excessive, the court held, it would have been deemed to have been earned when it was received and need not have been placed in the lawyer's trust account.

The court found that the money paid under Cluck's contract, however, was an advance fee payment which belonged partly to the client. It should have been deposited in Cluck's trust account and withdrawn as Cluck had earned the money.

This case shows that non-refundable retainers are dangerous. They have to be reasonable and properly

documented. The "securing the lawyer's availability and paying him for the loss of other employment opportunities" part is more difficult. A good example would be a case that would require all of the lawyer's time for several weeks. If the lawyer had a good practice, he might lose clients if he was unavailable. In that instance, a non-refundable retainer (if not excessive) would be appropriate.

The State Bar has cleared up some of the confusion regarding a non-refundable retainer in Ethics Opinion No. 611 issued in September 2011. The opinion basically restates what some other opinions have held in that a true non-refundable retainer is not a payment for services. It is more of an advance fee to make sure that the lawyer will be available and will not take other employment. It compensates the lawyer for the loss of opportunity to accept other employment. If the lawyer can prove that other employment would be lost by obligating himself to represent the client, the retainer fee would be deemed earned at the moment it is received. A problem arises if the client discharges the attorney for cause before the attorney has lost any opportunity to represent others or if the attorney withdraws voluntarily. The attorney must then refund an equitable portion of the retainer.

It is very difficult to determine a fair non-refundable retainer. For that reason, you should always proceed with caution in obtaining a non-refundable retainer from a client. The opinion goes on to provide that if you are going to enter into one of these agreements, and you have future work to do, if the future work is covered by the employment agreement and by what the attorney has called a non-refundable retainer, that part must be kept in the lawyer's trust account until the future work is performed. It is only that part that is a true retainer, in other words a payment to secure the lawyer's availability and to keep the lawyer from obtaining other work, that can be deposited in the lawyer's operating account. As mentioned above, even all or part of that fee might be required to be returned to the client. In all of these matters, however, the fee must be reasonable.

Cynthia Canfield Hamilton thoroughly examines the issue of nonrefundable retainers in *When is a Retainer Truly Non-Refundable?* 75 Tex. Bar J. 694 (2012). Proceed with great caution in this area.

E. Alternatives to Billable Hour

Lawyers have tried to determine ways to set their fees in ways other than by hourly rates. The contingent fee was one of the first alternate fee arrangements. Until it was declared it was declared to be in violation of the anti-trust laws by the U.S. Supreme Court, the State Bar of Texas published a minimum fee schedule that suggested alternate fee arrangements such as billing for handling a real estate transaction by a percentage of the sales price. I have represented individuals in estate matters who would not afford to pay me immediately but who would be receiving money at a later date by charging them 1.5 times my hourly rate until they were able to pay my fee. Once they were able to pay me and were able to pay a retainer fee, the rate dropped down to my normal hourly rate.

Attached as Appendix S is the engagement letter of a very fine law firm that does work in major litigation matters. The agreement is worthwhile to review for a number of reasons. First of all, note that it provides at the bottom of each page for arbitration and a waiver of certain remedies. Secondly, in Paragraph 6, it provides for bonuses upon the attainment of certain client goals. These are arrangements that would normally be negotiated in advance by the client and must meet the reasonableness requirements that are discussed elsewhere in this paper. Even though the firm deals with sophisticated clients, it still disclaims any warranty of success in the litigated matter in Paragraph 7 of the agreement. Even sophisticated clients can have unreal expectations. This is a matter involving the representation of more than one person. Paragraph 10 goes into great detail about the possible conflicts that might arise. It names a client representative to deal with the law firm.

Two great articles on this subject are Your Money or Your Life: Mutual Fairness in Billing and Engagement Agreements by Deborah D. Welch (16th Annual Advanced Drafting: Estate Planning and Probate Course, Chapter 3.1, (2005)) and Fee Agreements: Structuring Alternative Fee Agreements to Enhance Recovery of Fees and Align Interests of Attorneys and Clients by Alistair Dawson (2005 Page Keeton Civil Litigation Conference - University of Texas).

F. Matters to Think About Before Accepting Representation.

These topics are taken directly from Frank Ikard's excellent article. I have put my thoughts in the topics.

1. Evaluate the Client Personally.

a. Compatibility.

Lawsuits and long term engagements are difficult even with the best of people. You can often tell whether or not you are going to get along with someone in the first five minutes of your meeting. The feelings that you have that you don't like this person will only intensify as the litigation or other matter continues. If you don't think you can work with a client, decline the representation by simply telling them:

> "I think that I will not be able to satisfy your needs and desires in this matter. I believe you would be better served by another lawyer."

I represent individuals who are unusual, odd, or societal outcasts. They all need representation. It is a great mistake, however, to represent someone you cannot stand to be with.

b. Truthfulness.

If it is possible, check out whether or not your client is telling the truth. You are often unable to be able to do that, but if the story just doesn't make sense, you need to challenge the client in a polite manner in the interview. There are exceptions to this rule. I have had cases where the client's story did not seem to be believable but turned out to be the truth. You have to follow your intuition in a situation like this. It is important to tell the client that they must tell you the absolute truth or you will withdraw at a later point and that it will be expensive for them if you have to do that. Explain that they should not hold anything back from you because it will be confidential. Tell them that even if they don't hire you, once you have their confidential information, you cannot disclose it to others and you cannot be involved in the case against them.

2. Reasonableness.

a. Unreasonable Expectations Regarding the Case.

It is easy to tell the client who has unreasonable expectations regarding the case. They usually tell you what they want before you ask. You should ask the client what they want to achieve from the litigation. If what they want is unreasonable, you need to tell them that it is. It is not always necessary to reject the client simply because their expectations are unreasonable if you can lower their expectations.

b. Unreasonable Demands on the Lawyer.

Some clients will demand to be put through to you on the telephone and that their work take priority over everyone else's work. A certain amount of this is normal, especially if this individual has not had legal work done for them in the past. If, however, you believe that this client will be extremely demanding, you can, ethically, charge a much higher fee if you do put their work first and disclose that or you can decline the representation.

3. Motive.

If a client tells you that they are entering into litigation for the principle of the thing rather than for the economics or if they say they are doing this because of anger or for revenge, you should decline the representation. It is often better to explain this to a client. It is not ethical to litigate simply for harassment.

4. Willingness to Go to Trial.

Most people that you represent will not want to go to trial. You have to determine, however, if they will go to trial if it is necessary. Your reputation as an attorney will be substantially compromised if your opponents discover you are unwilling to try your cases. You can successfully represent someone who does not want to go to trial. You must, however, tell them in writing that their case will not be as valuable if they are unwilling to try it.

5. Ability to Accept the Rigors of Litigation.

Litigation is time consuming and emotionally and physically draining. It costs a great deal of money. The client needs to understand this at the outset. If you feel that your client cannot undergo the rigors of litigation, however, you still may be able to work out a settlement to their satisfaction.

6. Mental Capacity.

You also have to determine if your client has sufficient mental capacity to enter into a contract for legal services. You also need to know if they are being unduly influenced by others. These issues arise in any context and none of us are psychiatrists or psychologists. If you have a question about a client's mental capacity, you should not enter into a contract with them to prepare a document that requires contractual capacity or testamentary capacity. If, however, this person has been injured, there are remedies such as having a next friend file the litigation or asking the court to appoint a guardian to approve your fee contract in advance for the litigation.

7. Financial Ability

a. Ability to Pay.

If your client can't pay you, there is no reason to do the work unless you intend to work for free. A refundable retainer fee is the best way to determine whether or not a client will pay you. Some of the fee agreements in this paper call for a retainer fee that secures the payment of the last bill.

b. Willingness to Pay.

If the client, at first conference, questions your hourly rate, your charges for expenses, and wants to know if you charge for phone calls and the like, it is fine to answer their questions. If you get the feeling that your bills will be the source of a constant battle between you and that client, you may want to consider declining the representation. I have a conference with the client that goes something like this:

> "I don't enjoy working for free. I make my living representing people on an hourly rate basis. I have a retainer to secure the payment of my last fee. If you are worried about my honesty or my reputation, I can supply references. You also need to know that I will withdraw from the representation if you don't pay me as agreed. That has nothing to do about how I feel about you, it is simply a business proposition."

If the client balks at this conversation, you should consider declining the representation.

G. Understanding the Fee Agreement.

I usually go over the fee agreement briefly with the client, explaining each paragraph. I give them plenty of time to ask questions and make comments about the documents. Except for clients that you represent on a regular basis, it is important to have a written fee agreement. It is essential for any substantial undertaking, especially litigation. As provided elsewhere in the outline, you must have one signed by both you and the client for contingent fee litigation.

Attached as Appendix S is the engagement letter of a very fine law firm that does work in major litigation matters. The agreement is worthwhile to review for a number of reasons. First of all, note that it provides at the bottom of each page for arbitration and a waiver of certain remedies. Secondly, in Paragraph 6, it provides for bonuses upon the attainment of certain client goals. These are arrangements that would normally be negotiated in advance by the client and must meet the reasonableness requirements that are discussed elsewhere in this paper. Even though the firm deals with sophisticated clients, it still disclaims any warranty of success in the litigated matter in Paragraph 7 of the agreement. Even sophisticated clients can have unreal expectations. This is a matter involving the representation of more than one person. Paragraph 10 goes into great detail about the possible conflicts that might arise. It names a client representative to deal with the law firm.

H. Withdrawal-The Remedy for Failure to Pay or Cooperate.

Evaluating the client, the client's ability to pay you, to be truthful, and to be able to withstand the rigors of litigation is an art rather than a science. It comes with experience and, even with experience, you can make mistakes. If you find yourself at an impasse with a client, review the reasons that will allow you to withdraw and see if it makes sense for both you and the client to do so. You may have to spend some time for which you will not charge helping another lawyer get up to speed on the case. Sometimes you make mistakes with personalities or you are in a situation with a client with unrealistic expectations and you didn't realize it at the outset. If you know that you can't meet the client's expectations or if you have any other reason, such as untruthfulness of the client, or an overly demanding client, the best thing you can do is try to withdraw from the case, giving the client plenty of time to hire another lawyer. Whatever money that you lose on the fee, you will gain in peace of mind. If you agree to not charge a part of your fee, that could be your consideration for a release from the client. *See* III.D.5 for additional considerations on withdrawal.

III. STATUTES, DISCIPLINARY RULES AND OTHER SOURCES OF REGULATION OF FEE CONTRACTS.

A. Contingent Fee Contracts.

Section 82.065 of the Texas Government Code provides:

> "(a) a contingent fee contract for legal services must be in writing and signed by the attorney and the client.
> (b) a contingent fee for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the Disciplinary Rules of State Bar of Texas regarding barratry by attorneys or other persons."

As absolute as this statute appears to be, the Austin Court of Appeals in *Enoch v. Bratton*, 872 S.W.2d 312 (Tex. App. - Austin 1994, no writ) held that a written contingent fee contract signed by the client, but not by the attorney that had been fully performed was not void or voidable. The court construed Section 82.065(a) in a manner similar to the statute of frauds. It held that the agreement was enforceable if it was in writing and signed by the parties it charged. *Id.* at 318. This holding can be limited to its facts because the contract was challenged after the plaintiff's attorney had reached a $2.2 Million settlement on behalf of the client. The court held that to allow the contract to be voidable would lead to an inequitable result and would unjustly enrich the client. *Id.* at 318.

In spite of the holding in *Enoch*, the attorney should sign a contingent fee contract along with the client.

In the attempt to enforce an arbitration clause in a contingent fee contract, the court upheld the requirement that the attorney must sign the contract. In *In re Godt*, 28 S.W.3d 732, the court cites Section 82.065(a) of the Government Code and holds that since the fee agreement was not signed by anyone from the attorney's office, the attorney may not enforce the arbitration clause because it failed to comply with the requirements set forth in the Government Code. *Id.* at

738. In *Godt*, the client signed a contingent fee contract for representation in a medical malpractice case with a provision in the agreement calling for arbitration. The attorney did nothing and the statute of limitations expired. In Godt's suit against the attorney, the attorney answered and filed a motion to compel arbitration. Arbitration was denied because of Section 82.065(a) and because of Tex. Civ. Prac. & Rem. Code Ann. § 171.0023(a)(3)(c) (Vernon Supp. 2000) which provides that the Texas Arbitration Act will not apply to a claim for personal injury unless:

1) each party to the claim, on advice of counsel, agrees in writing to arbitrate; and
2) the agreement is signed by each party and each party's attorney.

Id. at 739. The court in *Godt* held that a suit for legal malpractice for a medical malpractice claim was a suit for personal injuries. In *Sans v. Clark*, 25 S.W.3d 800 (Tex. App. - Waco 2000, pet. denied), the attorney had no written contract for a contingent fee case. That attorney's contract was held to be voidable. *Id.* at 805. A written fee agreement with another attorney was also held to be voidable because it violated Tex. Disciplinary R. Prof'l Conduct DR 1.02(a)(2) in that it provided that the attorney was authorized to settle the suit in any manner that he deemed necessary without any further consultation with the client. *Sans* at 805. Because this contract violated the disciplinary rule, it violated Section b of Section 82.065 of the Government Code and was voidable.

DR 1.04 has further requirements for such an agreement. *See* III.D.2.

Circular 230 is now final (Rev. 6-2014). The IRS does not have to furnish a written notice of examination to a taxpayer before a practitioner may charge a contingent fee and provides a new exception allowing contingent fees for whistleblower claims under Internal Revenue Code § 7623(b). In general, a practitioner cannot charge a contingency fee for services rendered in connection with any matter before the IRS. There are exceptions. The IRS has now provided that a practitioner can charge a contingent fee for services rendered in connection with an IRS examination of, or challenge to, an amended return or claim for refund or credit filed before the taxpayer received a written notice of examination of, or a written challenge to the original tax return; or filed no later than 120 days after the receipt of such written notice or written challenge. The 120 days is computed from the earlier of a written notice of the examination, if any, or a written challenge to the original return. This is in addition to the exception that allows a contingent fee to be charged for services rendered in connection with an IRS examination of or challenge to an original tax return.

B. General Attorney's Fees Provisions.

There are numerous provisions in the Civil Practice and Remedies Code that provide attorney's fees to a litigant. *See, e.g.,* TEX. CIV. PRAC. & REM. C. § 38.001 *et. seq*. In drafting a fee agreement, consider including the following:

> "The court may award attorney's fees in your favor, however, that court award is not dispositive of what you owe the attorney."

This will not be the case in litigation involving class actions in which a court has to approve the attorney's contract.

C. Arbitration, Waiver of Jury Trial Mediation, Limitation of Liability, and Indemnity.

Section 171.001, *et. seq*. TEX. CIV. PRAC. & REM. C. provides the rules for arbitration under Texas law. Section 171.001 requires a written agreement. Section 171.002 provides that the chapter does not apply to a claim for personal injury. An agreement to arbitrate a personal injury claim must be in writing, signed by each party and their respective attorneys. *Id.* at 171.002(c).

In an article entitled *Arbitration Primer: An Alternative Dispute Resolution Tool for Your Professional Responsibility Repertoire or an Ethical Response to Disagreements in a Trust Context*, John K. Boyce (State Bar of Texas, 2004 Advanced Estate Planning & Probate Course, Ch. 26) discusses arbitration in fee agreements, concluding that arbitration is permissible in fee contracts.

A number of lawyers are incorporating arbitration agreements in their fee agreements. Many of us would like to stay out of court since we know that attorneys are esteemed by juries as much as used car salesmen. We would like to arbitrate fee disputes and malpractice claims. The recent case law appears to give a green light to having arbitration clauses in our contracts. It is advisable, however, to proceed with caution. One reason is that an arbitration clause may void your malpractice coverage. Check with your carrier to see if it does before inserting it in your fee agreement.

The San Antonio Court of Appeals in *In re Emily Albrink Fowler Hartigan*, 107 SW3d 684 (Tex. App. - San Antonio 2003), had a chance to review a claim by an attorney's client that an arbitration provision in an engagement letter for a divorce case violated Rule 1.08(g) of the Texas Disciplinary Rules of Professional Conduct and failed to meet requirements of Section 171.002 of the Texas Civil Practice and Remedies Code because a claim for legal malpractice is a personal injury claim.

The court held that an agreement for arbitration would not violate DR 1.08(g) which provides that "A lawyer shall not make an agreement prospectively

limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement."

Since that all the agreement did was to provide that the parties had to arbitrate any claims, the court held that the agreement did not insulate the lawyer from liability or limit the lawyer's liability, citing Formal Opinion 02-425 of the American Bar Association Committee on Ethics and Professional Responsibility Id. at 689.

Secondly, the court held that a malpractice claim is not claim for personal injury and is excluded from the scope of Section 171.002(a)(3) of the Texas Civil Practice and Remedies Code. Id. at 690. The court reviewed several cases that led to the conclusion. In *In re Godt,* 28 SW3d 732 (Tex. App. - Corpus Christi, 2000, orig. proceeding) the Corpus Christi Court held that the malpractice claim would be a claim for personal injury. In *Godt*, the court relied on Willis v Maverick, 760 SW 2nd 642, 644 (Tex) (1988) which held that a claim for legal malpractice was a tort and was governed by the two year statute of limitations. The *Godt* Court relied on *Sample v Freeman*, 873 SW 2nd 470, 476 (Tex. App. - Beaumont 1994, writ denied) holding that because a legal malpractice injury is a suit for personal injury, pre-judgment interest was appropriate and the *Estate of Degley v Vega*, 797 SW 2nd 299, 302-03(Tex. App. - Corpus Christi 1990, no writ) holding that a legal malpractice claim was a claim for personal injury so that the two year statute of limitations applied. The *Hartigan* Court distinguished the *Willis* case holding that all that Willis held was that a claim for legal malpractice was a tort and thus would be subject to a two year statute of limitations. The court disagreed with the Beaumont and Corpus Christi rulings in *Sample, Degley, and Godt* Id. at 690. Finally, the court held that the legal malpractice claim was within the scope of the parties' arbitration agreement because the factual allegations forming the basis of the client's claim necessarily arose from the law firm's representation of the client. Id. at 691.

The language of the contract in *Hartigan* read:

> "Should any dispute arise regarding the terms or conditions of this Employment Agreement, including, but not limited to, the services rendered or the fees, costs, or expenses payable thereunder, all parties hereby agree the dispute shall be referred to binding arbitration by an arbitrator appointed by the then Presiding District Judge of Bexar County, Texas. The provisions of Chapter 171 of the Texas Civil Practice and Remedies Code shall govern any proceedings under this clause to the extent the parties cannot otherwise agree."

Id. at 687.

This contract was for services rendered in a divorce case, not a personal injury case. The court in *Hartigan* did not discuss whether the underlying representation of the client would ever cause an arbitration agreement to be ineffective.

In *Miller v. Brewer*, 118 S.W.3d 896 (Tex. App. - Amarillo 2003, no pet. hist.), the court held that a claim for legal malpractice was not a claim for personal injuries, upholding the arbitration clause in an attorney's fee contract.

The San Antonio Court in *Henry v Gonzalez,* 18 SW 3rd 684, 690 (Tex. App. - San Antonio 2000, pet dism'd by agr.), held that the case law favored mandatory arbitration and arbitration did not deny their parties to the right by trial of jury as a matter of law. *Gonzales,* 18 SW 3rd at 691. In *Taylor v. Wilson*, 180 S.W.3d 627 (Tex. App. - Houston [14th Dist.] 2005 pet. den.), the 14th Court of Appeals in Houston found an arbitration clause in an attorney's fee contract to be binding. It also held that a legal malpractice claim was not a claim for personal injuries. The arbitration provision was upheld in spite of the fact that it lacked many of the warnings contained in the sample clause in this paper.

1. Arbitration Issues in *Tanox.*

In *Tanox v. Akin, Gump, Strauss, Hauer, & Fell*, 105 S.W.3d 244 (Tex. App. - Houston [14th Dist.]), cited elsewhere in this paper regarding the attorney-client relationship, the court also reviewed the arbitration clause in the fee agreement. The arbitration clause states:

> "Any actual or potential breach of this agreement by a party is to be brought to that party's attention promptly. Upon request of a party, a meeting shall be convened among the parties to attempt to resolve any issues relating to such actual or potential breach. If the parties are unable to resolve such issues or if the parties cannot resolve any other issues which may require further negotiations and agreement, any party may, by written request, require that any such unresolved issues be submitted to binding arbitration..."

Id. at 267.

The court, in reviewing that contract, held that the language:

> "any other issues that may require further negotiations and agreement"

in the fee agreement arbitration clause was broad enough to include tort related claims. *Id.* at 267.

Tanox asked the court to declare that, as a matter of public policy, a client's breach of fiduciary duty in legal malpractice claims should never be the subject of arbitration, absent special protection. The court took this as Tanox's request to declare the arbitration agreement void as a matter of public policy. The Court, citing *Henry v. Gonzales*, supra held that the law favors arbitration and that the arbitration does not deny parties a right to a jury trial as a matter of law. The court bolstered its holding by finding that Tanox had the benefit of representation by independent and experienced legal counsel. *Id.* at 268.

The *Tanox* court, in a footnote, cites a dissent in the *Henry* case by Justice Hardberger expressing his concerns about applying general contractual principles to an arbitration agreement in the context of the attorney-client relationship. Justice Hardberger argued that ignores the reality that the attorney and client are not, in most instances, engaged in arm's length transactions during initial negotiations. *Henry* at 693.

2. Sample Arbitration Provision for Board Certified Attorneys.

A sample arbitration clause calling for board certified attorneys to serve as arbitrators is as follows:

> Any dispute that may arise with respect to any aspect of this fee agreement shall, on the written request of either of us, be submitted to arbitration in accordance with appropriate statutes of the state of Texas and the Commercial Arbitration Rules of the American Arbitration Association; and, judgment upon the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. Each party shall appoint one person as arbitrator, and a third arbitrator shall be chosen by the two arbitrators previously selected by the parties; provided however, if there is no agreement as to the third arbitrator within 60 days after the notice of arbitration is served, then the third arbitrator shall be selected by a district or probate judge in Harris County, Texas, having subject matter jurisdiction over the dispute. We further agree that the expenses of arbitration shall be paid in such proportions as the arbitrators decide, except that the successful party in any such proceeding seeking enforcement of the provisions of this agreement shall be entitled to receive from the party not prevailing reasonable and necessary attorney's fees and expenses, in addition to any other sums to which such successful party may be entitled. The arbitrators shall decide the identity of the successful party for purposes of the preceding sentence. We also agree that each of the arbitrators shall be either (i) Board Certified as an Estate Planning and Probate Law specialist by the State Bar of Texas, or (ii) a Fellow of the American College of Trust and Estate Counsel.
>
> **ARBITRATION IS FINAL AND BINDING ON THE PARTIES. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS. THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED. YOU MAY BE REQUIRED TO PAY THE COSTS AND EXPENSES AND BOTH SIDES' ATTORNEYS' FEES IN SUCH A PROCEEDING WHICH CAN BE SUBSTANTIAL.**

3. ABA Opinion.

The ABA held in American Bar Association Formal Opinion 02-425, Feb. 20, 2002, that it is ethically permissible to include binding arbitration of fee disputes and malpractice claims provided that (1) the client has been fully apprised of the advantages and disadvantages of arbitration and has been given sufficient information to allow the client to make an informed decision about whether to agree to the inclusion of the arbitration provision in the retainer agreement, and (2) the arbitration provision does not insulate the lawyer from liability or limit the liability to which the lawyer would otherwise be exposed under common and/or statutory law. That opinion discusses the fact that arbitration is merely a procedure for determining the lawyer's liability. It only becomes a limitation on the lawyer's liability if some type of damages, such as punitive damages, or other relief that could be awarded in a court could not be awarded in an arbitration proceeding.

4. State Bar Opinion.

In Opinion No. 586, the Professional Ethics Committee for the State Bar of Texas discussed whether binding arbitration clauses in fee agreements were permissible under the D.R. In the opinion, the Court discusses D.R. 1.08(g) and 1.03(b). The latter rule provides that a lawyer must explain a matter to the

extent necessary to permit the client to make informed decisions. The Committee believes that the scope of that explanation will depend upon the circumstances of a client and that in some situations, namely a highly sophisticated client, no explanation will be necessary. In other circumstances, the lawyers should normally advise the client of the possible advantages and disadvantages of arbitration as compared to a judicial resolution of dispute such as:

> "(1) The cost and time savings frequently found in arbitration,
> (2) the waiver of significant rights, such as the right to trial by jury,
> (3) the possible reduced level of discovery,
> (4) the relaxed application of the rules of evidence, and
> (5) the loss of the right to a judicial appeal because arbitration decisions can only be challenged on limited grounds."

The rule goes on to state that lawyers should advise the client that arbitration is private, regarding the method of selecting arbitrators and the obligation, if any, of the client to pay some or all of the fees and costs of arbitration and that those fees could be substantial. The rule does not, unfortunately, give specific guidelines to the lawyer which would be very helpful in this circumstance.

5. Texas Supreme Court Decisions.

The Texas Supreme Court in *In re Morgan Stanley & Co,. Inc. Successor To Morgan Stanley DW, Inc.,* 293 S.W.3d 182 (Tex. 2009) held that the issue of the mental capacity of a party to an agreement providing for arbitration was an issue for the court and not the arbitrator under the Federal Arbitration Act (FAA). Federal law controls issues regarding the FAA. The Court analyzed the holdings of the United States Supreme Court, the Fifth Circuit and other courts and found that there was a conflict between the circuits and that the Supreme Court had not decided this issue. It analyzed two Fifth Circuit decisions, an earlier one holding that the issue was for the arbitrator and a later one stating it was for the court and held that contract formation issues such as whether the obligor ever signed the contract, whether the signor lacked authority to commit the principal, and whether the signor lacked the mental capacity to assent were issues for the court and not the arbitrator. *Id.* at 189.

These three issues are a concern for any fee agreement, not just for one that calls for arbitration.

In *In Re Wood*, 140 S.W. 3d 367 (Tex. 2004), John O'Quinn represented and settled the claims of over 3,000 women in breast implant litigation. Each of his fee agreements provided for arbitration according to the Federal Arbitration Act of all claims and causes of action regarding the attorney client relationship. O'Quinn added a 1.5 percent deduction to each of the client's settlement costs. The clients were unhappy about this and sued O'Quinn as a class. The Texas Supreme Court, citing the U.S. Supreme Court's decision in *Green Tree Fin. Co. v. Bazzle*, 539 U.S. 444, 123 S. Ct. 2402, 156 L.Ed.2d 414 (2003), held that the issue of class certification would be determined by the arbitrator under the arbitration clause of the contract.

The Texas Arbitration Act (Tex. Civ. Practice & Remedies Code Section 171.001 et. seq.) ("TAA") requires the signature of a party's counsel to any agreement to arbitrate in personal injury cases. The Texas Supreme Court has held that the Federal Arbitration Act ("FAA") can preempt the Texas Arbitration Act removing the requirement for the signature of a party's counsel. In *re Nexion Health at Humble.,Inc .d/b/a/ Humble Healthcare Center*, 173 S.W.3d 67 (Tex.2005). In that case, a patient's spouse signed an arbitration agreement with the hospital. The patient died and the spouse filed personal injury claims against the hospital. The Texas Supreme Court held that because Medicare was making payments to the hospital, the transaction involved interstate commerce. The factors the court cited to determine whether the FAA preempted the TAA were whether:

> 1) the agreement is in writing,
> 2) it involves interstate commerce,
> 3) it can withstand scrutiny under traditional contract defenses, and
> 4) state law affects the enforceability of the agreement.

The court found that all of the factors were present and that the FAA preempted the TAA. In another case, Jim Walter Homes, Inc. v. Cryer, 207 S.W.3d 888 (Tex. App. – Houston [14th Dist] – 2006 no pet. hist.) the court held that an agreement to arbitrate under the FAA, and disavowing any state statute that conflicted with the FAA, could include arbitrating personal injury claims.

6. Should Arbitration Clauses be Used?

Even though arbitrating a malpractice claim or a fee dispute with a client sounds like a great idea, not everyone in the legal community is of the same mind. The claims lawyers at ALAS, a captive insurance company for 250 large law firms which include Vinson & Elkins, and Fulbright & Jaworski, among others, does not encourage arbitration clauses. They like having the option of discovery, a jury trial, a right to appeal and all the other advantages that arbitration does not always provide. Other malpractice carriers caution against a wholesale use of the clauses in fee agreements because other state courts have not upheld

arbitration clauses in fee agreements. Some jurisdictions allow them but require full disclosure of the rights the client is waiving, such as a trial by jury. If the agreement to arbitrate is held invalid by the court, this could be one more bad fact against the attorney attempting to invoke it. They also believe the arbitrator has a tendency to compromise the matter and give something to everyone. On the other hand, they have realized substantial savings in defense costs having arbitration rather than a court proceeding. Perhaps the best policy is to fully disclose what the client is waiving and use this clause only with more sophisticated clients.

7. Mediation.

An alternative may be providing that your contract is subject to mediation before resorting to arbitration or litigation. I owe this idea to Rhonda Brink of Austin. The contracts in Appendices I, J, O, and Z provide a clause for mediation.

8. Indemnification.

Lawyers have been sued by those other than their clients. This is normally a strategic move to get a good lawyer off of the case or to distract them from doing their primary job in representing the client. Whatever the reason, this is not an expense normally anticipated by the client at the beginning of the litigation. One law firm has anticipated this problem by inserting the following clause in their fee agreements:

> *You have also agreed that you will indemnify and hold harmless the Firm and its shareholders and personnel against all losses, claims, damages, liabilities and expenses (including counsel fees and expenses), incurred by or asserted against any of such indemnified persons in connection with, arising out of or in any way based upon or related to the performance by the Firm of the professional services contemplated by this letter, including expenses incurred in connection with investigating, responding to, defending or preparing to defend against any such loss, damage or liability, or any pending or threatened claim or action arising therefrom, or otherwise participating in discovery or providing evidence in connection therewith; provided, however, that your indemnification obligation shall not extend to any loss, damage, liability, action or claim to the extent the same is determined, in a final judgment by a court having jurisdiction, to have resulted from the professional malpractice of the Firm or any of its shareholders or personnel.*

The Professional Ethics Committee of the State Bar of Texas recently issued an ethics opinion (Opinion No. 581, April 2008, 71 Texas Bar Journal 587 (2008)) regarding the issue of indemnification. The opinion holds that an indemnity provision, by itself, would not create a conflict of interest. It held that it was ethical as long as the indemnity provision did not prospectively limit the lawyer's liability. The focus was then on Rule 1.04(a) and whether an indemnity provision would make the lawyer's fee unconscionable even though the lawyer's fee with the indemnity provision would not be unconscionable and even though the attorney's defense lawyer's fee was not unconscionable. I don't think this opinion helps anyone. It doesn't take much imagination to see how a vexatious litigant on the other side could make an indemnity arrangement unconscionable under Rule 1.04(a).

9. Waiver of Jury Trial.

An alternative to arbitration is a waiver of jury trial provision in your fee agreement. The advantage to this alternative is that you have a trier of fact that has experience in judging the credibility of witnesses and the court's decision can be appealed like any other trial court judgment. The waiver should be conspicuous and clear.

For a while it appeared that an attorney seeking a jury trial waiver would have the burden of proving the waiver was made knowingly, voluntarily, intelligently, "with sufficient awareness of the relevant circumstances and likely consequences." *In re Prudential*, 148 S.W. 3d 124, 132 (Tex. 2004).

The *Prudential* decision was clarified in *In re Bank of America, N.A.*, 278 S.W. 3d 342 (Tex. 2009). The Texas Supreme Court held that a contractual jury trial waiver in a real estate contract did not create a presumption that placed a burden on a vendor to prove that the purchasers knowingly and voluntarily agreed to waive the right to trial by jury. In this case, the Supreme Court corrected a misunderstanding that contractual jury waivers were different from arbitration provisions. The Court held that arbitration clauses and jury waiver provisions will be enforced equally. It held that a jury waiver that is conspicuous is prima facie evidence of a knowing and voluntary waiver and shifts the burden to the opposing party to rebut the presumption. The Court held that the parties are presumed to know what they have signed and, where a jury trial waiver was conspicuous, it would be enforced. In attorney fee agreements, this puts a jury trial waiver's enforceability on equal footing with an arbitration clause.

Given the prejudice against arbitration clauses by some malpractice carriers, a jury trial waiver may be the way to go now that the Texas Supreme Court has placed it on equal footing with arbitration agreements.

The jury trial waiver should be very conspicuous. Explain, in your fee agreement, what the party is giving up in the same manner that you would in an arbitration agreement.

D. Texas Disciplinary Rules of Professional Conduct (DR) and the RESTATEMENT

1. Limiting the Scope of Representation.

Texas Rule.D.R. 1.02(b) provides that a lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation. The Comments 4-6 to DR 1.02 provide examples of how representation may be limited. The Comments 4 and 5 provide that an agreement must be in accord with the DR and other law. It further provides:

> "thus, the client may not be asked to agree to representations so limited in scope as to violate Rule 1.1 (Competent and Diligent Representation), or to surrender the right to terminate the lawyer's services or the right to settle or continue litigation that the lawyer might wish to handle differently."

Comment 6 provides that the representation must be carried through unless terminated by the provisions of DR 1.15 and that even though the representation is limited, for example to a trial, the lawyer should advise the client of the possibility of an appeal. Section 19 of the RESTATEMENT contains similar provisions.

2. Model Rules and ACTEC Commentaries on the Model Rules of Professional Conduct.

The ABA Model Rules have a similar provision: 1.2(c):

> "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

The ACTEC Commentaries provide the following:

> "**Facilitating Informed Judgment by Clients**. In the course of the estate planning process, the lawyer should assist the client in making informed judgments regarding the method by which the client's objectives will be fulfilled. The lawyer may properly exercise reasonable judgment in deciding upon the alternatives to describe to the client. For example, the lawyer may counsel a client that the client's charitable objectives could be achieved either by including an outright bequest in the client's will or by establishing a charitable remainder trust. The lawyer need not describe alternatives, such as the charitable lead trust, if the use of such a device does not appear suitable for the client. As indicated below, the lawyer should describe the tax and non-tax advantages and disadvantages of the plans and assist the client in making a decision among them. The client might choose to ask the lawyer or another professional to prepare any tax returns that are required.
>
> **Defining and Refining The Scope of Representation**. As the lawyer obtains information from a client, the lawyer and the client are typically working together toward defining further the scope and objectives of the representation, which are often revised as the representation progresses. One of the lawyer's goals should be to educate the client sufficiently about the process and the options available to allow the client to make informed decisions regarding the representation. See ACTEC Commentary on MRPC 1.4 (Communication). In furtherance of that goal many lawyers review with an estate planning client the appropriate alternative methods by which the client's general estate planning objectives could be implemented. In the course of doing so, the lawyer should express to the client the relative cost advantages of the alternatives, including the present and future tax, legal and other costs, such as trustees's fees. *See* ACTEC Commentary on MRPC 2.1 (Advisor).
>
> **Limitation on the Representation Must Be Reasonable**. This Rule recognizes that a lawyer and client may limit the scope of the representation in a manner that is reasonable under the circumstances. For example, a lawyer and client may agree that the lawyer will represent the client with respect to a single manner, such as the preparation of a durable power of attorney. See discussion of Adequate Information in the ACTEC Commentary on MRPC 1.0. Unless the scope of the representation is expanded by a subsequent agreement, the lawyer is not obligated to provide advice or services regarding other matters."

Some commentators have written that unbundling the services that a lawyer provides is an excellent way to lower the cost of legal services so that they are more readily available to the middle class. The lawyer who decides to do this must thoroughly document what is and is not being done for the client in writing and obtain the client's advance approval. If we can

adequately inform the client and manage client expectations, it can be beneficial to a client who does not need or want all of an attorney's services. If inadequately explained and documented, however, the limited representation can result in an angry client with all of the consequences that arise from that.

3. How Do We Handle Limiting the Scope of our Representation and Adequately Informing the Client?

Communicating in writing with the client or prospective client is the best way. Having written documentation of what you are doing and not doing on a client's behalf is great protection from later claims that the lawyer failed to inform a client of choices the client had.

In *Smith v. O'Donnell*, 288 S.W.3d 417 (Tex 2009), a husband acted as executor of his wife's estate. It was not the first marriage for either party. The children of the wife sued and settled with the deceased husband's estate on allegations that the husband breached his fiduciary duty as executor of his wife's estate by mischaracterizing property as his separate property rather than community property of the marriage.

The executor of the husband's estate then filed a malpractice action against the law firm representing the husband in his capacity as the wife's executor claiming that the law firm failed to properly advise the husband regarding the characterization of the wife's and husband's properties at the wife's death.

The matters were all brought up on an appeal from a successful summary judgment in favor of the law firm. In reading the Texas Supreme Court case cited above and the ones leading up to it, it appears that the law firm did not produce any written documentation advising the husband that the property could be community and that the husband should either call it community property or seek a declaratory judgment to determine its proper characterization. If the law firm could have produced a letter given to the husband advising him to take either course of action and the consequences that might occur if he didn't, the plaintiff's law firm probably would not have taken the case. Because the entire matter was taken up on a summary judgment, the case has not been developed well factually. For example, the executor of the husband's estate did not raise the statute of limitations as a defense against the claims of the wife's children. It may well be there are documents that will protect the law firm once the case is tried on the merits.

4. Nonprobate Assets.

Assets that are not subject to probate are becoming a much larger part of our clients' estates. Banks and other financial institutions such as brokerage firms are becoming our clients' estate planning advisors and drafters of documents. Many of our clients' assets, such as any type of a retirement plan account, require beneficiary designations to be effective. Others such as bank and brokerage accounts do not need beneficiary designations but often have them. Many times our clients are unaware of the designations because they signed an agreement with the institution ages ago that provided that all of the accounts are joint tenancies with rights of survivorship.

Understanding that account agreements are important and that beneficiary designations can drastically alter an estate plan, how do we help our clients plan for these assets and get paid for it? We know that getting information from a bank or a brokerage firm, changing a beneficiary designation, or changing an account from a survivorship account to something else can often require hours of time. Most of our clients do not want to pay for this service. How do we protect ourselves?

We know that we can limit the scope of our representation if clients are given sufficient information to make an informed decision. The solution is to provide the information and to limit the scope of representation in our fee agreements unless the client agrees to pay us for what it takes to deal with these accounts.

5. Proposed Fee Agreements.

Attached to this outline is a proposed fee agreement (Appendix J) and information regarding survivorship accounts (Appendix CC). I welcome your comments about this agreement since I cannot guarantee it will protect you. The documents provide one way to start a conversation and to, hopefully, protect yourself from claims by clients. It also can start a conversation with your client about how to take care of a very important part of their estate.

Many clients do not want to pay for your time to do what is really necessary to handle these accounts. The problem is that, like advising a client about the cost of a lawsuit, there is no way you can tell the client what it will cost to handle these matters prior to working on them. These agreements make it clear that it is important and it can be costly to deal with. It informs the client and leaves the choice up to the client to employ you. If you had to include the cost of dealing with a difficult bank or brokerage company with a beneficiary designation in a lump sum fee for estate planning, you would probably never be hired.

6. Dealing With Assets in the Probate of an Estate not Subject to the Estate Tax.

If we continue to enjoy a $5,340,000 exemption adjusted by inflation each year, getting an exact value on every asset the client owns becomes less important to the client in the probate of a will that leaves everything outright to a devisee. We know that

establishing these values is still important because the value at the date of death determines basis. There are federal estate and gift tax implications to nonprobate asset dispositions. The disposition of nonprobate assets can constitute a gift when, for example, a community property life insurance policy names the children as beneficiaries rather than a spouse. If the spouse doesn't assert the spouse's community property rights, the spouse has made a gift of half of the proceeds to the children. A federal gift tax return should be filed. The same is true when a survivorship account of community property names the spouse and children.

7. Portability.

The only way that a surviving spouse can take advantage of portability is by filing a federal estate tax return.

I have tried to come up with a great way to deal with this in an engagement agreement. I have revised my probate agreement (Appendix O) to mention both nonprobate assets and portability. Please let me know your comments. I have attached a letter I send to surviving spouses regarding portability and filing a federal estate tax return (Appendix DD). I thank Melissa Willms for her feedback on this document. This letter should be followed up with the preparation of a Form 706 or a letter to the spouse stating that they have elected not to file a return.

8. Date of Death Values to Determine Basis.

The same applies to basis. When we are engaged to handle a probate matter, we are often are unclear on what the assets are and where they are. Many lawyers are happy to have the clients obtain the information because it lowers the fee to the client. Depending upon the client, we often spend more time asking the client to get the information for us than we would spend getting it ourselves. Similarly, it is important to inform the client about the consequences of an improper valuation of an asset in the income tax area.

9. Conclusion.

It is extremely important to document, in writing, the choices that a client has and, also, what choices the client makes after you write them. The documentation takes the matter out of a swearing match in later litigation, or can even eliminate the litigation.

10. Fees.

Rule 1.04 provides for how a lawyer may charge. It provides that a fee shall not be illegal or unconscionable. Unconscionability is discussed in II.D.

It further discusses the factors in determining the basis of the fee. *See* Discussion in II.D. When the lawyer has not represented a client on a regular basis, Section c of DR 1.04 provides that the fee shall be communicated to the client, preferably, in writing, before or within a reasonable time after commencing representation. Obviously, to remove any doubt, it makes sense that the fee be communicated at the outset of the representation in writing and signed by the client and the lawyer.

When the fee is a contingent fee, Rule 1.04(b) mandates that the fee agreement be in writing and state the method by which the fee is to be determined. Any difference in percentages that accrue to the lawyer in the event of settlement, trial or appeal must be stated. It is very important to be very explicit in how that is stated. It must state the litigation and other expenses to be deducted from the recovery and whether those expenses are to be deducted before or after the contingent fee is calculated. It further requires the lawyer to provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of determination.

It prohibits contingent fees for representing a defendant in a criminal case and DR 1.04(e) and provides for how a division is to be made between lawyers who are not in the same firm. DR 1.04(f).

DRAFTING TIP: Consider including this in the contingent fee agreement:

> Example: Note: the figures used in the example are to illustrate how the fee is calculated and how expenses will be deducted from the matter. It is not intended to be an estimate of the recovery in this particular case or of the amount of the expenses in this case. It is only an example to show how expenses and fees will be calculated. Expenses and fees can vary dramatically from what is shown in this example. To understand how fees and expenses will be calculated, if the recovery in a case is $100,000 and the expenses are $10,000, and if the case is settled prior to trial, the attorney's fee will be 33-1/3 percent of the total recovery or $33,333.33. Expenses of $10,000 will also be subtracted before determining the amount due to the client in this example. The net recovery in this example for this client will be $100,000 less the attorney's fee of $33,333.33, less the expenses of $10,000, netting the client in this example $56,666.67.

11. Limitation of Liability and Releases.

DR 1.08(g) prohibits a lawyer from limiting his liability to a client from malpractice unless it is permitted by law and the client is independently

represented in making the agreement. The lawyer cannot settle a claim for malpractice liability with an unrepresented client or former client without first advising the person in writing that independent representation is appropriate. See Appendix A for an example of such a release.

Even this may not be enough. In *Keck, Mahin & Cate v. Nat'l Union Fire Ins.,* 20 S.W.3d 692 (Tex. 2000), the court had the opportunity to construe the validity of a release between a law firm and its client. Wolf Point Shrimp Farm sued Granada Food Corporation for damages for improper processing and marketing of shrimp. Granada hired the law firm of Keck, Mahin & Cate (KMC) as its attorneys. KMC tendered the defense of the suit to Granada's primary insurance carrier (Primary) and its excess carrier (Excess). Primary agreed to defend Granada under a reservation of rights and KMC was formally engaged by Primary to defend Granada since Granada had the right under its policy to select its own defense counsel. The Excess policy did not require Excess to investigator or defend claims against Granada as long as another carrier was providing a defense. Excess did have the right to associate in the defense and trial but it did not exercise those rights. Settlement demands were made prior to trial and KMC advised both carriers that the case could be settled for less than half the sum demanded. The trial court gave the plaintiffs a preferential trial setting. KMC's efforts to continue the setting were unsuccessful and, on the first day of trial, Primary tendered its policy limits to Excess and two days later Excess settled the suit for twice the initial settlement demand the plaintiffs had made.

Excess filed suit against Primary and KMC to recover the money it had paid to settle the Wolf Point litigation. Excess alleged that Primary and KMC mishandled Granada's defense and sued for malpractice and sued Primary for negligence, gross negligence, and violations of the Texas Insurance Code. Because all of these claims belonged to the insured, Excess asserted them under the doctrine of equitable subrogation.

Two weeks prior to the trial between Wolf Point and Granada, KMC and Granada signed a release. Granada owed KMC a substantial sum for past legal services unrelated to the current litigation and wanted to clear that debt from its balance sheet. In exchange for KMC's promise to forgive the unpaid fees, Granada released KMC from "all demands, claims, or causes of action of any kind whatsoever, statutory, at common law or otherwise, now existing or that might arise hereafter, directly or indirectly attributable to the rendition of professional legal services by KMC to Granada between June 1, 1988 and April 1, 1992". *Id.* at 696. The settlement date for the litigation was April 30, 1992.

The Supreme Court held that the release language was sufficient to release all malpractice claims included in the release. *Id.* at 698. The court held, however, that it did not release claims after April 1, 1992. *Id.* at 698.

The more important ruling concerns the validity of the release itself. Although the court construed the release language as granting a general release, KMC had the burden to prove that the agreement it negotiated with Granada was fair and reasonable and that Granada was informed of all material facts relating to the release. *Id.* at 699. The only proof offered by KMC was the language in the release itself which provides "whereas, KMC has advised Granada in writing that independent representation is appropriate in connection with the execution of this Agreement". *Id.* at 697, 699. The court held that this recitation was insufficient to rebut the presumption of unfairness or invalidity attaching to the contract. In a footnote, the court held that the presumption of invalidity applied because KMC was still representing Granada. There would be no presumption had Granada severed its relationship with KMC and hired new attorneys before agreeing to the release. *Id.* at 699 n.3. The lesson to be learned from *Keck* is that the court will strictly construe any release agreement negotiated with a current client and that the attorney will always have the burden of proving the fairness of that agreement as well as the fact that the client understood the agreement and all of the facts related to the agreement. A release like the one shown in Appendix A should be accompanied by a lengthy letter explaining what the client is giving up, advising the client that the attorney cannot advise the client in that situation, and that the client needs to obtain independent legal advice before signing the release.

12. Conflict of Interest.

DR Rules 1.06 through 1.15 govern various elements of the conflict of interest issues that could arise in a litigation context. The contract in Appendix A provides an explanation of what the attorney will do if the conflict of interest arises. The attorney should make every effort to discover a conflict of interest prior to entering into litigation, but some conflicts do not become apparent until well into the litigation. That is why those disciplinary rules are worth reviewing. The contract in Appendix D contains an unusual provision. It provides that, after the litigation has ended, the firm is allowed to represent others in matters that may be adverse to the client. Even if an attorney has this in a fee agreement, she should use great caution in proceeding against a former client. The ACTEC documents are very comprehensive in their coverage of the conflicts of interest. Appendix BB is an example of a law firm's agreement to represent a client's employee.

13. Withdrawal.

Rule 1.15 of the DR addresses declining representation and withdrawing. It provides:

> "(a) A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw except as stated in paragraph (c), from the representation of a client if:
>
> (1) the representation will result in violation of Rule 3.08, other applicable rules of professional conduct or other law;
> (2) the lawyer's physical, mental or psychological condition materially impairs the lawyer's fitness to represent the client; or
> (3) the lawyer is discharged, with or without good cause.
>
> (b) Except as required by paragraph (a), a lawyer shall not withdraw from representing a client unless:
>
> (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
> (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes may be criminal or fraud;
> (3) the client has used the lawyer's services to perpetrate a crime or fraud;
> (4) a client insists upon pursing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;
> (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
> (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
> (7) other good cause for withdrawal exists.
>
> (c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
> (d) Upon termination of representation, a lawyer shall takes steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation."

Section (a)(1) refers to a lawyer acting as a witness in the case.

The fee contracts in Appendices A through D, I, and O provide a means for allowing the attorney to withdraw in a matter. The disciplinary rule is clear that under (b)(5) a lawyer may withdraw if the client fails "to fulfill an obligation regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled." Section (b)(6) provides that the lawyer may withdraw if "representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client." In spite of these clear provisions of the disciplinary rules, every lawyer can recount times when a court will refuse to allow an attorney to withdraw. As provided in 1.15(c), the attorney cannot withdraw when a court will not permit it. The attorney should make the fee agreement very clear that she will withdraw if she is not pa*Id* When the client has not paid, the attorney should warn the client in writing and verbally about what will happen if payment is not made. The same rule applies for lack of client cooperation. When payment does not come, the attorney should withdraw.

Section 32 of the RESTATEMENT is not so generous. Although it provides similar provisions to DR 1.15, it provides, in Part 4 of Section 32, that, in the case of permissive withdrawal, a lawyer may not withdrawal if the harm that the withdrawal would cause significantly exceeds the harm to the lawyer or others in not withdrawing. RESTATEMENT 32 § 4. This may violate the 13th Amendment of the U.S. Constitution. This is an example of a rule promulgated by individuals who have, in all likelihood, never faced the prospect of having to represent a client who never intends to pay his lawyer. The rule is unrealistic,

impractical and wrong. Section 33 of the RESTATEMENT provides that a lawyer must take reasonable steps to protect the client's interest after withdrawal. These would include giving notice to the client of the termination, allowing time for employment of other counsel, surrendering papers and property that the client is entitled and refunding any advanced fee which the lawyer has not earned.

14. Security for Payment of Fees and Attorney's Lien.

Appendix C is contains a fee agreement in which the attorney is granted a security interest in the estate to secure the payment of an hourly rate fee.

In Opinion No. 610 of the Professional Ethics Committee for the State Bar of Texas, the committee discussed whether a lawyer may acquire, by agreement with his client, a security interest in the subject matter of the litigation that the lawyer is conducting for the client in order to secure the payment of the lawyer's fee with respect to the litigation. The statement of facts is the lawyer and client enter into a contingent fee agreement with respect to a litigation matter being handled by the lawyer which provides for the client to grant the lawyer, as a means of securing payment of the fee due to the lawyer, a security interest in the cause of action that is the subject of the litigation. The cause of action relates to a claim for damages from a personal injury of the client.

The Committee examines D.R. 1.08(h) and an old case *Thomson v. Findlater Hardware Co*., 205 S.W. 831, 109 Tex. 235 (Tex. 1918) which provides for the attorney's common law lien which is discussed in a number of cases and is limited by D.R. 1.15(d) discussed elsewhere in this paper. The Committee believes that, in this case, the rule prohibits an attorney from acquiring a lien upon the subject matter of litigation. Thankfully, this Committee's opinion is not binding on the courts. In *Dow Chemical v. Benton*, 357 S.W. 2d 565 (Tex. 1962), an opinion not discussed in Opinion No. 610, the court finds that there is nothing wrong and everything right with the attorney obtaining a security interest in the contingent fee contract and cites old case law that says that the lawyer's rights in the contract are derivative from the client and do not create a conflict of interest for the lawyer to continue to represent the client. Two unreported federal district court cases, *USA v. Betancourt*, 2005 W.L. 3348908 (S.D. Tex.) and *Norem v. Norem*, 2008 W.L. 2245821 (N.D. Tex.) both examine whether it is proper for a lawyer to have a security interest in the litigation. The court examines the common law lien which is discussed elsewhere. The two cases hold that an attorney may have a lien for reasonable compensation for obtaining a judgment or for procuring a settlement if the attorney holds a lien or a contract enforceable against the judgment or settlement amount. *Betancourt* examines Texas law and finds that Texas law, while not providing for statutory liens, does recognize that a lien may be arrived at under a contractual agreement (2005 W.L. 334890 at 2). "Under Texas Law, a contract may establish an attorney's lien for money received in judgment or in settlement of a matter." *Id.* at 3.

Opinion No. 610 is unfortunate in a number of aspects. The client is not harmed by the security interest or the assignment of a cause of action. If the client ends up in bankruptcy, the lawyer has a secured interest in the recovery for services rendered and it is justifiable because of the risks the lawyer takes in working on a contingent fee basis. Without the services of the lawyer, the claim would not even exist. The interpretation of the case law is flawed and this opinion is poorly reasoned. It is hoped that this Committee will reconsider its finding.

Frederick C. Moss has written an excellent criticism of Ethics Opinion 610: *One Lawyer's Perspective: A Second Look at Ethics Opinion 610*, 75 Tex. Bar J. 696 (2012). His excellent criticism of opinion 610 is worth reading.

The Texas Commission on Professional Ethics, in Opinion 449 (51 Tex. B.J. 165 (1988)) has allowed an attorney to acquire an undivided fee simple interest in property as security for the payment of the attorney's fees as long as the interest was acquired in good faith and with the client's consent. The opinion held that this does not violate the prohibition under DR 1.08(h) that a lawyer may not acquire a proprietary interest in the cause of action or such matter of litigation that the lawyer is conducting for a client. That provision, DR 1.08, makes it clear that an attorney may acquire a lien granted by law to secure the lawyer's fees or expenses. Section 43 of the RESTATEMENT allows such a lien as follows:

> "Lawyer Liens
>
> (1) Except as provided in Subsection (2) or by statute or rule, a lawyer does not acquire a lien entitling the lawyer to retain the client's property in the lawyer's possession in order to secure payment of the lawyer's fees and disbursements. A lawyer may decline to deliver to a client or former client an original or copy of any document prepared by the lawyer or at the lawyer's expense if the client or former client has not paid all fees and disbursements due for the lawyer's work in preparing the document and nondelivery would not unreasonably harm the client or former client.

(2) Unless otherwise provided by statute or rule, client and lawyer may agree that the lawyer shall have a security interest in property of the client recovered for the client through the lawyer's efforts, as follows:

(a) the lawyer may contract in writing with the client for a lien on the proceeds of the representation to secure payment for the lawyer's services and disbursement in that matter;
(b) the lien becomes binding on a third party when the party has notice of the lien;
(c) the lien applies only to the amount of fees and disbursements claimed reasonably and in good faith for the lawyer's services performed in the representation; and
(d) the lawyer may not unreasonably impede the speedy and inexpensive resolution of any dispute concerning those fees and disbursements or the lien.

(3) A tribunal where an action is pending may in its discretion adjudicate any fee or other dispute concerning a lien asserted by a lawyer on property of a party to the action, provide for custody of the property, release all or part of the property to the client or lawyer, and grant such other relief as justice may require.
(4) With respect to property neither in the lawyer's possession nor recovered by the client through the lawyer's efforts, the lawyer may obtain a security interest on property of a client only as provided by other law and consistent with §§ 18 and 126. Acquisition of such a security interest is a business or financial transaction with a client within the meaning of § 126."

Section 126 governs business relationships with a client and Section 18 governs a client's duty to pay his lawyer.

15. The Attorney's Common Law Lien.

The Texas Commission on Professional Ethics in Opinion 411 (47 Tex.B.J. 47 (1984)) reviewed whether an attorney can ethically assert a lien and withhold the client's papers, money, or property relating to a specific legal matter, if the client has refused to pay the attorney's fees and expenses in regard to that matter. Although the opinion holds that an attorney may ethically assert a retaining lien on the client's file if the attorney has first made demand and the client has refused to pay the fees and expenses in connection with that file, it also provides that the client's legal rights must not be prejudiced by this retention. The better practice would be to give up the file. The opinion cites cases in which the attorney's failure to give up the file prejudiced the client resulting in sanctions and monetary liability for the attorney.

A recent opinion from the Professional Ethics Committee sheds some more light on this issue. In Opinion No. 570, May 2006 (69 Tex. Bar Journal 788), it was held that a lawyer must, upon request, provide a former client his notes from his file for that former client subject to certain exceptions. The lawyer can withhold the notes under the following circumstances:

1) when the lawyer has a right to withhold the notes pursuant to a legal right such as a lawyer's lien,
2) when the lawyer is required to withhold the lawyer's notes (or a portions thereof) by Court order, or
3) when not withholding the notes (or portions thereof) would violate a duty owed to a third person or risk causing serious harm to the client.

In this Opinion, the Committee recognized that the lawyer has a fiduciary duty to the client and if the lawyer's desire to withhold those notes is the result of a selfish desire to put the lawyer's interests ahead of those of the client, the lawyer should not withhold the notes.

Section 43 of the RESTATEMENT recognizes a lien but also provides that the client's interest must be preferred over the lawyer's interest.

16. Payment for Fees Due After the Lawyer Withdraws.

The contingent fee attorney whose client discharges him continues to have a right to enforce his contingent fee agreement and receive the percentage fee agreed upon in the contract. *Mandell v. Wright*, 431 S.W.2d 841 (Tex. 1969). This is true when a

client, without good cause, discharges the attorney before he completes his work. *Id.* at 847. Texas is in a minority of states that apply this rule. The RESTATEMENT Section 40 provides that the attorney may recover the lesser of the fair value of his services or the ratable proportion of the compensation provided by the enforcement of the contract.

The limitation the RESTATEMENT places on this is that the lawyer must have been discharged for reasons not attributal to his misconduct, that he has provided severable services, and allowing the compensation under the contract would not burden the client's choice of counsel or the client's ability to replace counsel. The RESTATEMENT rule is the opposite of the current Texas rule.

In the *Law Offices of Windle Turley v. French*, 140 S.W.3d 407 (Tex. App. - Fort Worth 2004, no pet. hist.), the court reviewed a contingent fee agreement between a client and a personal injury firm. In this instance, one of Turley's associates filed a medical malpractice case on behalf of the Frenches. The associate, Sawicki, left the Turley law firm and another Turley lawyer took over. In this case, after the client moved their case to solo practitioner, Sawicki's firm, Turley filed a motion in intervention in the case seeking his full contingent fee. After that, the Frenches asked Turley to take the case back. Turley refused to do so citing a grievance filed against him by one of the former clients.

On rehearing, the Court of Appeals recognized the continuing validity of *Mandell* and it reversed a summary judgment in favor of the Frenches.

In the personal injury arena, aggressive solicitation of good personal injury cases occurs frequently. Individuals are encouraged to avoid fee agreements entered into in good faith. *Mandell* serves to discourage clients from shopping for attorneys and attorneys from shopping for clients after a fee agreement has been signed. Few trial courts will, as practical matter, enforce two contingent fee agreements. The court will encourage the attorneys to resolve their differences. Given the Supreme Court's recent reliance on the RESTATEMENT in *Arce* and in *Lopez*, it is questionable whether the Texas Supreme Court will follow *Mandell* if faced with this situation, again.

17. Withdrawal Without Good Cause.

The general rule in Texas is that if an attorney without just cause abandons his client before the proceeding for which he was retained has been finished or if the attorney commits a material breach of his contract of employment, he forfeits all rights to compensation. *Royden v. Ardoin*, 331 S.W.2d 206 (Tex. 1916). This case also holds that if an attorney is disbarred or suspended prior to completion of his contract, he is not entitled to collect either on the contract or *quantum merit* for the services he may have rendered. *Id.* at 209.

What constitutes "just cause" is not easily determined. In *Staples v. McKnight*, 763 S.W.2d 914 (Tex. App. - Dallas 1988, writ denied), an attorney withdrew from a case in which she had a contingent fee agreement because of a dispute over testimony that the client might have been called upon to give in an oral deposition. The contract was an oral contingent fee agreement. *Id.* at 910. The Court of Appeals held that, in the absence of a manifest contrary intent, an attorney who is retained to conduct a legal proceeding presumably enters into a contract to conduct a proceeding to its conclusion. *Id.* at 916. Although the court held that a client's intention to give perjury testimony provides just cause for the attorney to withdraw, it also held that the burden is upon the attorney to establish the falsity of the testimony threatened to be given. *Id.* at 917.

Rocha v. Ahmad, 676 S.W.2d 149 (Tex. App. - San Antonio 1984, writ dism'd w.o.j.), concerned a contingent fee agreement in a Texas Deceptive Trade Practices case. In this case, the court held that when a client breaches the contract, the attorney can treat the contract as rescinded and recover under quantum merit or sue for what he would have received under the contract. *Id.* at 156. Once the attorney has proven the contract and the fact of discharge, the attorney makes a prima facie case and is entitled to recover. The court held that the issue of good cause is defensive in nature and the former client must plead and prove good cause for discharge. *Id.* at 156. The court then departs from what appears to be well established law and cites an old case: *Thompson v. Smith*, 248 S.W.1070, 1072 (Tex. Comm'n App. 1923, judgm't adopted) and holds that when an attorney is discharged for good cause, the attorney may attempt to recover a fee for services rendered up to the time of discharge under quantum merit even though the attorney may not recover under his contract with the client. *Id.* at 1056. *Thompson* is a case in which an attorney is discharged without just cause. In *Rocha*, the jury found that the attorney was discharged with good cause. *Id.* at 153. The court of appeals allowed the attorney to recover $500 of his fee. *Id.* at 156. *Rocha* is difficult to reconcile with the rest of these cases cited here. It does not cite any of these cases. *Rocha* is an anomaly.

When the attorney withdraws from a case, even for good cause, the courts will not necessarily award fees to the law firm either under the contract or in quantum merit. In *Auguston v. Linea Area National, et .al.,* 76 F.3d 658 (5th Cir. 1996), the law firm representing personal injury claimants sought and received the permission of the trial court to withdraw from its representation of the plaintiffs over the objections of its clients, the plaintiffs. The law firm had negotiated a settlement of $650,000 for the plaintiffs

which they refused to take. The firm was worried that pursuing discovery would prove that the defendants had not intentionally caused the accident. Intentional acts were the basis of the settlement. The plaintiffs hired new counsel who settled their case for $850,000. At the settlement hearing, the trial court awarded the old counsel fees and expenses of approximately $110,000. The plaintiffs appealed. The appellate court held that good cause by the law firm for withdrawal did not necessarily justify a quantum merit award of fees. It held that it could find no Texas case requiring a quantum merit or other recovery for a just cause withdrawal by counsel. It appears that the appellate court did not believe it was fair to penalize the plaintiffs for their unwillingness to accept a settlement offer recommended to them by the old law firm in spite of the fact that it appeared that if the old law firm pursued the litigation, the plaintiffs could end up with nothing by uncovering facts showing simple negligence by the defendants rather than an intentional tort.

18. Adding *Quantum Merit* to Your Fee Contract in Contingent Fee Case.

The law in Texas is clear that you can proceed on a *quantum merit* claim when discharged without cause. A recent Colorado decision may help you in drafting your agreement. In *Dudding v. Norton Frickey & Assoc*., 11 P.3d 441 (Colo. 2000), the Colorado Supreme Court held that an attorney cannot recover in *quantum merit* when the contingent fee agreement failed to give the client notice that the equitable relief was possible if the contract failed. This case was a wrongful termination claim. The parties entered into a written contingent fee agreement that did not address what would happen if Dudding accepted re-employment with is previous employer, which he d*Id* Dudding settled with his employer and went back to work.

The court noted that because the attorney understands the law much better than the client, that the agreement between the client and the lawyer must be very specific as to *quantum merit*. The language in the agreement provided that the attorney could seek recovery for the value of his services based on an hourly rate but the court held that language was not sufficient to support a *quantum merit* recovery because it did not mention *quantum merit*, unjust enrichment, or equitable relief. It included no reference to the possibility the attorney could ask a court to determine the worth of his services in relationship to the outcome of the case.

19. Costs and Attorney's Fees as Damages.

The RESTATEMENT Section 35(2) provides that "unless the contract construed in the circumstances indicates otherwise, when a lawyer has contracted for a contingent fee, the lawyer is entitled to receive the specified fee only when and to the extent the client receive payment." Comment (d) provides that in the absence of an agreement to the contrary, costs and attorney's fees awarded in a case are not considered damages. Texas courts have construed this differently in reviewing the language of a fairly standard contingent fee agreement. In *Martin v. Lovorn*, 959 S.W.2d 358 (Tex. App. - Houston [14th Dist.] no writ), attorney Lovorn represented Martin in a sexual harassment suit in which damages and attorney's fees were awarded. The attorney and client sued each other over the statutory award of attorney's fees. The attorney contended that she was entitled to the contingent fee award on the damages and all of the statutory attorney's fees. The 14th Court of Appeals held that the client was entitled to the damages and the attorney's fees award. The contingent fee agreement that provided for a percentage out of "any and all recovery obtained on behalf of the Client" provided that the attorney could recover her contingent fee on the combined amount of the statutory damages and the attorney's fee award. The RESTATEMENT Section 38(3)(b) provides that unless the contract is construed otherwise, statutory attorney's fees awarded from one party to the other belong to the client and not the lawyer absent a contrary statute or court order. Comment f to Section 38 of the RESTATEMENT provides:

> "a contract providing that a lawyer is to receive both a standard contractual fee and a fee award, without crediting the award against the contractual fee is presumptively unreasonable under Section 34 of the RESTATEMENT (Reasonable and Lawful Fees)."

One of the contracts - Appendix B, provides that the attorney is entitled to receive the greater of a contingent fee award or a statutory attorney's fee award. This would not seem to violate any of these provisions since the attorney is not receiving both the contingent fee award and the statutory award.

20. Charging Interest and Using Credit Cards.

The Texas Commission on Professional Ethics, Opinion 409 (47 Tex.B.J. 44 (1984)) allows for the charging of interest when it is reasonable, complies with customary law and where the original stands is reasonable. In *Griffith v. Geffen & Jacobsen, P.C.,* 693 S.W.2d 724 (Tex. App. - Dallas 1985, no writ), the court upheld the law firm's right for an attorney to charge interest at the legal rate applicable to contracts where no rate of interest is specified. *Id.* at 726. The better practice, however, would be to provide for interest charges in the written agreement.

Note to RESTATEMENT Section 38 allows for a reasonable interest charge if agreed to in advance. In Opinion 465 of the Texas Commission on Professional Ethics (54 Tex.B.J. 76 (1981)), the commission held that the attorney could properly own an interest in a lending institution which lends money to personal injury clients of the attorney and the attorney may properly borrow money from the lending institution for case expenses for a personal injury clients and charge, or pass on to a client the actual out of pocket interest and finance charges of the lending institution. This Opinion assumes that the attorney did not own or control the lending institution to the extent that the institution only loans to the clients of the attorney and that there was not a conflict of interest prohibited by DR 1.06 and, that the interest charges were fair, reasonable and customary, and that the attorney client relationship and the contract was proper in all other circumstances. It is also clear that an attorney can honor a credit card. Texas Commission on Professional Ethics, Opinion 349 (1969).

21. Charging the Greater of the Fee That Would be Charged for the Same Circumstance on an Hourly Basis or a Percentage of the Amount Recovered for the Client.

The Texas Commission on Professional Ethics, Opinion 518 (September 1996) held that an attorney may not, absent very unusual circumstances that would make such an agreement reasonable under DR 1.04, enter into a contingent fee agreement where the same attorney is to be paid the greater of (a) the fee that normally would be charged for the same services on an hourly basis, or (b) the usual percent of the amount recovered for the client on a contingent fee basis. The commission based its holding on the fact that this fee arrangement would violate DR 1.04 because the uncertainty of collection normally would not be considered in arriving at a fee for services on an hourly rate and a higher fee payable only out of recovery on a contingent fee basis is normally justified due to the uncertainty of collection. The opinion did indicate that it would be possible to have such an arrangement if the hourly rate could be charged was less than the normal hourly rate and if the percentage of the contingent fee were less than the percentage that would be reasonable absent the hourly fee provision. The contract in Appendix B would not violate this opinion because it allows the greater of an hourly rate or contingent fee contract only if the court awards a higher fee than the contingent fee.

22. Notice of Complaints.

Section 81.079(b) of the Texas Government Code provides:

> "(b) Each attorney practicing law in this state shall provide notice to each of the attorney's clients of the existence of a grievance process by:
>
> (1) making complaint brochures prepared by the state bar available at the attorney's place of business;
> (2) posting a sign prominently displayed in the attorney's place of business describing the process;
> (3) including the information on a written contract for services with the client; or
> (4) providing the information in a bill for services to the client."

Some of the sample contracts include this provision in the contract, itself.

23. The Texas Lawyers Creed.

The Supreme Court of Texas and the Court of Criminal Appeals adopted "The Texas Lawyers Creed - A Mandate for Professionalism" in 1989 (Texas Rules of Court - State at 569 West 2001). Attaching this to the fee agreement and referring to it can help a client understand why you may grant extension of time to your opponent and why you, at times, are courteous to your opponent.

24. Third Party Guarantee of Fees.

When someone other than the client guarantees payment of the attorney's fee, there is an immediate conflict of interest. What happens if the guarantor refuses to pay or doesn't like the decisions the attorney has made in the litigation? This conflict has existed for a long time in the area of insurance defense in tort cases. In those cases, the law is very clear that the lawyer representing both the insured and insurer owes the duty of loyalty and allegiance to the insured and not the insurance company. *State Farm Mut. Auto Ins. Co. v. Traver*, 980 S.W.2d 625 (Tex. 1998); *Employer's Cas. Co. v. Tilley*, 496 S.W. 2d 552 (Tex. 1973). For an excellent discussion of these issues *see Brown, Hebdon, Schmidt*, 1 Texas Practice Guide-Personal Injury 2d, § 2.97 (West 2000). Comment 12 to DR 1.06 provides that an attorney may be paid from a source other than the client, if the client is informed of the fact and consents to it and the arrangement does not compromise the attorney's duty of loyalty to his client. *See also* Tex. Comm'n on Prof'l Ethics, 166 (1958) (www.txethics.org/index/166.htm). A sample guaranty provision below attempts to meet the requirements of the cases and the DR:

"Guarantee of Payment of Fees.

I have read the agreement to which this paragraph is attached. I understand that in negotiating this agreement and reviewing it that the attorney does not represent me and I should have an independent attorney review this agreement for me. I understand that the attorney is not representing me and that I have no right to control the course of this matter in any manner. I have no right to information regarding the case. Conferences between the attorney and the client are confidential and privileged from disclosure to the other side of the lawsuit. If these conferences are disclosed to me, it may cause the privilege to be lost. I further understand and agree that I absolutely and unconditionally guarantee payment of the fees and expenses as outlined in this agreement. I have the right to withdraw this guaranty upon written notice to the attorney, however, I am responsible for all fees and expenses incurred prior to the attorney's written receipt of my withdrawal of this guarantee which will include expenses paid for by the attorney after receipt of the withdrawal but incurred prior to that time. I further understand that if I withdraw this guaranty, that the attorney will request the court's permission to withdraw from the case and will withdraw if permission is granted. I agree to pay all fees and expenses of the attorney incurred in the attorney's withdrawal from the case after my withdrawal of my guarantee.

(Signature line for guarantor)

Review of Guarantee Clause by Client.

I have reviewed the paragraph titled: "Guarantee of Payment of Fees". I understand that I am not paying the fee in this matter. I also understand that the nonpayment of the fee by the guarantor or the withdrawal of the guarantee of the agreement by the guarantor will cause the attorney to request the court's permission to withdraw from the case and will withdraw if permission is granted.

(Signature line for client)"

25. Referral Fees.

a. Changes to D.R. 1.04.

Disciplinary Rule 1.04 (f) and (g) have been amended. This will require a change, mainly, in your contingent fee agreement, unless you are paying or obtaining referral fees for fee arrangements other than contingent fees.

b. Specific Client Consent Referral for Referral Fees.

The client must consent, in writing, prior to the time of the proposed referral to the terms of the arrangement. The terms have to include the following:

1) the identity of all lawyers or law firms who will participate in the fee sharing arrangement,
2) whether fees will be divided based on the proportion of services performed, or by lawyers agreeing to assume joint responsibility for representation, and
3) the share of the fee that each lawyer or law firm will receive, or, if the division is based on the proportion of services performed, the basis on which the division will be made.

Some of the contingent fee agreements provide that a case may be referred to another lawyer and that the fee to the client will not increase. Under this new rule change, this fee agreement is probably adequate. Prior to making any such referral, however, it is extremely important that you provide another document to the client that complies with new D.R. 1.04 (f)-(h) and that agreement be signed by you and your client.

c. Basis of the Referral

The referral fees have to be divided based on one of two criteria. The first is on the proportion of services performed. The second is by lawyers agreeing to assume joint responsibility for the representation.

i. Proportion of Services Performed

Comment 12 to D.R. 1.04 provides that if a division of a fee is based on the proportion of services performed, each lawyer is to perform substantial legal services on behalf of the client with respect to the matter. These services must go beyond initially seeking to acquire and being engaged by the client. It requires that there be a reasonable correlation between services rendered and responsibility assumed, and the share of the fee to be received. This allocation can be made at the beginning of the agreement and, according to Comment 12, "should" control even if the division ends up not being directly proportional to the actual work performed. It can be also be made at the end of the work, so long as the agreement so provides. If the

allocation is deferred until the end of the work, however, the arrangement itself must include the basis by which the division must be made.

ii. Joint Responsibility

Comment 13 details the requirements for joint responsibility. This entails ethical and, according to the Comment, "perhaps" financial responsibility for the representation. It is interesting that comment 13, which only refers to joint responsibility for the work, requires that the referring or associating lawyer conduct a reasonable investigation of the client's legal matter and refer it to a lawyer whom the referring lawyer believes is competent to handle it, referencing D.R. 1.01. This is a requirement whether you are receiving a fee based on a proportion of the services rendered or on joint responsibility. The referring lawyer has to monitor the matter throughout the representation and make sure the client is informed of the matters that come to the lawyer's attention and that a reasonable lawyer believes that the client should be aware of. It does not, however, require the referring or associating lawyer to attend all of the depositions or receive copies of all of the pleadings because this may increase the cost. It does, however, require that the referring lawyer be kept reasonably informed. Who know what that really means. Neither the comment nor the rule give specific guidance.

d. Consequences of the Violation of the Rule are Unknown.

D.R. 1.04 (g) requires that the client get all of the information required in D.R. 1.04 (f)(2). It does have a quantum meruit provision so that a lawyer who renders services that can receive a fee if D.R. 1.04 (f) and (g) are not complied with. The comments, however, leaving you hanging because comment 17 provides that "what should be done with any otherwise agreed-to fee that is forfeited in whole or in part due to a lawyer's failure to comply with paragraph (g) is not resolved by these rules". In this author's opinion, pursuing a quantum meruit recovering would be perilous.

Comment 18 provides that the overall fee should not be unconscionable.

e. Contract Lawyer.

For a number of years, when law firms were overwhelmed with work, the firm would hire a lawyer on a contract basis. The lawyer would not be an employee of the law firm but would be paid for the lawyer's time. The law firm would charge the client an additional amount on top of what the contract lawyer charged the firm for its profit. In Professional Ethics Opinion for the State Bar of Texas No. 577 issued in March 2007, the Committee determined that this was a violation of D.R. 1.04 and that a law firm could not charge a different hourly rate for a contract lawyer than it paid to the contract lawyer. Only if the lawyer was an employee or a member of the firm could the law firm add on an additional amount to the hourly rate of the lawyer. This is an unfortunate aspect of D.R. 1.04 if it, indeed, really applies. This seems to be an overly technical reading of the rule by the Committee. It will discourage lawyers from hiring other lawyers on a contract basis and from efficiently taking on extra work. An issue totally ignored in this ethics opinion is malpractice liability and the cost of malpractice insurance. If a malpractice problem arises with the matter, the client will be seeking a recovery from the attorney with whom they have a relationship and not some other lawyer. These rulings are not binding on the Courts, but they are out there and we all need to be aware of them.

If you regularly use a contract attorney, consider an of counsel arrangement. *Review* D.R. 7.01 and the following opinion to make sure you have properly documented that the lawyer is truly in the firm: *Professional Ethics Opinion for the State of Texas*, Opinion 402. This opinion presents a discussion of what an "of counsel" relationship should look like.

f. Conclusion.

This amendment to the D.R. 1.04 creates significant problems for a lawyer who wants to refer their client to another lawyer and divide the fee and for law firms who hire contract lawyers to take on additional work. Given the danger of the Arce case for fee forfeiture, and these new rules, lawyers need to tread carefully in this area.

Richard Hile has written an excellent article for a State Bar Webcast in 2006 entitled: *An Analysis of 2005 Changes to Rule 1.04 and Part VII of the Texas Disciplinary Rules of Professional Conduct*.

26. Circular 230 Concerns.

Circular 230 governs the rules that attorneys and others have to follow when a representing taxpayer before the Internal Revenue Service. The final edition of Circular 230 was published in June, 2014 but first issued in 2005 and changed how lawyers write tax opinions. A complete analysis of Circular 230 is beyond the scope of this paper. Circular 230, however, has a quite bit to say about the attorney's relationship with the client and what matters must be in writing. All references are to Circular 230.

a. Conflicts of Interests.

Section 10.29 of Circular 230 covers conflicts of interest. This section prohibits a practitioner from representing a client before the Internal Revenue Service if the representation involves a conflict of

interest. Circular 230 defines conflicts of interest in two circumstances:

> "(1) the representation of one client will be directly adverse to another client; or
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibility to another client, a former client or a third person or by a personal interest of the practitioner."

Paragraph (b) of §10.29 provides exceptions to the prohibition of representation where conflicts of interest are present. They are:

> "(1) the practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) each affected client gives informed consent, confirmed in writing, by each affected client, at the time the existence of the conflict is known by the practitioner. The confirmation may be made within a reasonable period after the informed consent, but in no event later than 30 days."

The provisions of Circular 230 go beyond the Disciplinary Rules in requiring that the consent to representation under a conflict of interest be confirmed in writing. Not only must these consents be confirmed in writing but they must also be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the clients. These written consents must also be provided to any officer or employee of the IRS on request.

b. Fees.

Circular 230 also governs the collection of fees. Section10.27(a) prohibits a practitioner from charging an unconscionable fee for representing a client in a matter before the IRS. "Unconscionable" is not defined in Circular 230. Although Circular 230 does not say so, an attorney can presume that the IRS would look to the bar rules having jurisdiction over the lawyer to determine what an unconscionable fee is.

Section 10.27(b) prohibits a practitioner from charging a contingent fee for any matter before the IRS and then provides certain exceptions. The exceptions are:

1) a practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to – (i) an original tax return; or (ii) an amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return;
2) a practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service;
3) a practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code."

Section 10.27(b)(2)(ii), to provide that a practitioner may charge a contingent fee for services rendered in connection with an IRS examination of, or challenge to, an amended return or claim for refund or credit filed within 120 days of the taxpayer receiving written notice or written challenge. The 120 days is computed from the earlier of a written notice of the examination, if any, or a written challenge to the original return.

A matter before the IRS is defined as "tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearing, and meetings." §10.27(c)(2)

For purposes of Circular 230, a contingent fee agreement is defined as "any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect." §10.27(c)(1)

c. The Client's File

Section10.28(a) requires a practitioner to return any and all records of a client necessary for a client to comply with the client's Federal tax obligations. It allows a practitioner to retain copies of the records and, if there is a fee dispute, it recognizes an attorney's lien on the client's file, but it requires the practitioner give the client the documents necessary to prepare the client's tax return and reasonable access to review and copy any other records. The practical effect of this is that lawyers should give the client the client's file regardless of the situation.

d. Fee Information

Section 10.30(b) and (c) govern information about fees that may be disseminated. The provisions are as follows:

> "(b)(i) a practitioner may publish the availability of a written schedule of fees and disseminate the following fee information – (a) fixed fees for specific routine service; (b) hourly rates; (c) range of fees for particular services; (d) fee charged for an initial consultation; (ii) any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs; (2) a practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published."
>
> "(c) *Communication of fee information*. Fee information may be communicated in professional lists, telephone directories, print media, mailings, and electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 moths from the date of the last transmission or use."

These appear to be a regulation of how an attorney can publish his or her rates. The lawyer needs to communicate the basis for fees to the client, in writing, for matters covered by Circular 230 in compliance with this language.

e. Communication Regarding Engagement Under Circular 230

Section 10.33 covering best practices for tax advisors requires, among other things, that the practitioner communicate clearly with the client regarding the terms of the engagement. This includes having a clear understanding and communicating with the client about the client's intended purpose and use for the advice and the form and scope of the advice or assistance to be rendered to the client. This is unusual because it requires not only specific written communication about the work the lawyer is going to perform, but also about what the client is going to do with the lawyer's work.

f. Engagement Agreements.

I asked a number of lawyers to send me copies of their engagement agreements for tax opinions under Circular 230. Most of them said they don't do that anymore and the few who did say that they were giving tax opinions told me that they used their standard fee agreement. In my opinion, your standard fee agreement may be insufficient if you are engaging in any type of work for the client before the Internal Revenue Service. You should read Circular 230 very carefully and make sure that you have complied with all of its requirements. If the IRS wants to stop a lawyer from practicing before it, part of its discovery will certainly be the communications with the client regarding the attorney's engagement.

g. Advertising and Solicitation Restrictions.

Circular 230, Section 10.30(a)(1) provides that:

> "A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form or public communication or private soliciting containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents or enrolled retirement plan agents, in describing their professional designation, may not utilize the term of art "certified" or

imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal revenue service," "enrolled practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent."

h. Other Circular 230 issues.

The other issues regarding Circular 230 are beyond the scope of this outline.

IV. DRAFTING TIPS.

A. Examples.

Many of the appendices were donated by lawyers in large metropolitan areas who have practiced with large law firms either currently or in the past. I am very grateful to those firms for their help. Since one lawyer indicated he thought some of his provisions might be illegal, I decided to eliminate the names of the firms from all of these. Given the current state of the law, every one of these contracts could stand a review and revision. After reading the case law, I do have some drafting tips that would be helpful to you.

Mark D. White has written a short and helpful article on fee agreements: *Preparing an Effective Engagement Letter*, 79 Tex. Bar J. 684 (2012), that is worth reading.

B. General Comments.

1. Make the Contract Clear.

Let several individuals who are not lawyers read your agreement to see if they understand it. Pay close attention to their questions. Making an agreement understandable usually means making it longer. Don't let that stop you.

2. Cover Every Contingency.

Make your agreement specific to the case in which you are involved, especially if you are drafting a contingent fee agreement. Think about what would happen in the case that would affect your fee and try to cover it in the agreement with the clients. Tailor your contract to the type of proceeding. For example, if you are representing an applicant for a guardianship, consider putting in the matters that will disqualify an applicant from acting as guardian.

3. Make it Fair.

Read the RESTATEMENT, the Texas Commission on Professional Ethics Opinions, and the Texas Disciplinary Rules of Professional Conduct as well as this paper.

4. Add the Texas Lawyer's Creed.

5. Complaint Notice.

Make sure that the complaint notice mandated by Section 81.079(b) of the Government Code is contained in the agreement or somewhere else as mandated by that section.

6. Fee is Negotiable.

Provide in the agreement itself that this fee is not set by law but it is negotiable.

7. Independent Attorney Review.

The contract in Appendix B provides that the client was advised to retain independent legal counsel. We have seen that that may not be enough, but it certainly cannot hurt.

8. Withdrawal.

State specifically in your contract the reasons allowing your withdrawal and what will happen upon withdrawal. Appendix B, in paragraph 3.5, states specific reasons that will allow the attorney to withdraw.

9. Conflicts of Interest.

State what happens if you discover a conflict of interest. See Appendix A for an example.

10. Sign the Agreement.

Since contingent fee agreements and agreements to arbitrate must be signed by the lawyer, sign all agreements and avoid this problem.

11. Arbitration.

Consider whether you want to require arbitration or mediation in your agreement.

12. Venue.

Provide that venue for any litigation over the fee agreement will be held in the county in which your office is located.

13. Client Responsibilities.

In Appendix Z, the lawyer incorporates some client responsibilities in his engagement agreement. This is a great idea in almost any engagement.

C. Hourly Rate Contracts.

1. Be Specific.

State how you are going to determine your hourly rates and what the different rates will be and whether they will every vary. If you charge a quarter of an hour for everything you do, state that in the contract.

2. Interest.

Consider charging interest and specifically stating it to encourage your clients to pay you promptly.

3. Credit Cards.

Appendix A provides for payment by the credit card or guaranteed by the credit card. In my experience, if they can't write a check, their credit cards aren't any good, either.

4. Third Party Guarantee.

Ask a third party to guarantee payment. There are problems with this, but that can mean the difference between representation and no representation for a client.

5. Attorney's Fee Recovery by the Court.

If the court can provide for an attorney's fee recovery on your hourly rate case, consider stating in your agreement that your fee is not limited by what a court or a jury may award. Many lawyers can recount the experience that a client, sometime after the jury verdict, gets the idea that you will refund any excess you have charged if the jury does not award attorney's fees in the amount that you have charged.

D. Contingent Fee Contracts.

1. Put in Writing.

Make sure that the contingent fee agreement is in writing and complies with the provisions of the Government Code and DR. 1.04(d).

2. Expenses and How to Calculate.

Consider using an example to show the client how her net recovery will be calculated.

3. Shifting to Higher Percentages Upon Specified Events.

Given the problems in *Lopez*, you need to be very specific about when those percentages change. Even if you are specific, consider backing off of that additional percentage if problems arise.

4. Calculation of the Recovery.

If counterclaims or offsets to your client's recovery are possible, cover that in your fee agreement and use an example. If attorney's fees can be awarded by the court, as well as costs and expenses, make sure that you provide that will be considered part of the recovery upon which the contingent fee will be calculated, or, consider paragraph 3.2.2 of the contract in Appendix B which allows that fee to offset any contingent fee or that fee to be the exclusive fee.

5. Mixed Contingent and Hourly Fee.

If the fee is to be a mixed fee of contingent and hourly, it cannot be the same contingent fee if it was your normal contingent fee nor can your hourly rate be as high as normal.

6. Don't Be Greedy.

Even when you aren't greedy, realize that the client can be. When the numbers are high, you always run the risk of someone else second guessing your fee contract. Document what you are doing with letters and other information that clearly communicates the status of the case to the client so that a jury will believe that anyone could have understood what you were doing, what you were telling your client, and that you were conducting yourself in an ethical manner.

7. Provide for Referral Fees.

If you are planning on referring the case, you need to comply with the Revisions to D.R. 1.04.

E. Estate Planning Contracts.

1. State What You Will Do and How You Will Do It.

Informing clients of the cost of your services is paramount in estate planning contracts. The best way to handle this issue is to offer to give a fifteen minute consultation at no charge to the client to determine some of the issues involved. When your client calls for an appointment, have your staff indicate that you will offer a no charge and no obligation fifteen minute consultation to determine the client's needs as well as the cost for estate planning services. Have your staff briefed on what to say when someone calls for an appointment. The materials contained in Appendix L provide an example. The debate has just begun about how lawyers can protect themselves against *Belt, supra*. Do you list every potential tax planning technique at your client's disposal and discuss which ones they chose not to do? No one has the answers at this point.

2. Questions About The Family.

The interview process seems to go easier if your first questions are about the client's family such as:

"a. Tell me about your family. (Listen to whom they name first and what they say about that person.)
b. Do you like your children?
c. Do your children get along?
d. How do they handle money?

e. If you died tomorrow and your children receive your assets, would you be comfortable letting them have all of the assets they would receive outright with no restrictions?"

These simple questions often open up a world of information that you need to determine what the client needs. Make sure you not only ask the questions but also listen to the client's responses.

3. Marriages.

It is important to discuss the issue of trusts when the first spouse dies. One way to approach this question is to ask the following:

"a. When one of you dies, do you want the survivor to be in complete control of all of the assets?
b. Do you want the survivor to have the right to control where all of your assets pass at the death of that survivor?
c. If not, who do you want to have in charge of the assets?"

4. Financial Information.

To get a good picture of the financial information, I suggest you say the following:

"For me to do a good job for you as an estate planner, I need to know what you have and what it is worth. I will keep the information confidential."

If the client will not disclose financial information to you, it is a judgment call as to whether or not to proceed with the estate planning work. If you decide to proceed, you should document that the client would not give you all of the information, that you cannot do an adequate job without all of the information, and that there may be severe estate and income taxes consequences from your planning if the client does not give you the information. The client should sign that letter and you need to keep a copy of the client's original signature in the file if you choose to do the work. The lack of the client's trust in you can be a sign that you will have client problems and should not represent the individual.

Given The *Belt* decision, it is important to document what the client tells you about their net worth. The best way is in your letter sending them their planning documents, explaining these were prepared on the basis of an estate of "$X" in value.

5. Other Questions

Ask them about their hopes for, fears of and goals for the process. Ask them if they are concerned about paying for long term care and qualifying for Medicaid.

6. Questionnaires.

Having a client completely fill out questionnaires is an excellent way to avoid malpractice and to know everything about the client. Unfortunately, I have never been able to have a client who will fill out a questionnaire. The clients who have requested a questionnaire before coming in to see me have never come in to see me. I have no idea what they have done, but they have not ask for planning work from me.

7. Estate Planning Engagement Letter.

Attached as Appendices J and J-1 are the engagement letters I use for estate planning services. It is also a malpractice prevention and marketing tool. I have also attached other attorneys' versions as Appendices Q, R, and V.

a. Services.

The first paragraph lists the common and uncommon estate planning services to perform for a client. If you retained this document after you have completed the work, it helps show others that you have, indeed, offered the client options such as directives to physicians, designation of agent for burial, and other tools. It does not spell out in great detail what type of will you are going to prepare, but the advantage of having this on one page probably outweighs the disadvantage of not having a very detailed engagement letter detailing exactly the type of will you are planning to prepare. When doing work by the hour, I have modified the agreement by hand, initialed it, and have had the client initial it. Some commentators do think such a list is a good idea, however, it can speed up the process of completing your contract for services. I also provide blanks for other work and that the list is not exclusive.

b. Married Clients.

I also provide a warning for married clients about what can change the nature (community vs. separate) of their property.

c. Fees.

This indicates the total fee that will be charged and what that fee covers. Some attorneys suggest allocating a certain amount of time for explanation and conferences, and providing that an hourly rate would be charged if the conferences exceed that amount of time. I have found that provision makes the client uncomfortable and that a client is much happier when

the client knows exactly what he or she will spend for estate planning services. I do explain that I charge additional work if the client changes his mind after leaving my office. I started this practice when I prepared seven different wills for a couple. The first four were under the original fixed price agreement. When they called for the fifth, I told them it was going to be by the hour after that. I never should have gone past the third draft.

Sometimes a client is not ready to have you prepare documents. In that circumstance, provide you will charge them by the hour for planning until they decide what they want. At that point you can set a fixed fee. Some of those clients, however, will want to see multiple versions of documents before they make up their mind about what they want. You are better off with an hourly rate basis with a fixed fee from the draft document with everything else billed at your hourly rate.

Note in the fee agreement in Appendix J-1, there is a fixed fee and an hourly rate. I started using this when the initial interview told me what the client needed in the way of documents but the client was uncertain of all of the terms. I would quote a fixed fee to prepare the document but would charge hourly for the discussions surrounding the document.

d. Fee Earned

There is no good guidance on when a flat fee or a portion of it is earned. Your division must be reasonable. Practically speaking, if a client wants to terminate the relationship and wants a return of the fee after the initial interview and before I have produced any documents, I return the fee to the client. Life is too short.

e. Citizenship and Document Review.

This tells the client that you expect them to read the documents and notify you of any errors as well as whether they are U.S. citizens. There are estate tax implications for planning for someone who is not a citizen of this country.

f. Payment Terms.

Receiving half of the fee immediately lets you know whether the client is serious about doing the work. It also helps your cash flow if your fee agreement provides how your fees are earned. For example, if your fee agreement provides that one-third of the fee is earned after the initial interview, you can take one-third of the total fee or two-thirds of the initial one-half deposit into income after the interview and the remaining one-third into income when you send out the documents with your bill. Requiring payment of the other half upon receipt of the documents also encourages the client to pay you. You will need to follow this up with a bill that will be enclosed with your documents. Encouraging the client to come in within 60 days after they receive the documents helps you complete the estate planning matter. For some strange reason, clients do not understand that the agreements are not effective unless they sign them. Requiring a client to pay extra at your hourly rate if they request changes after the 60 day period encourages them to complete the matter quickly which is usually in their best interest.

g. Witness or Assistance.

This allows you to charge if you have to appear as a witness in a will contest. Most of the wills that you prepare will not be contested and you can explain that to your client. If this is in your fee contract, however, it can protect you in the event of a later proceeding that you may not anticipate.

This will also cover the circumstance when you are not chosen to handle the probate but are asked to give information or other assistance to the law firm handling the probate. This can involve several hours of your time. This paragraph allows you to bill for that. I recommend including this clause in all of your engagement agreements.

h. Mediation.

I am not totally convinced that I want to arbitrate fee or malpractice disputes. Since most disputes can be resolved through a mediation, this paragraph provides an alternative to having nothing in the agreement.

i. Confidentiality.

This sets out the individuals with whom you can discuss the client's information. You can modify this by crossing through the various items.

Mark D. White suggested these two paragraphs:

> "Please make every effort to maintain the confidentiality of our communications because those are privileged from disclosure. We understand that your daughter, Martha Smith, and your son-in-law, David Smith, are authorized by you to receive confidential information from us, but it is not intended by you to have that information disclosed to third persons.
>
> "We also understand that Marsha and David have authority to obtain legal services or act on advice rendered by us, on your behalf. According to the Texas Rules of Evidence, the communications between all of us are also privileged, but please caution Marsha and David to not discuss these matters with others, for that could waive this privilege."

Rule 503, Texas Rules of Evidence (TRE) covers the lawyer/client privilege. Section (a)(2) defines a representative of a client as a "person having authority to obtain professional legal services, or to act on advice thereby rendered, on behalf of a client, or (b) any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting within the scope of employment for the client."

The rules of privilege covered in TRE 503(b) provide that a client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of legal services to the client between the client or a representative of the client and the client's lawyer.

A client can authorize someone else to act as their agent in obtaining legal services on their behalf and the matters remain privileged through Rule 503.

There are exceptions to this privilege such as claimants who claim through the same deceased client. TRE 503(d)(2).

j. Other clients.

I normally explain that this gives me the right to prepare a will for the clients' parents that disinherits the client. This is a helpful paragraph to have because most of us are blessed with a multi generation practice.

k. Future legal services.

I explain that the client cannot afford to have me pull their file on a periodic basis to determine if legal changes have affected their estate plan. I encourage them to set up a review time on a frequent basis. This also provides that the fixed fee doesn't cover continued client conferences after the documents are signed.

l. Termination.

Many lawyers are concerned that unless there is a formal termination of the attorney client relationship, it continues. This negates that conclusion.

m. Interest.

I tell my clients that I am not a bank. I do not want to charge them interest, but, if forced to do so, I want to charge them a very high amount that will encourage them to pay me and borrow the money from the bank. If you have this in your fee agreements, you should also charge the interest if you aren't paid. It lets the client know you are serious. You can always waive the interest charge.

n. Document Retention.

This tells the client that you are not going to keep copies of all their documents. It is important that you furnish copies of the documents to the client and you may want to keep copies, but this lets them know that they need to be responsible to keep track of their own documents.

o. Full Family and Financial Information

This paragraph tells the client that they are responsible for giving you the information regarding their assets.

p. Tax Advice.

This is given to let clients know that under Circular 230, you are not going to furnish a tax opinion. You will still need to make the Circular 230 disclaimers in all of your written communications to you your client, however, this puts them on notice about this issue.

q. Email.

I have provided a consent for clients for using email. It is hard to say whether this is necessary, but it is a suggestion for our agreements.

8. Representing Husband and Wife and Multiple Parties.

The State Bar of Texas has an excellent videotape regarding a hapless lawyer who prepares wills for a married couple. The husband later calls the lawyer and changes his will leaving all of his assets to his mistress. When he dies, his widow is very upset with the lawyer for preparing the new will for her husband and for not telling her about it.

The best way to avoid this trap, or at least let your clients know what will happen if that occurs, is to have them sign the joint representation advisory and consent document attached as Appendix F. While this document may not give four pages of conflicts of interest information, it certainly advises the married couple that you will not keep information confidential from the other spouse and that a separate lawyer would. When you are at the stage of having a married couple sign this agreement, you often have a good idea about whether or not you should undertake joint representation. When I explain this letter to clients, I give them a capsule description of the State Bar video to explain why I am asking them to sign this document. So far, I have never had a call from client who has signed this document to change the will to benefit a mistress.

The Texas Disciplinary Rules of Professional Conduct are written largely from the role of a lawyer as adversary. Rule 1.06 Tex.D.R. allow a lawyer to represent multiple parties in non-litigation situations if the lawyer reasonably believes the representation of each client will not be materially affected and each client consents to the representation after full disclosure of the existence, nature, implications and

possible adverse consequences of the common representation and advantages involved. TEX. D.R. 1.06(c).

Comment 15 to the D.R. recognizes that a lawyer may be called upon to prepare wills for several family members and that conflicts of interest may arise "depending upon the circumstances". The Comment advises the lawyer to make the relationship clear.

In any multiparty context, you are in ethics jeopardy without a written agreement to which your clients consent, preferably in writing. With no specific agreement, you have a duty of confidentiality to each client under TEX. D.R. 1.05. You also have a duty to keep your client reasonably informed to be able to make informed decisions under TEX. D.R. 1.03 and to be loyal to the client under TEX. D.R. 1.06. You must document the fact that you aren't keeping matters confidential between your clients and that you aren't advocating one client's position over another's.

Whenever you are representing multiple parties, including a husband and wife, it is important to not only document the conflicts of interest and the other negatives to joint representation, but also the positives. A husband and wife or people who are forming a business want to use one lawyer because they know the work will be much less expensive and they will receive the product much more quickly than if they had an attorney representing each party. It is important to include in your agreement the fact that the parties want to use one attorney is because they believe it will be much less expensive and much less time consuming.

The American College of Trust and Estate Counsel (ACTEC) has recently publish the second edition of Engagement Letters - A Guide for Practitioners ("Guide"), which is attached in full as Appendix L. This is a wonderful resource to review any time you are representing multiple parties. The letters are lengthy, but thorough. The work represent the current thinking of some of our country's premier estate planning and probate attorneys. It is, however, a compromise document because it is multi-state in scope. There is a general checklist on page 4 - 8 of the Guide which is supplemented by specific checklists for each particular area. The Model Rules of Professional Conduct (MRPC) are a set of rules of professional conduct that have been adopted in various forms by different states. The ACTEC Commentaries to the MRPC serve as the ethical basis for the comments in the Guide. The Commentaries are not the same as our D.R.s, therefore you should also cross reference the D.R.s when reviewing the Guide.

The difference between the Commentaries and the D.R.s is highlighted in the husband and wife context. The Commentaries provide in the Commentary to 1.7 that some experience estate planners regularly represent the husband and wife as separate clients. The Commentaries provides this should only be done after knowledge and consent. From a practical standpoint, however, I would find it very difficult to remember the confidential information that a husband or wife gave me that could not be shared with their spouse versus what could be. Life and your law practice will be much easier if you share everything with both spouses or you only represent one of the spouses.

9. Representing Fiduciaries.

TEX. D.R. 1.06 does not address this directly. Comment 15 to that rule provides:

> "in estate administration it may be unclear whether the client is the fiduciary or is the estate or trust, including it beneficiaries. The lawyer should make clear the relationship to the parties involved."

Even when that is done, subsequent conduct can cause the lawyer for the fiduciary to be tagged as the lawyer for the beneficiary. *Vinson & Elkins v. Moran*, 946 S.W.2d 381 (Tex. App. - Houston [14th Dist.] 1997, writ dism'd). A sample engagement letter is attached as Appendix L, Chapter 5 for the probate of an estate. A sample letter for the beneficiaries of an estate is attached as Appendix K. It is important to send this letter out when the beneficiaries and the fiduciary are different. It is possible to represent multiple fiduciaries in estate administration, however, it must be done with disclosure and the agreement of the parties. A sample letter is shown in Appendix H. The ACTEC Model checklists and engagement letters are attached as Appendix O is our firm's probate engagement letter. Two interesting things contained in there are the Circular 230 language and some provisions that provide that no title searches will be made unless requested by the client.

10. Clients Under Disabilities.

TEX. D.R. 1.02(g) requires a lawyer to take reasonable action to secure the appointment of a guardian or other legal representative or to seek protective orders with the respect to a client whenever the lawyer reasonably believes that the client lacks legal competence and that the action needs to be taken to protect the client. TEX. D.R. 1.05(c)(4) allows an attorney to disclose confidential information in order to comply with the Texas Disciplinary Rules of Professional Conduct. Paragraph 17 of the Comment, TEX. D.R. 1.05, Paragraphs 12 and 13 to TEX. D.R. 1.02, and Paragraph 5 to TEX. D.R. 1.03 support the proposition that there is nothing wrong with seeking a guardianship or other help for your client when the client needs it.

The ACTEC sample engagement letters provide a sample paragraph to inform the client that this may happen. I recommend against putting this in a fee

agreement. It may raise a duty on your part that is now supported by written agreement to seek help for your client. At least one trial court in Texas has ruled that someone that had a fiduciary duty to a client (in that case a trustee under an intervivos trust who was not to serve until the client became incapacitated) to determine when the client became incapacitated. This is an impossible situation for a lawyer. You may never see a client once you have prepared wills, revocable trusts, powers of attorney, etc. for the client. Clients move and change attorneys.

When you become aware that a client has become incapacitated, it is also a difficult situation. The disciplinary rules and mental health professionals recognize that there is no bright line between competence and incompetence and that individuals have varying degrees of competency. Alienating a long time client and, in some cases, friend, usually isn't worth it. Instead, you are perfectly within the disciplinary rules to inform a county court at law or statutory probate court judge of the issue. In one instance, in my practice in Washington County, the county court at law judge appointed an attorney to investigate. The end result was a good one and it did not involve my filing a request that my client have a guardian appointed for him.

On the other hand, there may be circumstances in which it is absolutely clear that you need to protect your client by initiating such a proceeding. This is one of the toughest judgment calls an attorney has to make.

11. Lawyer as Intermediary.

TEX. D.R. 1.07 recognizes that lawyers can enter into arrangements with multiple clients as an intermediary. D.R. 1.07 provides as follows:

> "(a) A lawyer shall not act as intermediary between clients unless:
>
> (1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;
> (2) the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and
> (3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.
>
> (b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.
> (c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.
> (d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.
> (e) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that conduct."

A sample Agreement to Act as an Intermediary is attached in Appendix N.

Comment 4 to D.R. 107 provides that in some situations, a risk of failure of the intermediary representation is so great that the representation is clearly impossible. Further, if the relationship is already antagonistic, intermediary representation should not be done.

Although representation as an intermediary has risks, it is something that lawyers have always done. The lawyer acting for the family or for all the parties in a business transaction is a long standing tradition. As long as all of the clients have been adequately informed and have consented to the representation in writing, the lawyer can proceed with the representation.

One very important aspect to help you in deciding upon representation of the parties as an intermediary is how well you know the parties and their prior dealings with each other. Even people whom you think you know well can surprise you when outside stresses produce changes in behavior. Any lawyer, however, must be more sensitive to a possibility of antagonism

as the representation progresses. When antagonism arises, the lawyer should withdraw and do so by a letter to all of the represented parties. After the withdrawal, the lawyer can represent none of the parties. It is not unusual for the antagonistic client to tell the attorney that he is no longer antagonistic and would like the attorney to continue the representation. This statement by the client should be documented and signed by the client . The continued representation should be agreed to in writing by all clients once again. The cost of having multiple lawyers in a transaction is often the balm that soothes the antagonism between the parties.

12. Dealing with Belt and Smith.

The case of *Belt v. Oppenheimer, Blend, Hanson & Tate*, 192 S.W.3d 780 (2006) dramatically changed the landscape for estate planning attorneys. *Smith v. O'Donnell*, 288 S.W. 3d 417 (Tex. 2009) made it bad for probate attorneys. Having a good engagement agreement is only the first step in avoiding a *Belt* claim. Documentation of the file and written communication with the client are more important than ever. Sarah Pacheco has written an excellent article entitled: *"Protecting Ourselves: Attorney Liability Issues?"*. It can be found in the State Bar of Texas Online Library in the 2007 Estate Planning Strategies Course.

V. CONCLUSION.

The law that governs attorney's fee contracts is changing as rapidly as everything else in our society. This paper is an attempt to help you to represent your clients in an ethical manner and to communicate your fee agreements to them in a way that they can understand and that will be upheld by the courts. I welcome your comments regarding this paper and the sample fee agreements. If you think you have an agreement that is better than any of these, please send it to me. If you disagree with any of my conclusions, please let me know. Send me an e-mail, call me, or write me with your comments.

APPENDIX A – FIRM 1
Litigation & General Matters – Attorney Employment Contract – Retainer Agreement

I hereby employ the firm of FIRM 1 to represent me in connection with _____ _____.

In consideration of this representation, I agree to pay at the offices of FIRM 1 (hereinafter called "Attorney"), in Nowhere, Texas, the following amounts: a fee of $_____ per attorney hour for the time spent on the case for all work, including but not limited to pleadings, preparation for trial, research, telephone calls, drafting of documents, depositions, interrogatories and court appearance; a fee of $_____ per hour for support staff time. Each portion of a quarter hour is billed as a full quarter hour.

I promise to reimburse and indemnify Attorney for and against all sums that they may spend or incur in representing me such as Court costs, taking of depositions, the gathering and adducing of evidence, expert or otherwise, obtaining photographs and x-ray pictures, medical examinations and treatment, duplication expense, long distance telephone calls, certified mailing charges and travel.

I agree to pay all fees and costs on a monthly basis, with payment due upon receipt of a statement from the Attorney. This fee schedule will be valid for a period of one year from the date of this contract, but will be subject to change after that time.

I UNDERSTAND THAT THE ATTORNEY WILL USE HIS BEST EFFORTS IN REPRESENTING ME, BUT THAT THE SUCCESS OR OUTCOME OF THIS MATTER IS IN NO WAY GUARANTEED BY THE ATTORNEY. I UNDERSTAND AND AGREE THAT THE ATTORNEY WILL WITHDRAW FROM THE MATTER AND CEASE TO REPRESENT ME IF THE FEE IS NOT PAID IN THE AMOUNT AND TIME AS AGREED AND/OR IF I DO NOT COOPERATED IN THE PREPARATION AND TRIAL OF THIS CAUSE.

I agree to deposit the sum of $_____ as a retainer fee which shall be credited to my account. I will receive statements on a monthly basis which I will pay within ten (10) days from receipt of those statements. If I do not pay the statement, the Attorney can draw against the retainer fee, however, I agree to replenish the retainer fee within ten (10) days after it is drawn down by the Attorney so that the $_____ retainer fee remains on account.

I promise to pay an additional amount which, when added to the retainer, will equal the attorney's estimate of the fee for the trial of this cause as an additional retainer fee prior to the trial of this cause and to make similar retainer deposits prior to any appeals. This estimated amount will be treated in the same manner as the initial retainer. The fee for services rendered will be based on the actual time devoted to the matter as described in the second paragraph of this contract and may or may not bear any relationship to the Attorney's estimate.

I understand that the Attorney cannot give me an estimate of the costs of this case. I understand that any case can be appealed after it is tried and new trials can be ordered or any case. I understand that the attorney's fees and costs can be very expensive.

I further agree that, in the event the fees are not paid as agreed upon, to have charged upon the following credit card any balance due the law firm:

_____
Credit Card Type and Number on Credit Card

_____
Expiration Date

_____
_____
Name and Billing Address for Card

I acknowledge receipt of the Texas Lawyer's Creed which is attached to this Contract.

I understand that one of the most important considerations which the law firm must have in accepting an engagement is whether the engagement will put it in conflict with any existing client interest. If such a conflict is discovered after the law firm has commenced work, the firm may be disqualified from continuing its representations of me. It is, therefore, very important that I reconsider all the interests which are involved to be certain that I have advised the firm fully in that regard. If, in the firm's judgment, the firm determines that a conflict of interest does exist, it will notify all affected clients and it will proceed in a manner consistent with the ethical standards contained in the Texas Disciplinary Rules of Professional Conduct (the "Disciplinary Rules").

I have read and understand the terms of this document.

SIGNED on _____, 20___.

_____
Client

_____
Client

Received from _____ the sum of $_____, on this the _____ day of _____, 20___.

LAW FIRM 1

By: _____

APPENDIX A – FIRM 1

Release Agreement

CLIENT ACKNOWLEDGES THAT THE CLIENT WAS ADVISED TO RETAIN INDEPENDENT LEGAL COUNSEL TO REPRESENT THE CLIENT IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT. THE CLIENT FURTHER ACKNOWLEDGES THAT CLIENT WAS ADVISED THAT THE LAW FIRM HAS A CONFLICT OF INTEREST THAT PREVENTS IT FROM REPRESENTING THE CLIENT IN ANY WAY WITH RESPECT TO THE NEGOTIATION AND/OR EXECUTION OF THIS AGREEMENT AND THAT THE LAW FIRM HAS NOT DONE SO.

This Agreement is made between _____ (hereinafter called the "Client") and LAW FIRM 1, a limited liability law partnership (hereinafter "LAW FIRM 1").

In consideration of the agreement contained herein and in consideration of other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. LAW FIRM 1 hereby releases all rights to collect all fees due LAW FIRM 1 under the fee contract (attached as Exhibit A), except for $_____.

2. Client hereby releases all obligations of LAW FIRM 1 to perform any services under the fee contract attached as Exhibit A and agrees to immediately pay LAW FIRM 1 $_____ for prior fees and expenses.

3. LAW FIRM 1 and Client hereby release, acquit and forever discharge each other from any and all liability, damages and/or injuries of any kind whatsoever, claims, demands, allegations, actions, and/or causes of action, whether same be known or unknown, anticipated or unanticipated, arising out of and/or in an y way relating to the contract which is attached as Exhibit A and the matters which are the subject of such contract. The foregoing release, acquittal, and discharge includes and extends to, but is not limited to, any and all claims arising from federal and/or state law, from statutory and/or common law, in contract and/or in tort, at law and/or in equity, including specifically, but not limited to, actions and/or claims for injuries and/or damages of any kind, including but not limited to legal malpractice, negligence, gross negligence, fraud, breach of fiduciary duty, whatsoever received or alleged to have been received either directly or indirectly by any of the parties.

EXECUTED this ____ day of _____, 20___.

[client info]

LAW FIRM 1

By: _____

APPENDIX B – FIRM 2
Contingent Fee Contract and Power of Attorney

STATE OF TEXAS §

COUNTY OF _____ §

AGREEMENT made by and between the law firm of LAW FIRM 2, 123 West Street, Nowhere, Texas, 77889. (the "Law Firm"), and _____, (the "Client"). The Client is entering into this agreement in _____(Capacity). The Law Firm and the Client are sometimes collectively hereinafter referred to as the "Parties". Any one of the Parties may be sometimes hereinafter referred to as a "Party".

1
SPECIAL DISCLOSURES

1.1. **CLIENT ACKNOWLEDGES THAT THE CLIENT WAS ADVISED TO RETAIN INDEPENDENT LEGAL COUNSEL TO REPRESENT THE CLIENT IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT. THE CLIENT FURTHER ACKNOWLEDGES THAT CLIENT WAS ADVISED THAT THE LAW FIRM HAS A CONFLICT OF INTEREST THAT PREVENTS IT FROM REPRESENTING THE CLIENT IN ANY WAY WITH RESPECT TO THE NEGOTIATION AND/OR EXECUTION OF THIS AGREEMENT AND THAT THE LAW FIRM HAS NOT DONE SO.**

1.2. **THE CLIENT AND LAW FIRM AGREE THAT ANY DISPUTES ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO THE SERVICES PERFORMED BY ANY ATTORNEY UNDER THIS AGREEMENT) SHALL BE SUBMITTED TO CONFIDENTIAL BINDING ARBITRATION IN NOWHERE COUNTY, TEXAS IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION.**

1.3. **ALL LAWYERS IN TEXAS HAVE AN OBLIGATION TO MAINTAIN A HIGH STANDARD OF ETHICAL CONDUCT TOWARD THEIR CLIENTS AND OTHERS. TO ENFORCE THIS STANDARD, THE STATE BAR OF TEXAS INVESTIGATES AND PROSECUTES COMPLAINTS OF PROFESSIONAL MISCONDUCT AGAINST ATTORNEYS LICENSED IN TEXAS. IF YOU FEEL THAT MISCONDUCT MAY HAVE OCCURRED OR IF YOU HAVE QUESTIONS REGARDING THE DISCIPLINARY PROCESS, YOU MAY CALL OR WRITE THE STATE BAR OF TEXAS, P.O. BOX 12487, AUSTIN, TEXAS 78711, (512) 463-1381 OR 1-800-932-1900 (TOLL FREE).**

1.4. **THE CLIENT ACKNOWLEDGES THAT PRIOR TO SIGNING THIS AGREEMENT CLIENTS WERE GIVEN THE OPTION OF RETAINING THE LAW FIRM TO PROSECUTE THE LAWSUIT ON A NORMAL HOURLY RATE (PLUS COSTS AND EXPENSES INCURRED) BASIS BUT ELECTED INSTEAD TO RETAIN THE LAW FIRM TO PROSECUTE THE LAWSUIT PURSUANT TO THE TERMS AND CONDITIONS OF THIS CONTRACT.**

2
RECITALS

The Client is executing this Agreement for the purpose of retaining the Law Firm to represent her in connection with:

2.1 the recovery for _____.

The causes of action described in paragraph [s 2.1 through ____ above] is/are sometimes hereinafter collectively referred to as the "Lawsuit".

3
THE AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants set forth in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by each Party, the Parties agree as follows:

3.1. The client hereby assigns, sells, conveys, and agrees to pay and deliver to the Law Firm the following contingent interest in the Lawsuit measured by the amount or recovery to be enjoyed, realized out of or collected from Lawsuit (whether in money, other property, future relief, or other consideration), either through settlement, compromise or judgment (such amount of recovery is hereinafter referred to as the "Litigation Proceeds" and is more specifically defined below):

3.1.1 If, after the effective date of this Agreement, the Lawsuit is settled, thirty percent (30%) of the Litigation Proceeds;

3.1.2 If the Lawsuit is tried in the initial trial court, thirty-five percent (35%) of the Litigation Proceeds (for the purpose of this Agreement, the Lawsuit will be deemed to be "tried" if the Law Firm announces ready at a trial on the merits of the case or if any hearing approving a settlement agreement is contested);

3.1.3 If the judgment of the initial trial court is appealed to a Court of Civil Appeals, thirty-seven and one-half percent (37 ½ %) of the Litigation Proceeds (for the purpose of this agreement, the law suit will be deemed to be "appealed" if the first step in such appeal such as filing the cost bond by either side has been done). Client understands that a case may be tried and a settlement reached in principle but not documented by the time cost bonds and other filings are done which would increase the attorney's fee;

3.1.4 If the judgment of the Court of Civil Appeals is appealed to the Texas Supreme Court, forty percent (40%) of the Litigation Proceeds.

3.2. The Law Firm shall advance all expenses reasonably incurred for reports, travel expenses, long distance calls, investigation fees, expert and witness fees, medical examination fees, charts, photographs, deposition fees and costs, xerox and other document reproduction costs, postage charges, and other expenses reasonably incurred by them in the prosecution of the Lawsuit ("Litigation Expenses").

3.2.1 As a consequence of the Law Firm's payment of the Litigation Expenses, the Law Firm shall be entitled to reimbursement of all such Litigation Expenses from any Litigation Proceeds received prior to the application of any percentage fee described in this Agreement;

3.2.2 The Law Firm is expressly authorized, as a separate alternative fee (the "Alternative Fee"), to apply to any court, prior to trial on the merits, at its own cost, for the maximum amount of compensation , costs and Litigation Expenses allowed to Client (or to the Client's attorneys) by law and to receive any such amounts awarded as compensation for their services hereunder from any person referred to in the RECITAL paragraph above or from any trust purportedly created by the Client. Any Alternative Fee recovered under this paragraph shall be offset against any contingent fee payable to the Law Firm under this Agreement; provided however, that, if the Alternative Fee exceeds any contingent fee, the Law Firm shall be entitled to retain the entire Alternative Fee as compensation for its services (and shall receive no contingent fee);

3.2.3 The term "Litigation Proceeds" shall refer to a sum of money equal in amount to the fair market value of all property, relief, and consideration of every kind and in every form enjoyed, realized out of, or received (or to be enjoyed, realized out of, or received) by the Client as a proximate result of the Lawsuit including, but not limited to, compensatory damages, exemplary damages, attorney's fees (other than any Alternative Fee), prejudgment interest, and post judgment interest (whether through trial or settlement of the Lawsuit). The amount of Litigation Proceeds shall not be reduced by any income, gift or estate taxes incident to the recovered amount or by any attorney's fees, costs, damages, interest or other award that may be awarded by a judge or jury against the client.

3.3. The Parties agree that the Law Firm has been induced to enter into this Agreement by representation made by the Client (or her agents) regarding the facts of the case.

3.4. Notwithstanding any other provision in this Agreement (including, but not limited to paragraph 3.5 below), the Law Firm may withdraw as counsel (in which case this Agreement shall be null, void and of no effect) if after thoroughly investigating the facts incident to the Lawsuit it concludes that the Lawsuit either is without merit or the defendant or defendants do not have sufficient net worth to warrant prosecution of the Lawsuit. If the Law Firm were to withdraw pursuant to this paragraph the Client would owe no legal fees or litigation expenses to the Law Firm.

3.5. The Client agrees that the Law Firm may withdraw from its representation of the Client in connection with the Lawsuit if:

3.5.1 the Client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument of an extension, modification, or reversal of existing law;

3.5.2 the Client insists that Law Firm pursue a course of conduct that is illegal or that is prohibited under the State Bar Rules;

3.5.3 the Client by other conduct renders it unreasonably difficult for Law Firm to carry out their employment;

3.5.4 the Client insists that Law Firm engage in conduct that is contrary to their judgment and advice, even if such conduct is not contrary to the State Bar Rules;

3.5.5 the Client deliberately disregards an agreement with Law Firm as to fees for services rendered or as to Litigation Expenses;

3.5.6 the Law Firm determines, in its sole discretion, after further investigation of the facts of the case, that the facts of the case are materially different from those represented to the Law Firm by the Client.

3.6. In the event that the Law Firm withdraws from representation pursuant to the applicable provisions of this Agreement, the Client agrees to sign all necessary documents to facilitate the withdrawal of the Law Firm from such representation immediately after written notification to the Client by the Law Firm of their intention to withdraw.

3.7. If the Law Firm withdraws from representation pursuant to the applicable provisions of this Agreement (except for subparagraph 3.5.6 in the preceding paragraph of this Agreement, in which case the Law Firm shall be entitled to no contingent interest) such withdrawal shall no in any way eliminate Law Firm's ownership of a contingent interest in the outcome of the Lawsuit (including but not limited to Law Firm's right to participate in and consent to any settlement of Lawsuit).

3.8. The Client may at any time and for any reasonable cause terminate the Law Firm's representation of Client with respect to Lawsuit; provided, however, that such termination shall not in any way eliminate Law Firm's ownership of a contingent interest in the outcome or the Lawsuit (including but not limited to Law Firm's right to participate in and consent to any settlement of Lawsuit).

3.9. If the Law Firm ceases to represent the Client pursuant to any provision of this Agreement, then the Law Firm shall no longer be liable to Client or to any third party for any costs or expenses incurred after the date of the termination of the Law Firm's representation. If any third party makes any claim against the Law Firm for any costs and expenses incurred by the Client after the date of the Law Firm has ceased to represent the Client, then the Client agrees to indemnify and hold the Law Firm harmless from any such cost and expenses and all expenses incurred, including but not limited to, all attorney's fees and litigation expenses and costs incurred by the Law Firm in seeking to enforce this Agreement.

3.10. The Law Firm agrees to faithfully perform the duties imposed upon the Law Firm as attorneys for Client in the prosecution of the Lawsuit. The Law Firm further agrees to use its best efforts to resolve the Lawsuit as soon as is reasonably possible.

3.11. The Law Firm agrees not to disclose any information regarding the whereabouts of the Client or her family to any third persons without the consent of the Client.

3.12. The Law Firm may, at the discretion and expense of the Law Firm, associate any other attorney or Law Firm in the prosecution of the Lawsuit and may assign all or any part of their contingent interest in this Lawsuit to any other such firm. Notwithstanding anything to the contrary in this paragraph, the Parties agree, however, that the Law Firm shall always be primarily responsible for the representation of the Client in connection with the Lawsuit.

3.13. The Client authorizes the Law Firm to try, compromise, settle and receive for and in Client's names, all damages or property to which Client may become entitled by reason of Lawsuit. Client agrees not to settle Lawsuit without the written consent of Law Firm, and Law Firm agrees not to settle Lawsuit without the written consent of the Client.

3.14. The provisions of this Agreement constitute a Power of Attorney coupled with an interest and shall survive and shall not be affected by the subsequent disability or incapacity of the Client.

3.15. The Client agrees to keep Law Firm advised of her location at all times, agrees to appear on reasonable notice at any and all depositions and court appearances and agrees to comply with all reasonable requests of Law Firm in connection with the preparation and presentation of the Lawsuit.

3.16. The Client specifically recognizes that the Law Firm has made no representation or warranty whatsoever regarding the probable outcome of the Lawsuit and have in no way guaranteed any recovery from the settlement or trial of the Lawsuit.

3.17. It is expressly understood and agreed that the mutual promises contained herein are the sole consideration for this Agreement, and that said considerations are contractual and not mere recitals, and that all agreements and understandings between the Parties are embodied and expressed herein.

3.18. The Parties agree to execute such other documents as might be reasonably necessary or appropriate to consummate and implement the terms of this Agreement.

3.19. This Agreement is executed in multiple counterparts, each one of which will be considered to be an original.

3.20. It is expressly understood and agreed that this Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Texas and shall be performable in Nowhere County, Texas.

3.21. This Agreement may not be modified or amended except by a subsequent Agreement in writing signed by the Parties. The Parties may waive any of the conditions contained herein or any of the obligations of any other party. Any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

3.22. In the event that any of the Parties become involved in litigation in connection with any right, obligation, or duty set forth in this Agreement then, and in that event, the Party prevailing in such litigation shall receive from the other Party all expenses, costs and attorney's fees suffered or incurred by such party as a result of such litigation.

3.23. In the event that any of the Parties hereto shall breach any of the obligations imposed by this Agreement, then any other party shall be entitled to monetary damages by this Agreement, then any other party shall be entitled to monetary damages as a result of such breach. It is understood by the Parties, however, that monetary damages shall not be adequate recompense for any breach of this Agreement, and each of the Parties shall, in addition to monetary damages, be entitle to equitable relief.

3.24. This agreement is and shall be binding and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

3.25. The effective date of this Agreement shall be the _____ day of _____, 2006.

LAW FIRM 2

By:_____
IMA LAWYER
State Bar No. 12345000
My Address

STATE OF TEXAS

COUNTY OF NOWHERE

This document was acknowledged before me on the _____ day of _____, 2006, by IMA LAWYER, President of LAW FIRM 2.

(Seal, if any, of notary) _____
(printed name of Notary)
My commission expires:_____

_____
(NAME OF CLIENT)

STATE OF TEXAS

COUNTY OF NOWHERE

This document was acknowledged before me on the _____ day of _____, 2006, by _____(client).

(Seal, if any, of notary) _____

(printed name of Notary)

My commission expires:_____

APPENDIX B – FIRM 2

Legal Representation Engagement Letter
_____, 20___

Name of Client
Address of Client

Re: Legal Representation Letter (the "Engagement Letter")

Dear **Name of Client:**

Thank you very much for allowing FIRM 2 (the "Law Firm") the opportunity to represent you. As used in this Engagement Letter the term "Client" refers to you. The term "Parties" refers to both you and the Law Firm.

THIS ENGAGEMENT LETTER IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM HAS A CONFLICT OF INTEREST THAT PREVENTS IT FROM REPRESENTING YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

As a part of the Law Firm's regular procedure in establishing a new client relationship, we would like to take this opportunity to set out the specific terms of our relationship. We request that you acknowledged your receipt and understanding of this letter by signing and returning the original to us at your earliest convenience. A signed, duplicate original is enclosed for your files.

The Law Firm's fees in this case are set on the basis of a baseline computation of billable hours multiplied by the attorney's hourly billing rate and then adjusted as provided below. At the present time my hourly billing rate is $XXX per hour. John Doe's hourly billing rate is $XXX. Mary Smith's hourly billing rate is $XXX per hour. We anticipate that our normal hourly billing rates will probably increase on some future date.

The Law Firm's fees are set on the basis of what we consider to be a fair charge for the services rendered. **We do not, however, bill on an hourly rate basis**. We do use for guidance a baseline computation of our billable hours times our hourly billable rate as set forth above. We then compute a reasonable fee that takes into account such things as: (1) the time and labor required; (2) the novelty and difficulty of the questions involved in the legal representation; (3) the skill requisite to perform the legal services properly; (4) the likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Law Firm; (5) the fee customarily charged in the locality for similar legal services; (6) the amount involved and the result obtained; (7) the time limitations imposed by the Client or by the circumstances; and (8) the nature and length of the professional relationship with the Client.

In addition to all fees described above, and out-of-pocket expenses incurred by the Law Firm in connection with the Legal Representation will be billed to the Client as a separate item on the Client's monthly statement. Additional details on expenses can be provided on request. Invoices for firm expenses (including but not limited to, out-of-pocket expenses, travel expenses, deposition transcripts, expert fees, court filing fees, court costs, printing charges, long distance telephone charges, and title company fees) may be sent to you from time to time for immediate payment direct to our suppliers. When reasonably possible we agree to allow you to arrange for any extraordinary duplication of documents.

We will normally submit a bill to you on a monthly basis, and it is due and payable upon receipt. There may be occasions involving unforeseen circumstances when a bill will go unpa*Id* In such instances, we will attempt to work with you, if you communicate the nature of the delay to us.

Occasionally, when a bill for a specific project is rendered near the conclusion of the matter, posting of some time and charges (such as telephone, copying, court costs, or similar items) may be delayed, or there may be an invoice which is not delivered to the Law Firm until after the affair has been finalized. In such cases, these "after closing" expenses will also be billed to you, even though you may have previously received a "final" bill.

Occasionally we will request reasonable attorney's fees from another party in a legal proceeding. Regardless of how any court rules with respect to the award of attorney's fees (or the reasonableness of legal fees requested in any pleading), the Client agrees to pay the Law Firm the fees set forth in this Engagement Letter. If the Law Firm receives any compensation as the result of an award for attorney's fees then the Law Firm will, in its discretion, either: (1) credit such receipt to the Client's unpaid bill or (2) reimburse the Client for the amount of the receipt (if, and only if, the Client does not owe the Law Firm any fees or expenses at the time that the receipt is received).

By signing this agreement, you are authorizing the Law Firm to do whatever is reasonably necessary and appropriate, in our professional judgment, to represent you properly, and to incur the costs and expenses reasonably necessary to handle your matter. This includes the authorization and power to associate or employ such other persons or entities as we may deem necessary to assist us, such as support services, technical experts, or other attorneys who are not members of LAW FIRM 2 (either "local counsel" in a distant forum or contract legal services with attorneys in other firms in Nowhere).

Should you have any questions regarding any bill, please contact us at your earliest convenience so that we may resolve any problems as quickly as possible. Your satisfaction with our legal services is very important to us.

1 Describe the Matters to Which this Engagement Letter Relates.

The Law Firm is not undertaking responsibility for matters outside this scope at this time; however, should you expressly request, and should we accept additional matters and responsibilities in the future, the provisions in this letter agreement will govern our continuing relationship, as well as our relationship with any of your related entities.

You have requested our advice and counsel as a part of our services to you. In the event that you fail to follow our advice, otherwise fail to cooperate reasonably with us, fail to pay any bill from us that is due and payable within thirty days of receipt, then we reserve the right to notify you in writing of our withdrawal from representation and to collect all fees and expenses accrued to the date of our withdrawal. Of course, at any time that you wish, you may cease to use our services by notifying us in writing.

As you know, we cannot make representations to you regarding the probability of ultimate success in the Legal Representation. Similarly, we cannot guarantee any particular result; however, we do agree to exert in good faith our best reasonable, ethical and professional efforts on your behalf.

Although historically we have attempted to retain copies of most documents generated by our Law Firm, we cannot be held responsible in any way for failing to do so, and we consequently request that you retain all originals and copies you desire among your own files for future reference.

It is anticipated that, insofar as the Law Firm is concerned, I will be in charge of your representation. However, I always reserve the right to assign other lawyers in our firm to assist me if, in my professional judgment, that becomes necessary or desirable. As previously indicated, I may from time to time contract with other local attorneys to assist me in representing you if, in my opinion, this will result in a cost effective benefit to you. If I do this I will bill these legal services through my firm directly to you.

All lawyers in Texas have an obligation to maintain a high standard of ethical conduct toward their clients and others. To enforce this standard, the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. If you feel that misconduct may have occurred or if you have questions regarding the disciplinary process, you may call or write the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, (512) 463-1381 or 1-800-932-1900 (toll free).

We truly appreciate the opportunity to represent you, and we look forward to continuing a mutually beneficial relationship. We are very much aware that we are in a service business and that you, as a client, are the lifeblood of our practice. If you do not feel that you understand any part of this agreement, please call me. We are sending this letter to you so that you may know our policies and billing practices at the beginning of our relationship.

Cordially yours,

LAW FIRM 2

By: _____
Ima Lawyer

AGREED:

_____
Name of Client

APPENDIX C– FIRM 3
Engagement Letter

_____, 20___

_____
_____
_____

Re: Engagement Agreement

Dear _____:

LAW FIRM 3 welcomes you as a client. We look forward to a lasting professional relationship providing you with quality, efficient legal services.

The cornerstone of an effective attorney-client relationship begins with a clear understanding about your objectives and our terms of engagement. This *Engagement Agreement* will define those parameters.

You have asked us to act as your attorneys in connection with the following matter:

_____

_____

_____

Our representation of your interests will be based upon our standard terms as described in this *Engagement Agreement* and in the enclosed *Memorandum of Engagement*.

I will take principal responsibility for your legal work. Other attorneys, legal assistants or law clerks may be utilized on your matter to take advantage of special expertise or lower billing rates. Our fees will be based upon our usual hourly rates. These rates are subject to periodic adjustments. We reserve the right to add a premium to our billing if justified by extraordinary results achieved. At the present time our current hourly rates are:

My Current Hourly Rate:	$XXX per hour
Other Attorneys in the Firm:	Range from $XXX to $XXX
Legal Assistants:	$XX per hour
Law Clerks:	$XX per hour

Services rendered are billed at the end of each month. Payment is due upon receipt. We reserve the right to withdraw from your representation in the event of nonpayment.

----------OPTION #1 – NO RETAINER----------

We normally require an initial retainer to be deposited into our client trust account as a guarantee against payment of all outstanding balances on your account. For this representation, we have elected not to require the initial retainer. However, we reserve the right to require, and you agree to provide, a retainer if requested by us at any time during this engagement.

To engage our services on the terms described, we will require your written authorization to proceed. Please immediately sign and return this *Engagement Agreement*. Upon receipt of your authorization, we will commence work on your matter.

----------OPTION #2 – RETAINER REQUIRED----------

We will require an initial retainer in the amount of $_____ to be held in our client retainer account as a guarantee of payment on all outstanding balances owed by you to our law firm.

To engage our services on the terms described, we will require your written authorization to proceed and the requested retainer. Please immediately sign and return this *Engagement Agreement* along with the retainer. Upon receipt of your authorization and the retainer, we will commence work on your matter.

Without written authorization from you to proceed on this matter we will assume that you have decided not to hire our law firm; in which case we will mark the file "closed" and do nothing further. Of course, if you need more time before making a decision, please let us know.

Sincerely,

LAW FIRM 3

_____

Enclosure: LAW FIRM 3 *MEMORANDUM OF ENGAGEMENT*

LAW FIRM 3 is authorized and instructed to proceed with this representation on the terms and conditions described in this *Engagement Agreement* and the accompanying *Memorandum of Engagement*

By:_____
Name:_____
Title:_____
Date:_____

APPENDIX C - FIRM 3

Assignment

STATE OF TEXAS §

COUNTY OF NOWHERE §

_____ ("Assignors"), in consideration of the legal representation Assignors have received from LAW FIRM 3 in regard to the administration of the Estate of _____, Deceased ("Decedent"), by means of this instrument, grant and convey to LAW FIRM 3, jointly and severally, from Decedent's Estate. Said percentage to be in an amount equal to the attorney's fees, expenses and court costs which have been and/or will be incurred by LAW FIRM 3 on Assignors' behalf, less any payments which have been and/or will be made by Assignor to LAW FIRM 3 in relation to the administration of Decedent's Estate.

This Assignment, and all of its terms and conditions, are binding on Assignors and their respective successors, legal and personal representatives, heirs, beneficiaries, administrators and assigns and LAW FIRM 3 and its successors and assigns.

By executing this Assignment, Assignors hereby authorize the Personal Representative of Decedent's Estate to tender payment in satisfaction of this Assignment directly to LAW FIRM 3 on Assignors' behalf. Assignors further authorize the Personal Representative of Decedent's Estate to execute all conveyances, transfers, assignments, instruments and other documents as may be reasonably necessary to carry out the provisions of this Assignment.

Assignors further agrees to pay any attorney's fees, expenses and court costs LAW FIRM 3 incurs in attempting to enforce the provisions of this Agreement.

Assignors agree to execute all conveyances, transfers, assignments, instruments and other documents as may be reasonably necessary to carry out the provisions of this Assignment.

Performance of all terms of this Assignment shall be in Nowhere County, Texas, and all of the matters affecting the interpretation of this Assignment and the enforcement thereof and the rights of the parties hereunder shall be governed by the contract laws and other laws of the State of Texas.

Should any provision of this Assignment be determined to be invalid or unenforceable, the invalid or unenforceable provision shall be severed from this Assignment, and the other provisions shall remain in full force and effect.

It is understood and agreed that this Assignment contains the entire agreement between and among Assignors and LAW FIRM 3, and supercedes any and all prior agreements, arrangements, or understandings between and

among Assignors and LAW FIRM 3 relating to the payment of Assignors' attorney's fees, expenses and court costs which have been and/or will be incurred by LAW FIRM 3 on Assignors' behalf, in relation to the administration of Decedent's Estate.

The parties agree that this Assignment may be executed in multiple originals.

By executing this Assignment, Assignor hereby expressly warrant and represent that, prior to executing the same, they fully informed themselves of the Assignment's terms, contents, conditions and effects; that no promise or representations of any kind have been made to Assignors by any person acting for, and on behalf of, LAW FIRM 3 except as is expressly stated herein; that Assignors have each voluntarily entered into this Assignment without any duress, fraud or pressure imposed upon them in any manner and with the capacity to do so.

SIGNED AND DELIVERED this _____ day of _____, 2006.

_____ _____
Witness _____
Address

_____ _____
Witness _____
Address

SUBSCRIBED AND SWORN TO BEFORE ME by the said _____, Assignor, and by the said _____, and _____, Witnesses, this the _____ day of _____, 2006.

_____
Notary Public, State of Texas

AGREED AND ACCEPTED:

_____
LAW FIRM 3

APPENDIX D – FIRM 4
Engagement Letter

_____, 20___

PERSONAL & CONFIDENTIAL

Mr. Smith

Re: Smith Family Trusts

Dear Mr. Smith:

I enjoyed having the opportunity to meet you and I appreciate having this opportunity to be of service to you. We are indeed honored that you have chosen us to assist you with this matter. As I as sure, you understand matters of this gravity require certain formalities. This letter is intended to address two such matters, that of my firm's role in the case, and the terms of our compensation.

We would like to confirm our assignment from you with respect to the trusts. We are to do the following: _____
_____.

We will bill you monthly and are to be paid on a monthly basis. The basis of our bills will primarily relate to the time we expend on an hourly rate basis, billed to the nearest quarter-hour. More than one attorney with our firm will be assisting with respect to this matter, and our attorneys all have varied hourly rates. Our hourly rates are set forth on the listing attached to this letter.

In addition to our fees, we anticipate incurring certain expenses. Expenses will include any of the following that may be incurred in our representation of you: court filing fees, certified copy fees, travel expenses, postage, photocopying expenses, messenger services, facsimile charges, and long distance telephone charges. These expenses will be listed separately on each invoice. Payment for these matters shall be handled in the same manner as our fees discussed above.

It is also expressly agreed that you will have the right to terminate our employment at any time, and we will have the right to resign as your attorneys at any time in accordance with the applicable rules of conduct for Texas attorneys. However, any such termination shall not constitute a release or waive of any of the remaining provisions of this fee agreement, nor will we released from any remaining ethical duties toward you such as the duty of maintaining the confidentiality of our communications.

In addition to the foregoing, we should mention that because of the number of clients that LAW FIRM 4 represents, and has or will represent, there is always the possibility that at some future time our firm will be asked to represent one or more of our firm's other clients in legal matters which are contrary to your interests. It is our agreement with each other that, after our representation of you is concluded, we will not be disqualified from accepting future unrelated matters for other firm clients whose interests may then be adverse to you.

Any dispute that may arise in connection with any and all aspects of the performance of our services or this fee agreement shall, on the written request of either party, be submitted to binding arbitration in accordance with appropriate statutes of the State of Texas and the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. We agree to act in good faith to select a single neutral arbitrator. If we are unable to do so within 90 days after one party notifies the other party, in writing, of a dispute or claim, then each party shall appoint one person as arbitrator, and a third neutral arbitrator shall be chosen by the two arbitrators previously selected by the parties. The third arbitrator shall then conduct the arbitration alone. It is provided, however, that if there is no agreement as to the third arbitrator within sixty (60) days after the notice is served, then the third arbitrator shall be selected by a district judge in Nowhere County, Texas, having subject matter jurisdiction over the dispute. In such event, all three arbitrators shall conduct the arbitration. It is further agreed that the expenses of arbitration shall be paid in such proportions as the arbitrators decide, except that the successful party in any proceeding seeking enforcement of the provisions of this agreement shall be entitled to receive from the party not prevailing reasonable and necessary attorney's fees and expenses, in addition to any other sums to which such successful party may be entitled. The arbitrators shall decide the identity of the successful party for purposes of the preceding sentence.

In the unlikely event that a member or employee of our firm is ever called upon to give testimony about any aspect of our representation of you in any matter other than a dispute about our fees, whether in deposition, hearing or trial, it is further agreed that you will pay us legal fees at our then prevailing hourly rates for the time we dedicate to the preparation and participation in any such deposition, hearing or trial.

Your signature below will evidence your agreement to each and every term of this fee agreement. This is a binding legal document. Therefore, you may wish to obtain the advice of an independent attorney before you sign this letter. We ask that you return a signed copy of this letter after you have considered it (we have enclosed a second counterpart of this letter for that purpose).

Of course, we will be happy to answer any questions you may have about this letter. We sincerely appreciate having this opportunity to be of service to you.

Very truly yours,

LAW FIRM 4

_____

Wera Lawyer,

For the Firm

I, _____, hereby agree to the engagement of the law firm of LAW FIRM 4, Nowhere, Texas, as co-counsel for me with respect to the above referenced matters. I hereby agree to the conditions and terms of the foregoing letter pertaining to the representation of LAW FIRM 4, including the payment of fees and expenses charged by such firm and the waiver of any future potential conflict.

_____

Client

APPENDIX E – FIRM 5
Legal Representation Letter

_____, 20___

Client Address

Re:

Dear Client:

This will confirm that you have asked LAW FIRM 5 to assist your clients and you with respect to certain tax and estate planning matters. As we discussed, our firm is pleased to represent you under the conditions set out below. The purpose of this letter is to set forth the terms of our engagement and confirm our discussions concerning our engagement and the work to be done.

Our representation at this time will include analysis of the current estate situation, consideration of the tax impact of the planned courses of action and recommendations for effective means of carrying out the courses of action. You understand that in order for us to give you proper advice, you must provide us with complete and accurate financial and family data and that we will rely on such data in doing your work.

This is a limited engagement for the consultation we discussed and we will have to agree upon any areas with respect to which we are to advise you or do work beyond what is outlined in this letter. If any additional assignment is undertaken, the general terms of this letter will continue to apply, except as may be otherwise agreed in writing. Further, it is agreed that LAW FIRM 5 reserves the right to continue to represent existing or new clients in any matter that is not substantially related to our work on this matter even if the interests of such clients in those other matters may be adverse to you.

As compensation for our services rendered and to be rendered you have agreed to pay reasonable attorneys fees, which will be determined according to our customary practices for advice to our clients. Our fees are to be based on the time spent by the attorneys, paralegals, and other support personnel involved in representing and advising you. For your information, the current hourly billing rates that I anticipate will be applicable to you file will range from $_____ an hour for my time to $_____ per hour for our paralegals. Such rates are adjusted by our firm annually, over time, and the rates quoted are for the current year. The time charges of others who might appropriately work on the file will generally fall within the range between my time and those of paralegals. In addition to our fees for legal services, we will bill for our expenses, including postage, photocopying, telephone and other communication charges, filing fees, messenger delivery and other miscellaneous out-of-pocket disbursements in accordance with our customary practices.

If the foregoing correctly reflects our agreements and your understandings, please acknowledge this agreement in the space provided below. We have enclosed two copies of this agreement, one for your files and one to be signed and returned to me. If you have any questions about the proposed engagement, please do not hesitate to call me.

Thank you for giving us this opportunity to provide these services for you. We look forward to working with you.

Sincerely yours,

_____
Lawyer

Enclosure

AGREED and ACCEPTED:

_____
Client's Name Date

CLIENT ACKNOWLEDGES THAT THE CLIENT WAS ADVISED TO RETAIN INDEPENDENT LEGAL COUNSEL TO REPRESENT THE CLIENT IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT. THE CLIENT FURTHER ACKNOWLEDGES THAT CLIENT WAS ADVISED THAT THE LAW FIRM HAS A CONFLICT OF INTEREST THAT PREVENTS IT FROM REPRESENTING THE CLIENT IN ANY WAY WITH RESPECT TO THE NEGOTIATION AND/OR EXECUTION OF THIS AGREEMENT AND THAT THE LAW FIRM HAS NOT DONE SO.

APPENDIX F

Joint Representation Advisory and Consent

Spouses can have differing, and sometimes conflicting, interests and objectives regarding their estate planning. For example, they may have different views on how property could pass after the death of one or both of them. In some situations, we may recommend that holdings be restructured to take advantage of available tax benefits, which may involve gifts from one spouse to the other. Some of these actions can affect the division of property in the event of divorce. These are just a few general examples. Each couple's situation is unique.

If you each had a separate lawyer, you would each have an advocate for your position and would receive totally independent advice. Information given to your own lawyer is confidential and cannot be obtained by your spouse without your consent.

That is not the case when one firm advises both of you. One firm cannot be an advocate for only one of you. Information that either of you gives to the firm relating to your planning cannot be kept from the other. We will have to immediately tell the other anything which one of you tells us that relates to the estate planning of either of you, since not to reveal such information to the other would be a violation of attorney-client joint relationship. If you ask us to continue to serve you jointly, our effort will be to assist in developing a coordinated overall plan and to encourage the resolution of differing interests in an equitable manner and in your mutual best interests.

There are advantages to having one firm represent both of you. It is usually much less expensive. The work is usually done much more quickly because there is no need to consult with another lawyer. And there is a better chance of coordinating the will and trust provisions for each spouse.

Some of the planning techniques such as community property conversions, post-nuptial partition agreements, irrevocable trusts, limited liability companies, and family limited partnerships are difficult or impossible to unwind on divorce. The unwinding can cause adverse tax consequences. The characterization of your property as community property, separate property or separate property with rights of community reimbursement is a very critical issue that can affect your beneficiaries in the future. If you think this will be an issue, you need to seek the advice of a family law attorney who is not a member of this firm before implementing any of these matters.

After considering these factors, each of you must decide whether you wish the firm to represent you jointly in connection with your estate planning and related matters. If you do, please review the statement that follows, sign and date it as indicated. If either of you ever wants to have the advice of separate counsel, please do so.

If you decide to obtain separate counsel from the beginning of your estate planning process, our firm would be happy to represent either of you.

CONSENT

We have carefully reviewed the foregoing Advisory. Each of us realizes that there may be areas where our interests and objectives may differ and areas of potential or actual conflict of interest between us in connection with our estate planning and related matters. We understand the advantages and disadvantages of having one firm represent us. We understand that either of us may retain separate, independent counsel in connection with these matters at any time. After careful consideration, each of us requests that Moorman Tate Haley Upchurch & Yates, LLP, represent us jointly in connection with our estate planning and related matters and each of us consents to that dual representation. Each of us also understands and agrees that all communications and information that Moorman Tate Haley Upchurch & Yates, LLP, receives from either one of us, or provides to either one of us, relating to these matters will be shared and disclosed by said firm with the other spouse.

DIVORCE

We understand that this joint representation ends upon either of us filing for divorce. If either of us files for divorce, and asks Moorman Tate Haley Upchurch & Yates, LLP to change any of the documents reflected in the Estate Planning Services Employment Contract, Moorman Tate Haley Upchurch & Yates, LLP will contact the other of us in writing to inform the other of us that Moorman Tate Haley Upchurch & Yates, LLP is changing our documents, however, we agree that no other information should be disclosed to the other of us by Moorman Tate Haley Upchurch & Yates, LLP Once a divorce between us is final, Moorman Tate Haley Upchurch & Yates, LLP has no obligation to inform one of us that the other is changing his or her estate planning documents.

ALL CLIENTS SHOULD ALSO READ THE DOCUMENT ENTITLED "WARNING TO CLIENTS REGARDING JOINT TENANTS, SURVIVORSHIP, POD AND TRUSTEE ACCOUNTS".

Signed on _____

_____ _____

Client Client

APPENDIX G
Estate Planning Representation Letter
PERSONAL AND CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED
PLEASE READ VERY CAREFULLY

RE: Estate Planning Disclosure and Engagement Letter

Dear Client:

ARTICLE 1
Introduction

Pursuant to Firm policy, **and because I also think it is in your best interest**, I am sending you this engagement letter. The principal reason for the use of an engagement letter is the need for full disclosure in a world where such disclosure is now expected and required for ethical reasons, especially in an area as sensitive as estate planning This is even more important where I may be representing a husband and wife.

It is not necessary to sign this engagement letter in advance of our initial meeting, but if you would like, you can bring it with you and give it to me then, or you may wait until after the meeting to make up your mind.

This letter is designed to set forth the terms of our engagement to perform estate planning for you. This engagement letter is designed to benefit us both. Among other things, it sets forth the scope of our mutual involvement in the estate planning process, so that neither of us will be undertaking obligations to each other that we did not intend to assume.

My understanding is that you are both U.S. citizens.

ARTICLE 2
Scope of Involvement And Terms of Engagement

This letter is a contract ("this Agreement"). Further, even if this letter is not signed —whether through oversight, or because it is misplaced, or other reason— you must understand that unless we otherwise agree in writing, then if I undertake to represent you or to perform legal services on your behalf nevertheless, and you consent to it, implicitly or explicitly, by allowing me to do so without advance written objection, then such representation or other work performed will be subject to the terms set forth in this letter.

The following is a list of what you and I agree to do and what we do not agree to do.

2.1 Engagement Does Not Cover State Laws Outside of Texas. I am licensed to practice law in Texas. I can give advice about Texas law and federal law (e.g., federal estate and gift tax). I cannot and will not give any advice, or be retained to give advice, regarding the law of any other jurisdiction.

2.2 Scope of Engagement. The Firm is hereby engaged by you to provide advice and consultation, as and when specifically requested, regarding legal matters associated with estate planning and specifically with regard to the drafting of an irrevocable trust designed to be able to invest in life insurance and to receive contributions that will qualify, within applicable limits, for the annual gift tax exclusion. Our engagement does not guaranty that the fiduciary can properly invest in life insurance, or that contributions to the trust will qualify for the annual exclusion, or that the assets in the trust will not be includable in your estate for estate tax purposes, given the inherent complexity of a trust of this nature, the uncertainties of the tax laws, and the fact that the IRS is not overly sympathetic towards this technique. Nevertheless, I will take such steps as I believe prudent and reasonable under the circumstances to achieve the desired ends, taking into account all of your intentions as expressed to me and the degree of risk you are willing to assume.

It is anticipated that I will prepare (perhaps among other things) Funeral Instructions, General and Universal Power of Attorney, HIPAA Authorization, Directive To Physician, Power of Attorney For Health Care Decisions, and Appointment of Guardian Before the Need Arises, and Wills, for each of you. **Most importantly, I will be**

preparing a Revocable Living Trust designed to avoid estate taxes so long as either of you is alive, with a dynasty trust, for your children to last for as long as the law allows, following your death.

To give you a more specific idea about how much really is involved from my end, in even a fairly rudimentary estate plan I submit that even a basic estate plan requires the preparation (and, as applicable, signing) most of the following documents:

- Preparation of engagement letter to client.
- Preparation of community property disclosure memo.
- Preparation of approximate fee schedule.
- Preparation of 1st information letter to client.
- Preparation of Estate Planning Techniques letter to client.
- Preparation of Estate Planning Time Table.
- Minimum of two hours worth of meetings with you.
- Preparation of database entering all essential data about the client, the fiduciaries the client wants and the estate plan itself. This takes a Legal Assistant probably four hours, and I will spend a minimum of two hours on the part dealing with the estate planning variables that fit the client's profile. One of the biggest problems of late is identifying what property is community and what is not. This may not be a problem if you have never been the recipient of a large gift, never inherited property, owned no property when you got married, have never lived outside Texas, etc., but fewer and fewer people these days fit that profile.
- Preparation of List letter to client, confirming the following information found in attachments.
  - Documents entitled "Identification of Client and Family List."
  - Documents entitled "List of Basic Estate Planning Documents to be Prepared."
  - Documents entitled "List of Fiduciaries."
  - Unless the estate is very small in value, a Financial Statement based upon a list of all of the client's significant assets (a highly necessary but very time-consuming undertaking usually performed by a Legal Assistant, with me reviewing the process periodically).
  - Diagram of Estate Plan.
  - Lawyer's Notes Outlining Special Drafting Needs.
  - Mock Estate Tax Return (if the estate is large).
  - Qualified Retirement Projections (if this appears to be a likely issue).
- Preparation of Will.
- Preparation of Revocable Living Trust.
- Preparation of Funeral Instructions.
- Preparation of General and Universal Power of Attorney.
- Preparation of HIPAA Authorization.
- Preparation of Directive To Physician.
- Preparation of Power of Attorney For Health Care Decisions.
- Preparation of Appointment of Guardian For your Estate and Person Before the Need Arises.
- Preparation of Appointment of Guardian For the Estate and Person of Your Minor Children, if there are any.
- Preparation of documents used as cover sheets to most of the above, which explain the documents. This is a form that usually does not require original drafting, so I don't include these in the number of documents totaled below, even though there are about 20 of them.
- Preparation of long letter to client transmitting these documents.
- Preparation of letter to witnesses explaining elements of testamentary capacity, to be signed by them.
- Preparation of Will execution checklist to be signed by me and initialed by secretary.
- Signing ceremony (1 to 2 hours).
- Scanning all signed documents and putting them on a CD for the client.
- Preparing an indexed tabbed three-ring notebook, organizing and reproducing copies of the above.
- Long exit letter to client explaining each document we have prepared, who has the originals of what documents and what needs to be done with documents, how trusts may be funded, whether or not and how tax identification numbers are to be obtained, explaining how revocable trusts are taxed.
- Preparation of audit checklist following signing of all documents to ensure that they were properly executed and to note where they are to be found.

In the case of a married couple, this amounts to at least 40 documents, because there are two of most documents mentioned above, most of which require one or more signatures. An error or ambiguity in any of them could cost you many times my fee; so a great deal of care and proofing is essential to avoid making even a simple mistake. Being perfect is impossible, but I like to spend at least the time necessary to reduce the odds of a mistake happening. And the bulleted items above are for a **basic** estate plan! I really don't know which of the documents could be left out if one were to seek to economize.

The basic revocable trust I use is quite sophisticated. Ordinarily it would contain creditor protected beneficiary controlled trusts to last for the rule against perpetuities, marital deduction and bypass subtrusts and generation skipping exempt subtrusts, broad powers of appointment (re-write provisions) and would be about 75 pages in length. One advantage (among many) it has over a will is that the client's assets placed in the trust do not have to be disclosed to the world on a probate inventory. My wealthy clients find this very important. The revocable trust is the only document that is amenable to simplification or elimination. So consider what is the minimum number of hours I can get away with spending. If I spend an hour, on average, on each one, it would be 40 hours. If I spend 15 minutes on each one it is still 10 hours.

2.3 Term of Engagement. This contract may be terminated by either Attorney or Client at any time, without penalty or liability. There is no implied representation that we can or will provide any further service beyond the engagement period and scope of service without first negotiating a new contract in writing. However, this Agreement will control all future work except to the extent we have otherwise agreed in writing. As a general rule, the "engagement period" will end at the very latest when the estate planning documents you ask us to draft have been signed, and, if applicable and if later, when any other undertaking we have specifically agreed to perform (e.g., beneficiary designation work, funding of trusts, etc.) has been completed to your satisfaction. (However, the engagement period may end before such date.) Further, in no event will the engagement period extend beyond five years. Notwithstanding the foregoing, if we actually perform substantial legal services for you after the time otherwise specified for the engagement to end, the terms of this engagement will be extended or re-invoked for the duration of such additional work, unless a new written contract between us has been signed. (It is my general practice to send a letter signaling the completion of the initial undertaking and end of the engagement period.)

2.4 Fees. Unless otherwise agreed, all services will be billed at an hourly rate. Attorney time for a partner is generally between $XXX and $XXXan hour, or less. My hourly rate usually does not exceed $XXXan hour. Associate rates are less than partners, and generally range between $XXX and $XXX an hour, depending on the experience level of the associate and the nature of the work being done. Paralegal (or Legal Assistant) time is billed at approximately $XX an hour. Ordinarily fees and expenses are billed monthly and are due within 30 days of receipt.

I want to emphasize that these rates vary in the discretion of the billing attorney, with the intent that you not be charged more than a reasonable fee for the services received. It is unusual for the costs of implementing a basic estate plan to exceed $XXX, and a basic estate plan for a husband and wife with a taxable estate will often be under $XXX, depending on the amount of work requested. My fee for an irrevocable annual withdrawal trust will usually run between $XXX and $XXX. In order that you will have some rough idea of what various estate planning documents costs, and the amount of work involved, I am attaching a very approximate fee schedule. I am doing this in an attempt to be helpful, but at the risk that you will think estate-planning documents are a commodity, which they are not.

I estimate that the total legal fees involved will not exceed $XXX, barring anything extraordinary.

Costs, travel, delivery, filing fees, etc., and other reimbursable expenses will be billed separately as accrued. **Please note that any estimate of total costs or legal fees does not include these items**, whether such estimate is listed here or in any schedule or separate document I give you that relates to fees or cost.

It is agreed that the foregoing rates are subject to periodic adjustments by the Firm based upon the attorney's responsibilities and experience and in response to overall Firm policy, but that such adjustments will not be more frequent than semi-annually. The hourly rates charged by attorneys or support staff will be reflected in statements furnished or by supplemental correspondence.

2.5 Coordinating Nonprobate Assets. Nonprobate assets are assets that do not pass under a Will. Examples would include life insurance, joint tenancy bank accounts, IRAs and deferred compensation arrangements (such as a benefit under a qualified plan).

Planning for these assets may be incidental in some cases, and of primary importance in others. Life insurance proceeds are generally includible in the estate of the owner and insured no matter who is the beneficiary (unless special measures are undertaken to divest the insured of all incidents of ownership during life). Since the proceeds are includible in the estate, they are subject to estate tax. The same is true of IRA and qualified plan benefits. And if the benefits are community property, a spouse will have an interest that must also be considered and coordinated. The proper coordination of nonprobate assets can be particularly important in order to take full advantage of the marital deduction and to shelter the unified credit.[1]

Unfortunately, the proper coordination of nonprobate assets can be the most expensive part of an estate plan, and many clients are not willing to pay a lawyer to make sure that all of the beneficiary designations are properly coordinated and that all changes have been properly recorded and accepted by the company or other institution providing the benefits. Further, we do not usually know in advance how much time will be required. In the case of IRA and employee benefit plans especially, we are not even sure whether a beneficiary designation will be effective, even if accepted, and this is particularly true with respect to the community property interest of a nonparticipant spouse. The tax effects attendant to a distribution under an IRA or employee benefit plan are often unsettled and uncertain, under the present state of the law, and again, this is particularly true with respect to the community property interest of a nonparticipant spouse. For these reasons and others we are forced to limit the scope of our involvement, and we cannot guaranty results.

We will not attempt to coordinate the beneficiary of your nonprobate assets with your overall estate plan, to the extent set forth below, unless you give us the information set forth below, and request such assistance in writing. However, even if you request our help, **this is one area where the scope of our involvement is definitely limited** and in which we cannot guaranty results. If you either do not get written confirmation from the insurance company or other institution that the change of beneficiary with respect to a particular policy or benefit has been made, or if you do not receive a copy of our letter attempting to make the change, it may be that the change has not been made, and, unless we hear from you in writing to the contrary, we will assume in that case that you do not wish for us to pursue the matter further on your behalf.

Because nonprobate assets can be an important part of the estate, our preference, but only if you request it in a separate writing, is to handle these items as follows:

a. **Financial Accounts**. If you will provide us with a copy of the last monthly or other periodic statement from each institution in which you have an account (bank, savings and loan, brokerage firm, etc.) we will prepare a form letter for you to sign instructing the institution about the preferred disposition of the account at death.

b. **Life Insurance**. If you will provide us with (i) a copy of each life insurance policy on your life, (ii) a copy of the last statement from the company showing current death benefits, cash values, etc., and (iii) a current beneficiary designation form, we will prepare the beneficiary designation for you to sign.

c. **IRAs and Employee Benefits**. If you will provide us with (i) a copy of the underlying document establishing each IRA or employee benefit plan in which you have an interest, (ii) a copy of the last statement or valuation showing your current benefit and (iii) a current beneficiary designation form, we will prepare the beneficiary designation for you to sign.

In each case (a), (b) and (c), if you request it in a separate writing, we may agree to forward that letter or beneficiary designation to the institution on your behalf, via certified mail, under our letterhead. If you do not receive a copy of such a letter, you should assume that we have not agreed to perform this service. Most beneficiary designation forms are woefully inadequate for proper estate planning, and so our practice is often (but not always) to prepare a form of

[1] The applicable exclusion under the estate and gift tax credit is $2 million for each taxpayer in 2006-2008, and is scheduled to increase to $3.5 million by 2009. However, this amount is subject to change at any time by Congress and can also be reduced by lifetime gifts and tax elections made in the administration of an estate.

our own and attach it to the company form. If you do not bring us an approved form, we will prepare our own form and submit it to the company, if you request. In either case, it is sometimes difficult to tell whether or not the company or institution has accepted the change. It can sometimes take hours of work and months of time to get these matters resolved satisfactorily, since large institutions often have the traditional mentality and resistance to change usually associated with large bureaucracies.

2.6 Not All Contingencies Will Be Covered By Estate Plan. Estate planning can be a time consuming and expensive process. No estate plan is bullet proof or fail safe. Few clients can afford to pay a lawyer to cover absolutely every contingency that could conceivably be addressed. There are practical limits. And yet, there is a foreseeable statistical likelihood that some clients or their beneficiaries will incur taxes or otherwise have their interests adversely affected because of circumstances, law, or language in a Will or trust. With the benefit of hindsight or otherwise, it will often be true that such outcome could have been avoided by more elaborate or different planning. Because the variety of events that could affect your estate plan is virtually without limit, whereas the time and cost that can reasonably be expended to plan for such events is definitely limited, the scope of our involvement cannot be open ended, and we expressly do not undertake to cover every issue that could affect your estate plan. Our commitment is to produce the documents that you actually sign. We do not commit to go beyond that, even if it turns out later that it would have been better if more work was done.

2.7 Who is Our Client/Use of Pronouns. Unless otherwise clearly indicated by the context, the words "Attorney," "the Firm," and all first person pronouns ("I", "we", etc.) used in this letter, refer to LAW FIRM, and to any person employed by or in partnership with any of them in the practice of law. (But see below regarding the contingency that an attorney may cease to be a member or employee of the Firm.)

The term "Client" or "you" refers to Husband and Wife, unless only one of you signs this engagement contract, in which case the term "Client" will refer solely to the person signing. We will assume no duty whatsoever to any other person or enterprise, nor any other member of your family, not identified as the Client above.

2.8 Attorney Ceasing to be Associated With the Firm. We agreed above that this Agreement may be terminated by either Attorney or Client at any time, without penalty or liability. In this regard, we wish to make you aware that from time to time, and for any number of reasons, an attorney who works for the Firm and who may be working on matters covered by this Agreement (whether as a partner, employee, or third-party contractor), may terminate his or her relationship with the Firm. Such termination (departure) may be voluntary or involuntary, either on the part of the attorney or the Firm. In that event, you may or may not wish to continue to employ that attorney in connection with the subject matter hereof. If, following such departure, and without direct or indirect solicitation by the departing attorney, you and the departing attorney, or some other law firm with whom the attorney has a relationship, enter into an attorney-client relationship regarding any of the matters covered under this Agreement, the Firm agrees to take whatever steps are reasonable and consistent with this Agreement to cooperate with the transition in order to mitigate any costs to you incurred as a direct result of such departure, provided that such cooperation does not include uncompensated legal fees in excess of $XXX. However, in return, you agree that, beyond the proffering of such cooperation, we will not be liable for any direct or indirect damages or expenses arising out of such departure.

2.9 Confidences. We will not disclose any information whatsoever to anyone other than you except as specifically permitted by you or impliedly authorized in order to fulfill representation. We reserve the right to refuse disclosure of confidential and privileged information under any condition or circumstance.

It is my understanding that we may routinely send copies of our correspondence to you to the following, though we reserve the right not to do so, if we think the communication is sensitive and otherwise privileged, or if to do so seems to us to possibly be inappropriate or contrary to your wishes:

{people who get copies}

Ordinarily, I will use my own discretion about who should be copied on correspondence, a list which may change, depending on the circumstances. However, if there is anyone you expressly do not want to receive a copy of correspondence, let me know and I will respect that wish. **Basically, I will consider all of our communications to be totally confidential, except as I believe necessary to further your interests.** This can be a fairly difficult decision to make at times, for reasons having to do with the preservation or loss of the attorney-client privilege. In a contested or litigated matter, I will be very sensitive. Otherwise, I may be less concerned about losing the privilege than I am with seeing to it that your interests are best served by making sure that all of your advisors and other

interested parties working for or with us are fully informed, "on the same page," so to speak. At times this will be absolutely necessary in order to properly represent your interests, and in that case, I can only hope that if a matter is discussed that we do not want to be discoverable in a lawsuit, the courts will respect my need to work and communicate with third parties in the course of my representation.

2.10 Not a Third-Party Beneficiary Contract. Our engagement to do estate planning for you is not for the benefit of third parties and is not a third-party beneficiary contract, in favor of your descendants, beneficiaries, or anyone else. We will be working for you alone.

2.11 Duty to Read and Review Documents. It will be your affirmative duty to give all documents prepared by us a comprehensive review both before and after they have been signed and before the engagement ends (and to submit the documentation to your accountant for his or her review), and to visit with me about any document or provision you do not understand. You will review the documents carefully and thoroughly and will call me with any changes to make within a few weeks of receipt. If you wish to schedule an appointment to discuss the documents prior to the date of execution, we should meet within that period. I will make any changes that you request within **2-3 weeks** of your request if at all possible. (But again, I cannot promise you an exact time, and you agree that if the work is not done timely, the sole remedy will be a rebate of the bill, if any, rather than liability for any other consequences.) You will schedule an appointment or appointments through my secretary[2] to discuss the documents with me and to have them signed by you after they meet your satisfaction.

Some of the documents we prepare may be complex to read and understand. Again, by signing this engagement letter, you promise that you will read and review the documents thoroughly before they are signed. No attorney is error-proof. Your thorough review of the documents is important to insure that I have followed your directions and objectives and that we have properly recorded all essential information. Any changes made due to our error will be made without cost to you.

2.12 Ownership of "the File." At your request, your papers and property given by you to us will be returned to you promptly upon receipt of payment for outstanding fees and costs. We will see to it that you have copies of all relevant correspondence and final legal documents that are connected with our representation of you. We will nevertheless, supply you with additional copies of correspondence and other documents previously given to you in the course of our representation, provided you reimburse us for the copying charges. It is agreed, however, that our own files, including notes, drafts, research materials, internal memoranda, and other lawyer work product, whether or not created during the course of our representation of you, will belong to the Firm, and will not be subject to copying or delivery to you.

2.13 Retention of Documents. Any documents retained by the Firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

At the conclusion of our initial representation period, we will discuss with you whether you prefer for us to retain any original estate planning documents. It is commonly the case that we will retain the original of your Wills, for example. If you are retaining the originals, then they will be delivered to you at the conclusion of our initial representation period. If we retain any original documents, we will reserve the right to return them to you by delivering them to your last known address. **In this regard, you should be sure to provide us with a current address where you may be reached in case we are no longer able to keep the documents.** We may destroy any originals after ten years if we do not know of a mailing address where the documents may be returned at that time. We will retain photocopies of everything for at least five years. Although we may be retaining originals, we cannot assume responsibility for finding out whether or not there is a need to probate a will, deliver a document, etc., unless someone gives us actual notice of the need.

[2] My secretary is Irene Smith. Her direct line is (xxx) xxx-xxxx.

ARTICLE 3
Ethical Considerations and Conflicts of Interest

In beginning and completing your work, we will assume that the family, financial and other information you provide is complete and correct. We will assume that there are no conflicts of interest, other than as discussed in this engagement letter, and you affirmatively promise to disclose any conflicts that develop during the course of our representation.

3.1 Rules of Professional Conduct for Lawyers. There is a brochure prepared by the State Bar of Texas that answers some of the common questions about the duties that an attorney has to a client and about what a client can do if a rule of professional conduct has been violated. Copies of this brochure are freely available at the front desk of our office.

3.2 Joint Representation of Husband and Wife.

3.2(a) Potential Conflict of Interest. **Rule 1.06(b)** of the Texas Disciplinary Rules of Professional Conduct provides that as a general rule "a lawyer shall not represent a person if the representation of that person (1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests." This rule poses a nagging problem for a trust and estate lawyer, and experts have been agonizing for years over the resolution to the issue.

An argument can be made that in today's litigious society—where lawsuits are frequent and where it is assumed that if anything in life goes wrong someone must be sued—that every husband and wife has an inherent conflict of interest in estate planning for their family. This argument strikes some (including me) as extremely cynical; but you must remember that court cases are argued by litigation attorneys, and their perspective of as well as their monetary interest in our system of justice is different from those of us with an office practice. We deal with real people in day-to-day situations where, unlike the litigation attorney, the exception is not the rule.

Are your interests materially and directly adverse to one another? They could be; it depends on your circumstances and your attitudes, as much or more than on the law. You must help me make this determination, and in many ways you are in a better position than I am to decide this issue. Although there are a number of property law and other legal issues involved in estate planning, the question of whether the interest of a husband and wife are materially adverse to one another is primarily one of common sense for which you, in many respects, are perhaps better qualified than I to evaluate. If you feel that your interests are "materially and directly adverse" to one another then you must disclose this to me and only one of you should sign this letter, because in that case, I will decline to undertake the joint representation of you both.

By both of you signing this letter you will be representing to me that your interests are not "materially and directly adverse." If you are wrong in your conclusion regarding this issue, then by signing this letter you will be consenting to my joint representation of you both even if your interests are in fact materially and directly adverse.

3.2(b) Mutual Disclosure. **Rule 1.06(c)** reads: "A lawyer may represent a client in the circumstances described in (b) if: (1) the lawyer reasonably believes the representation of each client will not be materially affected; and (2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any."

If I undertake to represent you jointly it is because I reasonably believe my representation of each of you will not be materially affected by the conflict, if any. But I want you both, in any event, to be fully aware of the existence, nature, implication, and possible adverse consequences of the common representation and the advantages involved, if any. In this regard, I will send you, at the time I send the first draft of the estate planning documents, a diagram and memo that explains how property in Texas passes if a person does not have a Will.

3.2(c) Advantages and Disadvantages of Joint Representation. The advantages of joint representation include economy and the ability to coordinate an estate plan that obviously will affect you both but will also presumably be disclosed to each other as well as to me as your joint counsel. The disadvantages include the fact that

by planning the estate jointly, one or both of you may feel compelled to adopt a plan that is different from what you might otherwise implement in the privacy that separate representation affords; and further, if either of you owns separate property, an attorney that represents only you will be in a better position to further your interests in the event of a dispute over the proper characterization of the property as community or separate. **Moreover, if you have children by a prior marriage, your interests in benefitting them may not be identical and could be affected by the estate plan of your spouse**.

I am enclosing along with this letter a separate memorandum (entitled "Community Property Law") that briefly describes some of the more important rules of community and separate property law in Texas to help you to understand some of the issues and potential conflicts that could affect your decision about whether you feel joint representation is appropriate. I think you will find it interesting and informative, unless you are already aware of how the Texas community property law system works.

Note that either of you may ordinarily revoke or amend your Will or sign a new Will, without penalty or obligation. Occasionally clients execute what are known as election Wills or put provisions in a Will or trust for the benefit of a spouse contingent upon what the other spouse has done in his or her Will. If that is the case in the estate planning documents I prepare for you, I will take pains to make you aware of it. Each of you must assume the risk that the other may secretly revoke his or her Will or trust through the assistance of another lawyer, or that the surviving spouse will alter his or her estate plan after your death.

By each of you signing this letter each of you assumes the duty to report to me any fact or circumstance which may affect my impartial representation of you both, and any fact or circumstance that indicates that your interests are in conflict with one another.

Each of you are advised of the hazards of multi-party representation by one attorney. I cannot represent you both and be an advocate for one of you to the exclusion of the other. An attorney is required to be impartial, loyal, and to exercise independent judgment with regard to the client group as a whole. If I represent you jointly I may not promote the interest of one of you to the disadvantage of the other. An attorney may act as the common representative for more than one person in a common enterprise or endeavor for so long as their interests do not differ or potentially differ.

If I undertake to represent you jointly, both of you will have free access to any documents I prepare for either of you, and it must be understood that any communication that one of you makes to me will not be confidential with respect to your spouse. This is a condition of my undertaking joint representation.

It is theoretically possible for a lawyer to undertake the separate (as opposed to joint) representation of a husband and wife after full disclosure and if consent is obtained, but I have found that this is not only awkward but that it lacks some of the principal advantages that joint representation offers, such as the advantage offered by full disclosure of a commonly understood plan.

Each of you may serve as the spokesperson for all. I will assume in the absence of clear evidence to the contrary that each of you is communicating to the other respecting any conversations of a material nature that may occur between me and only one of you.

3.3 Duty to Ask Questions and to Understand Estate Plan. It is not uncommon for those who are passively involved in an estate planning endeavor to sign documents without thoroughly reading or understanding what they have signed. This cannot happen in this engagement. In signing this Agreement, each of you affirmatively represents and promises that you will read any documents I prepare, will ask questions when in doubt about the meaning of any document or term, and will not sign or rely upon a document prepared by me until you understand the document.

3.4 Duty to Ask Questions. It is not uncommon for those who are passively involved in a legal matter to sign documents without thoroughly reading or understanding what they have signed. This cannot happen in this engagement. In signing this Agreement, each of you affirmatively represents and promises that you will read the documentation, will ask questions when in doubt about the meaning of any document or term, and will not sign the documentation until you understand the documents.

3.5 Retainer. **We require an initial retainer of $XXX**. This retainer will be **applied to** the extent applicable and necessary for discharge of the last statement of the Firm following completion of our engagement (**i.e., it will NOT**

be applied against your initial billings), with any remaining amount of the retainer to be refunded to you immediately following the closing of the Firm's representation of you and completion of the billing and settlement of the account. However, a purpose of the deposited amount is to have on hand funds available for the discharge of past due billings, and if the deposited retainer is utilized for such purpose, an amount of at least the amount of the retainer will be required for the Firm to continue its representation of you. It is agreed that the retainer will be maintained by the Firm for your account, subject to the agreement for its utilization. Until utilized or refunded, we will hold the retainer in an IOLTA trust account (Texas Interest on Lawyers' Trust Account) under the Equal Access to Justice Program. See http://www.txiolta.org.)

3.6 Involvement of C.P.A. You are advised that your Certified Public Accountant should be involved in this planning. The failure to involve the accountant could result in subsequent confusion, time and cost when the accountant is asked to review your plan for the first time during tax season and in the course of the preparation of the added income and gift tax returns which may result from your planning. It will be your affirmative duty to involve your accountant, whose services will be necessary to maintain the plan, in the planning process. In this regard, please note that most gifts to trusts, and all outright gifts in excess of the annual exclusion, generally require the preparation and filing of a gift tax return. However, we will not be undertaking to prepare any tax returns, whether income or gift tax or any other, unless specifically requested to do so in writing, and then we will not be responsible for a return that is not actually prepared by us and signed by you, so that if you do not sign a return, it is understood that we did not undertake to prepare or file it.

3.7 Changes in the Law/Periodic Review of Estate Plan. We represent many, many, estate planning clients. It is virtually impossible to advise all of our clients of changes in the law, even if those changes directly affect an estate plan or the legality and effectiveness of any document that we may have prepared. Many years ago this may have been feasible, but in recent decades the Congressional penchant for spawning new legislation and changing old legislation makes this task simply too daunting. Nor can we assume responsibility for probating your Will if no one engages us and actually informs us of the need to do so. This is true whether or not we retain the original signed estate planning documents.

Although we may from time to time voluntarily contact you regarding your estate plan or the legality or effectiveness of a document that we may have prepared for you, we do not undertake to be legally bound to do so. Therefore, after a document has been signed, we will assume no further obligation with respect to it, whether or not we retain the original. This means, for example, that it will be necessary for you to keep in touch with us from time to time, if you wish for us to continue to represent you and if you wish to be informed of changes in the law and related matters.

3.8 Multiple Counterparts. This Agreement may be signed in duplicate (multiple counterparts), in which case, any one counterpart may be deemed an original for all purposes. I have signed both the printed copy and the photocopy, since both may be treated as originals under this Agreement.

3.9 Return of One Contract. If you find this Agreement acceptable, please sign one of the counterparts of this letter, and return it to me, along with the $5000 retainer.

3.10 **Enclosures**. Your copy of this letter is spiral bound (except for the magazine articles) and separated by index tabs. This is for your convenience and future ready reference. The printed copy of this letter is separate from the attachments, in order that you may easily sign and return it to me in the enclosed, stamped self-addressed envelope.

3.11 Effect of Failure to Sign. If you do not sign this Agreement, and another contract that is mutually agreeable and signed by me is not substituted in its place, and if I nonetheless proceed to act as your attorney with your apparent permission, I will assume that the failure to sign is an oversight unless you notify me otherwise in writing. Therefore, if I represent you with respect to the matters within the scope of this engagement letter, it will ordinarily be under the terms set forth above, unless this letter has been superseded by another one.

3.12 IRS Circular 230 Disclosure. IRS Circular 230 Disclosure (U.S. Federal Tax Advice): Any U.S. federal tax advice contained in this email (including any attachments) is not written in a form, nor is it intended, to satisfy the requirements for an opinion on which you (or any other taxpayer) may rely for the purpose of: avoiding penalties under the Internal Revenue Code of 1986, as amended; or promoting, marketing or recommending to another party a transaction (or matter) addressed in this email.

Yours very truly,

Joe Lawyer

If you accept the terms of this engagement letter please sign the original where indicated below, and return it to me **along with a $XXX retainer** as soon as reasonably convenient. For your convenience in this regard, I am enclosing a stamped, self addressed, return envelope. Your copy of the letter is spiral bound among the attachments and is marked by an index tab. Please retain the extra copy for your records.

TERMS OF AGREEMENT ACCEPTED BY CLIENT

Date Signed:_____ _____

Husband

Date Signed:_____ _____

Wife

Enclosures: Extra copy of this letter
Return envelope
Brochure: "What is an Estate Planning & Probate Law Board Certified Attorney?"
Article Regarding Generation Skipping Trusts
Memo entitled "Who Inherits in Texas When There is No Will"
Memo entitled "Community Property Law"
Approximate Fee Schedule

cc: Bookkeeping
people who get copies

APPENDIX H
Multi-Executor Conflict Waiver

_____, 20___

Client 1 _____

Client 2 _____

Client 3 _____

Re: *Estate of* _____, *Deceased,* In the County Court at Law of _____ County, Texas

Dear 1, 2, and 3:

THIS IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM CANNOT REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

I am sending you this letter because you need to understand I need to fully explain the consequences of joint representation. The **(number)** of you are appointed or are applying to be appointed as Independent Executors. You have asked me to represent all of you. I agree to represent **all/both** of you together, as an intermediary, because I reasonably believe that, at this point, the resolution of any conflicting issues that you may have can be accomplished in a mutually advantageous basis without the necessity of litigation between or among any of you; that each of you will be able to make independent, rational decisions in the matter if I adequately inform you; and that there is little risk of material prejudice to any of your interests by this joint representation.

You should, however, understand the following:

1. One of you might gain some advantage if you were represented by independent counsel and could freely consult with your own lawyer.

2. I cannot serve as an advocate for any one of you, but, instead, must assist all of you in pursuing your common interests as Co-Executors of this Estate, as a consequence of which each of you must be willing to make independent decisions concerning whether you should agree to the resolution of any conflicts that you may have among or between you.

3. I have to deal fairly and impartially with each of you; no information that I receive or that anyone in my office receives is confidential between or among you.

4. I will be required to disclose information to each of you if that information will materially affect the position of any of you or would work a fraud on any of you, even if you request me not to do so.

5. I will be required to correct any false or misleading statements or material omissions relating to my representation made by or on behalf of any of you, if the failure to do so would materially affect the position of any of you in this matter or would work a fraud on any of you even if requested not to do so.

6. I will be required to withdraw in the event any of you request me to or, if in my judgment or your judgment, I cannot move this Estate forward in an expeditious manner. I will not be able to continue representing any of you unless you later decide that we can enter into a joint representation agreement, again.

7. A major advantage to having one lawyer represent all of you is that it usually results in substantial savings of legal fees as well as time.

If this is satisfactory, please sign this document and return it to me. I cannot go forward on this matter until I receive a signed copy of this from all of you. Even though I have disclosed all of this information and much more to you, verbally, I need this to satisfy the rules that govern my work as a lawyer by sending this letter to you, having you sign it and return it to me before I get started. I am also sending you a copy of the Agreement for Representation-Probate regarding fees and other matters that supplements this agreement.

Sincerely yours,

LAWYER

AGREED and ACCEPTED:

Client 1	Date
Client 2	Date
Client 3	Date

Enclosure: Agreement for Representation – Probate

APPENDIX I
Litigation Agreement

_____, 20___

_____
_____
_____

Re: Agreement for Representation for Litigation and General Matters

_____
File/Matter Name

Dear Client:

THIS IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM CANNOT REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

Please read this letter carefully. It describes the terms and conditions under which MOORMAN TATE HALEY UPCHURCH & YATES, LLP will undertake to represent you in connection with the legal matter described below. Our firm policy requires that each client sign a copy of this letter, agreeing to the terms and conditions set forth below, before we can engage in any representation. The terms and conditions of our agreement for engagement are as follows:

1. Scope of Engagement.

1.1. **Description of Representation**. You are retaining and employing us as your attorneys, to represent and provide legal services to you in connection with _____ _____ (all referred to in this agreement as the "Legal Matter"). This representation will include advising, counseling, negotiating, investigating, handling, prosecuting and/or defending such legal matters, to final settlement or adjudication. If you decide to engage us for additional legal matters, the terms and conditions of this agreement will apply to those matters as well but we will also require a separate written agreement specific to those matters which must be signed by you and us.

1.2. **Use of Other Consultants and Assistance**. By signing this agreement, you are authorizing us to do whatever is reasonably necessary and appropriate, in our professional judgment, to represent you properly, and to incur the costs and expenses reasonably necessary to handle your matter. This includes the authorization and power to associate or employ such other persons or entities as we may deem necessary to assist us, such as consultants, support services, technical experts, or other attorneys who are not members of our firm (either "local counsel" in a distant forum, or contract legal services with attorneys or legal assistants). You will be consulted before any professionals or other experts are hired by us. In an effort to reduce overall legal costs, we may utilize legal assistant personnel and other support staff whenever appropriate. All such services are performed under the direction and supervision of an attorney, and within our discretion and judgment.

2. Cooperation.

2.1 **Full Disclosure and Cooperation.** In order to enable us to effectively render the legal services contemplated by this agreement, you agree to fully and accurately disclose all facts and to keep us informed of all developments relating to the Legal Matter. We have to rely on the accuracy and completeness of the facts and information and that you and your agents provide to us because your bill would be very expensive if we have to independently verify everything you disclose to us. To the extent it is necessary for you or your representatives to attend meetings in connection with the Legal Matter, we will attempt to schedule them in cooperation with you. Likewise, you must give us adequate notice if you will not be able to attend a meeting or provide information as requested. You acknowledge and agree that it is important to cooperate with us in scheduling meetings, conducting phone calls, reviewing documents, and providing responses to requests for information from us or the professionals or experts that we may employ. You agree to cooperate with us, to the best of your ability, in order to successfully conclude our representation of you.

2.2 **Permission to Investigate Credit and Background**. You agree that we may investigate your personal and professional background and may check your credit history in deciding whether or not to represent you.

3. Fees.

3.1. **Basis for Fees**. Our firm's fees are based on the time spent by the lawyers and firm personnel on who work on the matter. You understand that, by accepting representation of you in this matter, we may have to forego representation of other clients with a resulting loss of fees. You also acknowledge that our fees are set on the basis of what we consider to be a fair and reasonable charge for the services rendered, based upon the time, labor and skill required to perform the legal services properly, as well as the fee customarily charged by other attorneys for similar legal services. The fee is not set by law, but is negotiable.

3.2. **Hourly Rates**. Our fees for legal services are based on the attached schedule.

The hourly rates usually increase at the beginning of each calendar year to take into account current levels of legal experience, changes in overhead costs and other factors. Any increase will be disclosed to you.

You will be billed at the applicable hourly rate for all legal services that we provide. This may include legal research, drafting of pleadings, conferences, telephone conversations, preparation of documents, investigation of facts, preparing for and taking depositions, preparation for and appearances in court, and other tasks necessary to adequately handle the matter in controversy. You will also be billed for the time that we spend talking with you about the Legal Matter, sending you correspondence, or responding to requests for information from you or your representatives. An attorney's time involved in out-of-office representation will be measured from the time the attorney leaves the office until the attorney arrives back at the office. All time will be billed in minimum increments of one-quarter (1/4) hour, even though the time spent may be less than one-quarter (1/4) hour.

We reserve the right to deduct any outstanding fees, charges, expenses and interest that you owe us from any settlement or award to you in connection with the Legal Matter.

3.3. **Costs and Expenses**. In addition to our fees, you will be billed for other items incurred in connection with the performance of our legal services, such as filing fees, court costs, photocopying and other duplication costs, long distance telephone calls, facsimile transmissions, delivery charges, travel expenses, deposition costs, and specialized computer applications such as computerized legal research or public records searches. Unless special arrangements are otherwise made, the fees and expenses of other consultants and professionals (such as experts, investigators, accountants, appraisers, records handlers, consultants, or specialized or local legal counsel) incurred on your behalf will be billed directly to you, and you will be responsible for paying them. Also, all invoices for costs and expenses in excess of $200 will be forwarded to you for direct payments.

Occasionally, when a bill for a specific matter is rendered near the conclusion of the matter, posting of some time and charges (such as telephone, copying, court costs, or similar items) may be delayed, or there may be an invoice which is not delivered to us until after the legal matter has been finalized. In such cases, the "after closing" expenses will also be billed to you, even though you may have previously received what was designated as a "final" bill. You will be responsible for paying these "after closing" expenses.

3.4. **DEPOSIT**. IT IS OUR USUAL PRACTICE TO REQUIRE PAYMENT OF A DEPOSIT BEFORE WE BEGIN WORK FOR A CLIENT. WE HAVE ASKED THAT YOU REMIT AND MAINTAIN WITH US, DURING THE ENTIRE COURSE OF OUR REPRESENTATION OF YOU IN THIS MATTER, AN INITIAL DEPOSIT IN THE AMOUNT OF $_____ (THE "DEPOSIT"). WE WILL PLACE THE DEPOSIT INTO OUR TRUST ACCOUNT. WE WILL SEND YOU MONTHLY STATEMENTS FOR FEES AND EXPENSES. YOU AGREE TO PAY THE AMOUNT DUE IN FULL EACH MONTH. THE DEPOSIT WILL STAY ON DEPOSIT IN OUR TRUST ACCOUNT. UPON THE TERMINATION OF OUR SERVICES, WE WILL PROMPTLY REFUND THE DEPOSIT TO YOU, LESS ANY BALANCE FOR FEES AND EXPENSES UNPAID AS OF THE DATE OF OUR FINAL BILL.

WE RETAIN THE RIGHT AND DISCRETION TO REQUEST A SUPPLEMENTAL COST DEPOSIT, OVER AND ABOVE THE INITIAL DEPOSIT, IN THE EVENT OF AN INCREASE IN OUR ANTICIPATED FEES AND EXPENSES DURING THE COURSE OF REPRESENTING YOU. IF WE MAKE SUCH A REQUEST, YOU WILL AGREE TO PROMPTLY DELIVER THE ADDITIONAL DEPOSIT TO US.

3.5. **Monthly Statements**. We will normally submit a bill to you on a monthly basis, and it is due and payable upon receipt. Each lawyer and support staff personnel contemporaneously records the time required to perform services, and these time records are put into a computer that generates a monthly bill which we try to send out around the end of the month. This bill describes the services performed and the expenses incurred. We encourage you to review the bill and to contact us if you have any questions about the services described or the expenses incurred. If we do not hear from you, we will presume that you understand and approve of the charges included in the monthly statement. If you ask us to do so, we will bill you by email.

There may be occasions involving unforeseen circumstances when a bill will go unpaid. In such instances, we will attempt to work with you, if you communicate the nature of the delay to us. However, we expect you to pay us on time each month; we do not want to become your creditor.

3.6. **INTEREST ON PAST DUE AMOUNTS**. UNLESS WE OTHERWISE AGREE WITH YOU IN WRITING, UNPAID FEES AND EXPENSES WILL BE CONSIDERED PAST DUE IF NOT PAID WITHIN THIRTY (30) DAYS OF THE BILLING DATE. ALL PAST DUE AMOUNTS SHALL BEAR INTEREST AT THE RATE OF 1.5% PER MONTH (18% ANNUAL PERCENTAGE RATE), OR THE MAXIMUM RATE ALLOWED BY LAW, UNTIL PAID. INTEREST CHARGES WILL BE CALCULATED ON ALL PAST DUE AMOUNTS AND ADDED TO THE NEXT MONTH'S BILLING STATEMENT.

3.7. **Failure to Pay Fees**. You agree that we have no responsibility to perform any further work for you, if you fail to pay any monthly statement for fees and expenses (including bills for expenses received from third parties), or to timely respond to a request for a supplemental cost deposit, as stated above. By your signature on this engagement agreement, you also acknowledge and agree that, in accordance with Texas Law, we have a right to assert a lien against your files to secure payment of any unpaid amounts you owe us.

3.8. **Awards of Attorneys' Fees**. Occasionally, we will request reasonable attorneys' fees from another party in a legal proceeding. Regardless of how any court rules with respect to the award of attorneys' fees (or how the court rules on the reasonableness of legal fees requested in any pleading), you are agreeing to pay us the fees set forth in this engagement Agreement. If we receive any compensation as the result of an award of attorneys' fees, then we will, in our discretion, either: (1) credit such receipt to the amount of any unpaid bill, or (2) reimburse you for the amount of the receipt (if, and only if, you do not owe us any fees or expenses at the time that the attorneys' fees are received).

3.9. **Estimates of Fees**. During the course of our discussion with you about handling the Legal Matter, we may have provided you with certain estimates of the size of fees and expenses that will be required at certain stages. It is our firm policy to advise all of our clients that such estimates are our best guess, and that the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which the opposition files pretrial motions and engages in its own discovery. The reason why we submit bills to our clients on monthly basis, shortly after the services are rendered, is so that you will have a ready means of monitoring and controlling the legal costs you are incurring. If you believe the expenses are mounting too rapidly, you need to contact us immediately so that we can assist you in evaluating how they might be curtailed in the future. If we do not hear from you, you will be deemed to have approved of the overall level of activity on our part in this case on your behalf.

4. Conflicts of Interest. One of the most important considerations which we must have in accepting an engagement is whether the engagement will put us in conflict with any existing client interest. If we discover such a conflict after we have begun work for you, we may be disqualified from continuing our representation of you. You acknowledge that it is, therefore, very important for you to consider all the interests which are involved in the Legal Matter, to be certain that you have advised us fully in that regard. If we, in our judgment and discretion, determine that a conflict of interest does exist, we will notify you and all other affected clients, and will proceed in a manner consistent with the ethical standards contained in the Texas Disciplinary Rules of Professional Conduct (the "Disciplinary Rules").

5. Withdrawal from Representation.

5.1. **Withdrawal of Firm**. You have requested our advice and counsel as a part of our services to you. In order for our representation of you to be successful, it is important that you follow our advice, reasonably cooperate with us, and abide by the terms and conditions of this agreement. If any of the following events occur, we reserve the right to withdraw from representing you in this matter at any time:

(a) You insist that we present a claim or defense that is not warranted under existing law and cannot be supported by a good-faith argument for an extension, modification, or reversal of existing law;

(b) You seek to pursue an illegal course of action;

(c) You fail to follow our advice or to reasonably cooperate with us, or, by your conduct, you render it unreasonably difficult for us to represent you;

(d) You insist that we engage in a course of conduct that is illegal or that is prohibited under the lawyers' Disciplinary Rules;

(e) You insist that we engage in conduct that is contrary to our judgment and advice, but not prohibited under the Disciplinary Rules;

(f) You fail to timely pay statements for our fees, expenses or costs, or you otherwise fail to fulfill or abide by the terms and conditions of this agreement;

(g) We determine, in our sole judgment and discretion, after further investigation, that the facts related to the Legal Matter are materially different from those you represented to us and upon which our agreement to represent you was based; or

(h) We are required to withdraw due to a conflict in interest, because an attorney with the firm becomes a witness in the case, or for any other reason required under the Disciplinary Rules.

In any of these events, you agree that we may move to withdraw as your counsel in any suit in which we have made an appearance on your behalf or from any matter in which we are representing you, and that you will promptly execute any documents required to accomplish this.

If we withdraw for any reason, we will take reasonable steps to avoid foreseeable prejudice to your rights, including giving proper notice, allowing reasonable time for your to employ other counsel, delivering to you all papers and property to which you are entitled, and complying with applicable laws and rules.

5.2. **Withdrawal by You**. It is our desire and goal that you be satisfied with our legal services at all times. At any time you wish, however, you may cease to use our services by notifying us in writing. You will be still responsible for payment of any and all fees, expenses, and costs that have been incurred in connection with our representation of you prior to the date that we receive your written notice as well as the obligation to pay our then current hourly rates if we are called to testify or assist in another matter.

5.3. **Resolution of Case; Death or Dismissal of Parties**. In the event of a bona fide resolution of the Legal Matter by the parties, or in the event that our services are no longer necessary for any reason, you must pay us or make suitable arrangements for the payment of the total amount of all fees, expenses, and costs still outstanding before the signing and filing of the instruments necessary to resolve the matter or terminate our services. If you die or are declared legally incompetent while any outstanding amount is owed to us under this agreement, your estate or guardian will owe us for those amounts.

5.4. **Suit for Fees**. In the event of any dismissal, withdrawal, or termination of our representation of you under this agreement, you agree and understand that the terms of this engagement Agreement pertaining to the payment of fees, costs and/or expenses for our services rendered up to and including the date of such dismissal, withdrawal or termination of representation shall remain in full force and effect. If we are compelled to intervene in a pending Lawsuit or to initiate any subsequent Lawsuit in order to cover those fees, costs, and/or expenses, you agree to pay us, in addition to the fees, costs and/or expenses due us, any and all attorneys' fees, costs and/or expenses incurred in that legal action.

6. No Income Tax Advice. You understand that our representation does not include rendering any income tax advice to you or the preparation of any income tax returns. You must seek such advice from your accountant or other financial advisor.

7. FAVORABLE OUTCOME NOT GUARANTEED. ALTHOUGH WE WILL USE OUR BEST REASONABLE, ETHICAL AND PROFESSIONAL EFFORTS IN REPRESENTING YOU, WE CANNOT PREDICT OR GUARANTEE THE RESULTS OF OUR EFFORTS OR THE OUTCOME OF THE LEGAL MATTER. YOU UNDERSTAND THAT WE HAVE MADE NO REPRESENTATION CONCERNING THE SUCCESSFUL DETERMINATION OR RESOLUTION OF THE LEGAL MATTER OR RELATED CLAIMS OR THE FAVORABLE OUTCOME OR ANY LEGAL ACTION THAT IS OR MAY BE FILED, AND WE HAVE NOT GUARANTEED THAT WE WILL OBTAIN REIMBURSEMENT TO YOU OF ANY OF THE FEES, COSTS, AND/OR EXPENSES INCURRED BY YOU IN THE PROSECUTION OR DEFENSE OF THE LEGAL MATTER. YOU FURTHER EXPRESSLY ACKNOWLEDGE THAT ALL STATEMENTS FROM US ON THESE MATTERS ARE STATEMENTS OF OPINION ONLY.

8. Document Retention. Although we attempt to retain copies of most documents generated by our firm, we are not responsible in any way for keeping copies (electronic or otherwise). We ask that you keep all originals and copies that you desire among your own files, for future reference. If you do not keep the copies, we cannot be responsible for the document no long being able to be found.

9. Mediation. Before resorting to litigation or arbitration, any disputes arising out of or connected with this engagement agreement (including but not limited to the services performed by any attorney under this agreement) will be submitted to non-binding mediation in Washington County, Texas, in accordance with the rules for alternative dispute resolution set forth under Texas law. You and we will mutually cooperate to select the mediator to be used. Any and all information, negotiation, and results of the mediation will remain confidential. The mediation is not binding on either party.

10. Entire Agreement; Amendment. This engagement agreement constitutes the entire agreement between us with respect to the matters contained in it. This agreement may not be modified or revoked unless by a written agreement signed by both parties, which will be attached to this agreement and made a part of it.

11. Controlling Law. This agreement will be governed, construed, interpreted and enforced under the laws of the State of Texas.

12. Complaints and Grievances. All lawyers in Texas have an obligation to maintain a high standard of ethical conduct toward their clients and others. To enforce this standard, the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar office of General Counsel will provide you with information about how to file a complaint. If you feel that misconduct may have occurred, or if you have questions regarding the disciplinary process, you may call or write the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, (512) 463-1381 or 1-800-932-1900 (toll free). By your signature below, you acknowledge a receipt of the Texas Lawyer's Creed, which is attached to this agreement.

13. Place for Performance. You agree that the place for performance for the majority of work to be performed under this Agreement is in Washington County, Texas.

14. Witness. You understand that if any attorney in the firm is called as a witness or asked to assist others acting on your or your estate's behalf in a later proceeding, you bind yourself and your estate to compensate us at our then prevailing hourly rates which will be disclosed to you or the representative of your estate at the time.

15. Optional Provisions Regarding Authorized Agents. You agree that _____ _____ is/are authorized by you to receive confidential information from us, but it is not intended by you to have that information disclosed to third persons.

You agree that _____ has/have authority to obtain legal services or act on advice rendered by us on your behalf.

16. ACKNOWLEDGMENT OF AGREEMENT. WE HAVE DISCUSSED WITH YOU THE TERMS AND CONDITIONS OF OUR ENGAGEMENT BECAUSE WE BELIEVE THAT YOU ARE ENTITLED TO KNOW OUR POLICIES, AND IN ORDER TO AVOID ANY MISUNDERSTANDINGS LATER. BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT, IN ADDITION TO YOUR HAVING READ THIS AGREEMENT IN ITS ENTIRETY, WE HAVE ANSWERED ANY QUESTIONS THAT YOU MAY HAVE CONCERNING THE AGREEMENT, AND THAT YOU UNDERSTAND THE AGREEMENT TO YOUR SATISFACTION AND UNDERSTANDING AND CONSIDER IT TO BE FAIR AND REASONABLE. BY YOUR SIGNATURE, YOU ALSO ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED BY US TO RETAIN SEPARATE INDEPENDENT LEGAL COUNSEL TO REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT AND THAT YOU HAVE HAD SUFFICIENT TIME TO DO SO. BY SIGNING BELOW, YOU ARE AGREEING TO THE TERMS AND CONDITIONS CONTAINED IN THIS ENGAGEMENT LETTER.

ACCEPTED:

CLIENT:

_____ _____
Date

LAW FIRM

By:_____ _____
Date

EXHIBIT "A"

Fee and Expense Schedule – 20XX

R. Hal Moorman	$XXX per hour
Larry P. Urquhart	$XXX per hour (civil) $XXX per hour (criminal)
Steven C. Haley	$XXX per hour
Laura J. Upchurch	$XXX per hour $ XXX per hour (contested probate and guardianship)
Wendy Yates	$XXX per hour $XXX per hour (estate planning, probate, trust and guardianships)
Andrew J. Hefferly	$XXX per hour
Support Staff	$XX - $XXX per hour (Probate) $XX per hour (Other)
Law Clerks	$XX per hour
Clerks	$XX per hour

Expenses

Copying	15 ¢ per page in firm or cost of copy service
Incoming Fax; Local Outgoing Fax	15 ¢ per page
Outgoing Long Distance Fax	Long distance call expense plus ten percent
Long Distance Calls	Cost to firm plus ten percent
Other Expenses	Cost to firm
Costs Advance	Cost to firm

APPENDIX J
Estate Planning Engagement Letter

Dear Client:

THIS IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM CANNOT REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

Services. I employ the firm of MOORMAN TATE HALEY UPCHURCH & YATES, LLP (hereinafter called "Attorney"), to represent me in the preparation of simple wills / tax planning wills / wills with disclaimer trusts / special needs trust wills / durable powers of attorney / medical powers of attorney / directives to physicians / designations of guardian / designation of guardian for child-incapacity / designation of agent for burial / irrevocable life insurance trust / revocable or living trust with pourover wills / Buy-Sell Agreement / Family Limited Partnership / 2503(c) Trust for Minors / Beneficiary Designations for Insurance Policies, IRAs and Other Retirement Plans **(does not include dealing with the insurance company or IRA provider to implement the designation – this will be an additional charge determined on an hourly rate basis)** / Qualified Personal Residence Trust (QRPT) / Private Foundation / Sale to intentionally Defective Trusts / Review of Account Designations on all bank and brokerage accounts and dealing with the insurance company or IRA provider to implement the beneficiary designation **(this will be charged on an hourly rate basis as shown on the attached schedule and, if chosen, will not be included in any lump sum fee)**, other: _____ _____. (Items circled are services requested)

The estate planning techniques listed above are not intended to be a comprehensive list of estate planning techniques. The attorney and I have reviewed and discussed these and other alternatives. I have elected to use only those techniques circled or written in above and no others.

Out of Office Signing. I understand that the attorney wants me to sign these documents at the attorney's office to make sure they are signed properly. If the documents are to be signed at a location other than the attorney's office, the expenses and time involved will be billed at the rates shown on the attached sheet and are in addition to the other fees quoted in this letter.

For Married Clients. I also realize that the characterization of property as separate, community, or separate with community rights of reimbursement is important. I understand that agreements such as community property conversion agreements and post-nuptial partition agreements can clarify and change the nature of property. I have elected to do only that which is circled or written in above and nothing else.

Fees. In consideration of this representation, I agree to pay at the offices of MOORMAN TATE HALEY UPCHURCH & YATES, LLP, in Brenham, Texas, the following: $_____. This fee covers the initial conference, the planning and preparation of a draft of the documents, a conference regarding any misspelled names or typographical errors, and a final conference to explain and sign the documents. If there are more changes because of changes requested by me other than what was requested in the initial conference, if the information I supply is inaccurate or incomplete, if I request other work than that described herein, or if I fail to sign the documents before sixty (60) days after I receive them, I will be charged for the changes, additional work, or any time spent on this matter at the rates shown on the attached sheet. Each portion of a quarter hour is billed as a full quarter hour. All work is done and all fees are payable in Brenham, Texas. These rates will normally increase at the end of each year. Costs paid to third parties are billed at cost plus.

Fee Earned. I agree that one-third of any lump sum fee is earned after the initial conference. The remainder of the lump sum fee is earned when the documents are prepared.

Permission to Investigate Credit and Background. I agree that the Attorney may investigate my personal and professional background and may check my credit history in deciding whether or not to represent me.

Citizenship and Document Review. I agree to read the documents thoroughly and notify the Attorney of any misspelled names or other errors obvious to me. Unless otherwise indicated on the contract, I am a United States citizen.

Payment Terms. I agree to pay half the fee immediately and the other half upon the receipt of the documents. I agree to sign the documents within sixty (60) days after I receive them. If I fail to do so, all work done after that date will be charged on the hourly rate basis shown above.

Witness. I understand that if the Attorney is called as a witness or asked to assist others acting on my or my estate's behalf in a later proceeding, I bind myself and my estate to compensate the Attorney at the Attorney's then-prevailing hourly rates.

Mediation. In the unlikely event I have a disagreement with the Attorney, before resorting to litigation or arbitration, any disputes arising out of or connected with this engagement agreement (including but not limited to the services performed by Attorney under this agreement) will be submitted to mediation in Washington County, Texas, in accordance with the rules for alternative dispute resolution set forth under Texas law. I and Attorney will mutually cooperate to select the mediator to be used. Any and all information, negotiation, and results of the mediation will remain confidential.

Confidentiality. I understand that, generally, all information I provide to the Attorney will be kept confidential and will not be disclosed to persons outside the Attorney's office without my consent. However, I authorize the Attorney to discuss my estate planning and share my confidential information: (1) with other of my professional advisors (such as CPAs, financial planners, insurance agents, etc.); (2) with persons named as an agent, trustee or other fiduciary in estate planning documents signed by me or prepared at my request; and (3) whenever my mental capacity is in question, with my children and other immediate family members, my health care providers, and other interested persons.

Other clients. I agree that under the rules that govern the practice of law, the Attorney can continue to represent existing and new clients regarding their estate planning or other matters even if these other clients are related to me (professionally or personally). I understand that, without prior permission, the Attorney will not reveal any confidential information of mine to these other clients and the Attorney will not relate any of the confidential information of the other clients to me. Regarding other immediate family members (immediate family members means parents and children), if they call the Attorney, the Attorney will first seek my permission to represent the other immediate family members. I will let the Attorney know if there is a conflict between my desires and the desires of these other immediate family members to the extent I am aware of any conflict. I also understand that if the Attorney becomes aware of a conflict, the Attorney will withdraw from representation of the last immediate family member who has hired the Attorney and will continue to represent the other immediate family member that the Attorney represented first.

Future legal services. I understand that changes likely will occur in tax, property, probate, and other laws which could impact my estate plan. The Attorney cannot economically review my file to determine the impact of changes in the law. Changes likely will occur in my own family, in marital circumstances, and in my finances, all of which could impact my estate plan. I understand I should contact the Attorney to have my plan reviewed regularly and I will be charged by the Attorney at the then prevailing hourly rates to answer questions and review my documents or estate plan.

Termination. I have the right to fire the Attorney at any time and the Attorney has the right to resign as my attorney at any time. The Attorney's active role, as my attorney, will terminate when my documents are signed. However, no termination will waive any of the remaining provisions of this agreement, including: (1) my agreement to pay the Attorney for all work performed prior to termination, (2) my consent to complete disclosure of confidential information to me and to others (to the extent authorized above), (3) the Attorney's ethical duties to me, such as the Attorney's duty not to disclose my confidential matters to third parties (except as authorized above), and (4) the obligation of my estate to compensate the Attorney if called as a witness in a later proceeding.

INTEREST ON PAST DUE ACCOUNTS. UNPAID FEES AND EXPENSES WILL BE CONSIDERED PAST DUE IF NOT PAID WITHIN THIRTY (30) DAYS OF THE BILLING DATE. I AGREE TO PAY INTEREST ON PAST DUE AMOUNTS AT THE RATE OF 1.5 % PER MONTH (18% ANNUAL PERCENTAGE RATE), OR THE MAXIMUM RATE ALLOWED BY LAW, WHICHEVER IS LESS, UNTIL PAID. INTEREST CHARGES WILL BE CALCULATED ON ALL PAST DUE AMOUNTS AND ADDED TO THE NEXT MONTH'S BILLING STATEMENT.

Document Retention. I agree the Attorney is not responsible to keep copies of my documents. I agree to keep all originals and copies that I desire among my own files for future reference.

Full Family and Financial Information. I have provided or have had others provide full family and financial information to the Attorney. I realize the documents prepared are based on this information I have supplied and are only as good as the information provided.

Place for Performance. The place for performance of this Agreement is Washington County, Texas.

Circular 230. I may ask the Attorney's advice regarding federal tax issues. The Internal Revenue Service (IRS) does not allow me to rely on informal tax advice rendered before I file my tax return to avoid tax penalties. If I want to rely on the Attorney's federal tax advice to avoid federal tax penalties, the IRS requires the Attorney to issue formal written tax opinions regarding the tax issue(s). Formal written tax opinions are not within the scope of this engagement. The IRS rules also prohibit someone else from using the advice the Attorney provides to me. All communications from the Attorney are intended for my use only and include, and are intended to reflect, in substance, the following notice:

> Treasury Circular 230 Disclosure: to the extent this communication contains any statement of tax advice, such statement is not intended or written to be used, and cannot be used, by any person for the purpose of, or as the basis for, avoiding tax penalties that may be imposed on that person. This communication if not intended to be used, and cannot be used for the purpose of promoting, marketing, or recommending to another party any matter addressed in this communication. This legend is attached pursuant to U.S. Treasury Regulations governing tax practice, to comply with requirements imposed by the Internal Revenue Service.

I will let the Attorney know if I want a formal, legal opinion regarding tax issues. I agree to sign a separate engagement letter with the Attorney to show I want such an opinion. I understand that the cost of such an opinion will be substantial given the IRS requirements.

Electronic Mail. We use electronic mail ("email"). Email may not be a secure communication. If you use a work computer to send emails, your employer may have access to those emails. Please indicate below if we have your permission to communicate with you by email.

Optional Provisions Regarding Authorized Agents. You agree that _____ _____ is/are authorized by you to receive confidential information from us, but it is not intended by you to have that information disclosed to third persons.

You agree that _____ has/have authority to obtain legal services or act on advice rendered by us on your behalf.

NOTE: MARRIED COUPLES SHOULD ALSO READ AND SIGN THE ATTACHED JOINT REPRESENTATION ADVISORY AND CONSENT.

ALL CLIENTS SHOULD ALSO READ THE DOCUMENT ENTITLED "WARNING TO CLIENTS REGARDING JOINT TENANTS, SURVIVORSHIP, POD AND TRUSTEE ACCOUNTS".

I have read and understand the terms of this document.

SIGNED on _____, 2014

_____ _____

Client Client

____ Yes. You may communicate with me via email.
Initial Preferred Email Address: _____

____ No. Please do not communicate with me via email.
Initial

NOTE: MARRIED COUPLES SHOULD ALSO READ AND SIGN THE ATTACHED JOINT REPRESENTATION ADVISORY AND CONSENT.

ALL CLIENTS SHOULD ALSO READ THE DOCUMENT ENTITLED "WARNING TO CLIENTS REGARDING JOINT TENANTS, SURVIVORSHIP, POD AND TRUSTEE ACCOUNTS".

Received the sum of $_____ in the form of check/cash on _____, 2012.

APPENDIX J-1

Estate Planning Engagement Letter
(Hourly Rate and Fixed Fee)

Dear Client:

THIS IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM CANNOT REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

Services. I employ the firm of MOORMAN TATE HALEY UPCHURCH & YATES, LLP (hereinafter called "Attorney"), to represent me in the preparation of drafts of simple wills / tax planning wills / wills with disclaimer trusts / special needs trust wills / durable powers of attorney / medical powers of attorney / directives to physicians / designations of guardian / designation of guardian for child-incapacity / designation of agent for burial / irrevocable life insurance trust / revocable or living trust with pourover wills/ Buy-Sell Agreement / Family Limited Partnership / 2503(c) Trust for Minors / Beneficiary Designations for Insurance Policies, IRAs and Other Retirement Plans (does not include dealing with the insurance company or IRA provider to implement the designation – this will be an additional charge determined on an hourly rate basis) / Qualified Personal Residence Trust (QRPT) / Private Foundation / Sale to intentionally Defective Trusts / Review of Account Designations on all bank and brokerage accounts and dealing with the insurance company or IRA provider to implement the beneficiary designation (this will be charged on an hourly rate basis as shown on the attached schedule and, if chosen, will not be included in any lump sum fee), other: _____. (Items circled are services requested)

The estate planning techniques listed above are not intended to be a comprehensive list of estate planning techniques. The attorney and I have reviewed and discussed these and other alternatives. I have elected to use only those techniques circled or written in above and no others.

Out of Office Signing. I understand that the attorney wants me to sign these documents at the attorney's office to make sure they are signed properly. If the documents are to be signed at a location other than the attorney's office, the expenses and time involved will be billed at the rates shown on the attached sheet and are in addition to the other fees quoted in this letter.

For Married Clients. I also realize that the characterization of property as separate, community, or separate with community rights of reimbursement is important. I understand that agreements such as community property conversion agreements and post-nuptial partition agreements can clarify and change the nature of property. I have elected to do only that which is circled or written in above and nothing else.

Fees. In consideration of this representation, I agree to pay at the offices of MOORMAN TATE HALEY UPCHURCH & YATES, LLP, in Brenham, Texas, as follows: (i) a fixed fee for the preparation of a draft of the documents of $_____ and (ii) on an hourly rate basis for all conferences, research and the finalization of documents to be billed at the rates shown on the attached sheet. Each portion of a quarter hour is billed as a full quarter hour. All work is done and all fees are payable in Brenham, Texas. These rates will normally increase at the end of each year. Costs paid to third parties are billed at cost plus.

Fee Earned. I agree that one-third of any fixed fee is earned after the initial conference. The remainder of the fixed fee is earned when the documents are prepared. The hourly rates are earned as the work is done.

Permission to Investigate Credit and Background. I agree that the Attorney may investigate my personal and professional background as well as check my credit history in deciding whether or not to represent me.

Citizenship and Document Review. I agree to read the documents thoroughly and notify the Attorney of any misspelled names or other errors obvious to me. Unless otherwise indicated on the contract, I am a United States citizen.

Payment Terms. I agree to pay half the fixed fee immediately and the other half upon the receipt of the documents. I agree to pay the hourly rates when billed.

Witness. I understand that if the Attorney is called as a witness or asked to assist others acting on my or my estate's behalf in a later proceeding, I bind myself and my estate to compensate the Attorney at the Attorney's then-prevailing hourly rates.

Mediation. In the unlikely event I have a disagreement with the Attorney, before resorting to litigation or arbitration, any disputes arising out of or connected with this engagement agreement (including but not limited to the services performed by Attorney under this agreement) will be submitted to mediation in Washington County, Texas, in accordance with the rules for alternative dispute resolution set forth under Texas law. I and Attorney will mutually cooperate to select the mediator to be used. Any and all information, negotiation, and results of the mediation will remain confidential.

Confidentiality. I understand that, generally, all information I provide to the Attorney will be kept confidential and will not be disclosed to persons outside the Attorney's office without my consent. However, I authorize the Attorney to discuss my estate planning and share my confidential information: (1) with other of my professional advisors (such as CPAs, financial planners, insurance agents, etc.); (2) with persons named as an agent, trustee or other fiduciary in estate planning documents signed by me or prepared at my request; and (3) whenever my mental capacity is in question, with my children and other immediate family members, my health care providers, and other interested persons.

Other clients. I agree that under the rules that govern the practice of law, the Attorney can continue to represent existing and new clients regarding their estate planning or other matters even if these other clients are related to me (professionally or personally). I understand that, without prior permission, the Attorney will not reveal any confidential information of mine to these other clients and the Attorney will not relate any of the confidential information of the other clients to me. Regarding other immediate family members (immediate family members means parents and children), if they call the Attorney, the Attorney will first seek my permission to represent the other immediate family members. I will let the Attorney know if there is a conflict between my desires and the desires of these other immediate family members to the extent I am aware of any conflict. I also understand that if the Attorney becomes aware of a conflict, the Attorney will withdraw from representation of the last immediate family member who has hired the Attorney and will continue to represent the other immediate family member that the Attorney represented first.

Future legal services. I understand that changes likely will occur in tax, property, probate, and other laws which could impact my estate plan. The Attorney cannot economically review my file to determine the impact of changes in the law. Changes likely will occur in my own family, in marital circumstances, and in my finances, all of which could impact my estate plan. I understand I should contact the Attorney to have my plan reviewed regularly and I will be charged by the Attorney at the then prevailing hourly rates to answer questions and review my documents or estate plan.

Termination. I have the right to fire the Attorney at any time and the Attorney has the right to resign as my attorney at any time. The Attorney's active role, as my attorney, will terminate when my documents are signed. However, no termination will waive any of the remaining provisions of this agreement, including: (1) my agreement to pay the Attorney for all work performed prior to termination, (2) my consent to complete disclosure of confidential information to me and to others (to the extent authorized above), (3) the Attorney's ethical duties to me, such as the Attorney's duty not to disclose my confidential matters to third parties (except as authorized above), and (4) the obligation of my estate to compensate the Attorney if called as a witness in a later proceeding.

INTEREST ON PAST DUE ACCOUNTS. UNPAID FEES AND EXPENSES WILL BE CONSIDERED PAST DUE IF NOT PAID WITHIN THIRTY (30) DAYS OF THE BILLING DATE. I AGREE TO PAY INTEREST ON PAST DUE AMOUNTS AT THE RATE OF 1.5 % PER MONTH (18% ANNUAL PERCENTAGE RATE), OR THE MAXIMUM RATE ALLOWED BY LAW, WHICHEVER IS LESS, UNTIL PAID. INTEREST CHARGES WILL BE CALCULATED ON ALL PAST DUE AMOUNTS AND ADDED TO THE NEXT MONTH'S BILLING STATEMENT.

Document Retention. I agree the Attorney is not responsible to keep copies of my documents. I agree to keep all originals and copies that I desire among my own files for future reference.

Full Family and Financial Information. I have provided or have had others provide full family and financial information to the Attorney. I realize the documents prepared are based on this information I have supplied and are only as good as the information provided.

Place for Performance. The place for performance of this Agreement is Washington County, Texas.

Circular 230. I may ask the Attorney's advice regarding federal tax issues. The Internal Revenue Service (IRS) does not allow me to rely on informal tax advice rendered before I file my tax return to avoid tax penalties. If I want to rely on the Attorney's federal tax advice to avoid federal tax penalties, the IRS requires the Attorney to issue formal written tax opinions regarding the tax issue(s). Formal written tax opinions are not within the scope of this engagement. The IRS rules also prohibit someone else from using the advice the Attorney provides to me. All communications from the Attorney are intended for my use only and include, and are intended to reflect, in substance, the following notice:

> Treasury Circular 230 Disclosure: to the extent this communication contains any statement of tax advice, such statement is not intended or written to be used, and cannot be used, by any person for the purpose of, or as the basis for, avoiding tax penalties that may be imposed on that person. This communication if not intended to be used, and cannot be used for the purpose of promoting, marketing, or recommending to another party any matter addressed in this communication. This legend is attached pursuant to U.S. Treasury Regulations governing tax practice, to comply with requirements imposed by the Internal Revenue Service.

I will let the Attorney know if I want a formal, legal opinion regarding tax issues. I agree to sign a separate engagement letter with the Attorney to show I want such an opinion. I understand that the cost of such an opinion will be substantial given the IRS requirements.

Electronic Mail. We use electronic mail ("email"). Email may not be a secure communication. If you use a work computer to send emails, your employer may have access to those emails. Please indicate below if we have your permission to communicate with you by email.

Optional Provisions Regarding Authorized Agents. You agree that _____ _____ is/are authorized by you to receive confidential information from us, but it is not intended by you to have that information disclosed to third persons.

You agree that _____ has/have authority to obtain legal services or act on advice rendered by us on your behalf.

NOTE: MARRIED COUPLES SHOULD ALSO READ AND SIGN THE ATTACHED JOINT REPRESENTATION ADVISORY AND CONSENT.

ALL CLIENTS SHOULD ALSO READ THE DOCUMENT ENTITLED "WARNING TO CLIENTS REGARDING JOINT TENANTS, SURVIVORSHIP, POD AND TRUSTEE ACCOUNTS".

I have read and understand the terms of this document.

SIGNED on _____, 2012

_____ _____

Client Client

____ Yes. You may communicate with me via email.
Initial Preferred email address: _____

____ No. Please do not communicate with me via email.
Initial

Received the sum of $_____ in the form of check/cash on _____, 2012.

2014 FEE AND EXPENSE SCHEDULE
FEES – HOURLY RATES - STANDARD

FEES

R. Hal Moorman	$XXX
Larry P. Urquhart	$XXX
Steven C. Haley	$XXX
Laura J. Upchurch	$XXX
Wendy Yates	$XXX
Andrew J. Hefferly	$XXX
Support Staff	$XXX
Probate	$XX/$XX/$XXX
Law Clerks	$XX
Clerks	$XX

EXPENSES

Photocopies	XX¢ per page in firm, or cost of copy service
Color Photocopies	$X.00 per copy, or cost of copy service
Incoming Fax; Local Outgoing Fax	XX¢ per page
Outgoing Long Distance Fax	Long distance call expense + 10%
Long Distance Calls	Cost to firm + 10%
Other Expenses	Cost to firm
Costs Advanced	Cost to firm
Mileage	.51 per mile

APPENDIX K
Letter to Beneficiaries When Representing Executor

_____, 20___

Beneficiary 1

Beneficiary 2

Re: Estate of John Doe, Deceased

Dear Mr. Beneficiary 1 and Ms. Beneficiary 2:

Please accept my condolences on your father's death.

Enclosed please find some correspondence and documents regarding your father's estate. We will be filing the will for probate as a muniment of title.

As you know the will leaves all of your father's estate to your mother. I am enclosing a copy of the will for your information.

Because I am representing your mother as executor of the estate in this matter, I cannot represent you. To the extent you have any questions about what we will be doing in this estate., I would be happy to answer them. I cannot, however, give you any legal advice. You will need to obtain your own legal representation to the extent you believe it is advisable to do so.

Sincerely yours,

LAWYER

APPENDIX L
Purpose of the Engagement Letters and Checklists

(Reprinted with the permission of the American College of Trust and Estate Counsel)

For use with the *ACTEC Commentaries on the Model Rules of Professional Conduct,* Fourth Edition 2006

Developed by the
Professional Responsibility Committee of
The American College of Trust and Estate Counsel

INTRODUCTION

Purpose of the Engagement Letters and Checklists

In October 1993 the Board of Regents of The American College of Trust and Estate Counsel adopted the ACTEC Commentaries on the Model Rules of Professional Conduct ("ACTEC Commentaries"), to provide better guidance to estate planners regarding their professional responsibilities. The ACTEC Commentaries consists primarily of commentaries that discuss how the most relevant of the ABA's Model Rules of Professional Conduct apply to trust and estate lawyers. The project was undertaken by ACTEC, in part, because of a concern that the ABA's Model Rules of Professional Conduct and the Comments to them primarily reflected a perspective based on a litigation or adversarial model that provided insufficient guidance to estate planners regarding their ethical responsibilities.

The ACTEC Commentaries continues to be a work in progress—one that is periodically revised to reflect amendments to the Model Rules and the latest ethics cases and opinions. Accordingly, the ACTEC Commentaries was revised and updated in March 1995, March 1999, and again in March 2006. Among other things, the Fourth Edition of the ACTEC Commentaries, published in March 2006, addresses the important changes to the Model Rules made by the ABA in 2002 and 2003.

From the outset, the Commentaries have consistently emphasized that the Model Rules generally permit lawyers and their clients to define the scope and objectives of a legal engagement. Reflecting that emphasis, the Commentaries strongly encourage the use of engagement letters to establish the scope and objectives of an engagement, to describe the basis upon which fees will be determined, and to explain how conflicts of interest and issues of confidentiality will be handled. As stated in the ACTEC Commentary on MRPC 1.3, "The risk that a client will misunderstand the scope or duration of a representation can be substantially reduced or eliminated if the lawyer sends the client an engagement letter at the outset of the representation."

Because of the critical importance of engagement letters, ACTEC—through the work of its Professional Responsibility Committee and with the financial support of the ACTEC Foundation—developed a series of forms of engagement letters, which were contained in Engagement Letters: A Guide For Practitioners ("Engagement Letters"), published in June 1999. The sample engagement letters that are included in that guide address the ethical issues that may arise as a trust and estate lawyer and a client collaborate in establishing the nature and scope of a representation. The First Edition of Engagement Letters also included checklists that could be use with, or independent of, the engagement letter forms. Trust and estate lawyers have responded favorably to Engagement Letters, which they have found to be a useful tool and reference work.

With the amendments to the Model Rules made by the ABA in 2002 and 2003 and the publication of the Fourth Edition of the ACTEC Commentaries, ACTEC is now publishing the Second Edition of Engagement Letters. The Second Edition builds on the initial edition by updating the forms and checklists to address the amended version of the Model Rules, to respond to other changes in the law, and to provide cross references to the latest edition of the ACTEC Commentaries. In addition, this Second Edition includes checklists and forms that address a variety of engagement scenarios that were not dealt with in the First Edition and by offering additional drafting options. The goal of these changes is to assist lawyers in providing ethical services to clients based on a family-oriented practice model, to demonstrate how trust and estate lawyers can use engagement letters to promote

competent and ethical representation of their clients, to increase the utility and value of the engagement letters and checklists, and to provide an improved resource for the bench and bar and a better tool for law schools in teaching ethics.

Organization of the Engagement Letters

Following this introduction, there is a general checklist designed to aid the lawyer before preparing the engagement letter in any trust and estate representation. The general checklist includes cross references to the specific checklists and forms that follow.

Following the general checklist, there are eight chapters, each with a basic engagement letter form or specific language to be added to, or used in conjunction with, a basic engagement letter form addressing:

Chapter 1: Representation of Spouses;
Chapter 2: Representation of Multiple Generations of the Same Family;
Chapter 3: Representation of Multiple Parties in a Business Context;
Chapter 4: Estate Planning Lawyer Serving as a Fiduciary;
Chapter 5: Representation of Executors and Trustees;
Chapter 6: Fiduciary Litigation;
Chapter 7: Dealing with the Potential for Diminished Capacity; and
Chapter 8: Withdrawing from Representation.

Each chapter begins with an introduction and a cross reference to the ACTEC Commentaries applicable to the subject matter of that chapter. These are followed by a supplemental checklist designed to expand the utility of the general checklist with respect to the subject matter of that chapter. The engagement letter form or special language for addition to the engagement letter form then completes the chapter. Within many of the basic forms, there are sections setting forth optional provisions for that form.

Caveat: Limitations Regarding the Use of the Checklists and Forms

The Engagement Letters cannot and do not replace a lawyer's own independent judgment. In particular, the Engagement Letters are designed to address issues that would affect all lawyers in the United States but without reference to, or consideration of, the specific ethical rules and requirements of any particular jurisdiction. As a result, there may be state-specific rules that affect the use of a particular form and may require a deletion from, modification of, or addition to the basic form.

Moreover, no single form or checklist will cover all situations. Thus, lawyers and others using these materials should consider both the general checklist, the checklist for the basic form, the basic form, and the optional provisions in relationship to the specific services that the client has requested the lawyer to provide. When the client seeks an unusual service, the lawyer may find that the engagement letters and optional provisions do not address that unusual situation. Under such circumstances, the lawyer may need to draft new or different provisions in the engagement letter in order to provide the requested service competently and ethically.

Finally, each form has an order for presenting issues to the client and a style in making that presentation. In general, the style is legalistic and thorough. In addition, the forms generally are based on an engagement letter from a law firm to a client, as opposed to one from an individual lawyer to a client, and they are also generally based on representing multiple clients. Accordingly, a lawyer using these forms and checklists should consider them a starting point that, based on the lawyer's independent judgment, should be modified as necessary to reflect the lawyer's style, practice, governing laws, and clientele.

User Comments

While the Engagement Letters reflect the thoughtful efforts of many Fellows in the College, and in particular the work of the members of the Professional Responsibility Committee, and while ACTEC has sought to make this tool as useful and thorough as possible, the Engagement Letters, as stated above, are a work in process. ACTEC would be pleased to receive from the lawyers and others using and studying these forms and checklists any comments regarding the Engagement Letters. These comments should be addressed to the Chair of the Professional Responsibility Committee using one of the following methods:

By letter to:
The American College of Trust and Estate Counsel
3415 South Sepulveda Boulevard, Suite 330
Los Angeles, California 90034
Attention: Chair of the Professional Responsibility Committee

By fax to:
(310) 572-7280
Attention: Chair of the Professional Responsibility Committee

By email to:
info@actec.org
Subject line: Attention: Chair of the Professional Responsibility Committee

Thank you in advance for your use of this guide and your contribution to its continuing development. ACTEC ENGAGEMENT LETTERS.

GENERAL CHECKLIST

1. ISSUES A LAWYER SHOULD CONSIDER BEFORE ACCEPTING THE REPRESENTATION

(a) Is there any previous or existing client or advisory relationship between/among the lawyer (or his or her firm) and any of the parties, their spouses, or families? If so, does the lawyer have any conflict in representing any of the parties? If the lawyer (or the lawyer's firm) has represented any of the parties, their spouses, or their families before, in what capacity (e.g., individually, as an officer or director of an organization, or as a fiduciary or beneficiary of an estate or trust)?

(b) How well does the lawyer know the parties?

(c) Are the parties U.S. citizens? Are the parties U.S. residents? What is the domicile of the parties? If any entity is involved, is the entity duly organized and in good standing in all appropriate jurisdictions? In which jurisdiction or jurisdictions will the entity be organized or authorized to do business?

(d) Do all parties appear to have adequate capacity to enter into the engagement?

(e) What common connections do the parties have with each other (e.g., spouses, parent and child, owners of a family-controlled entity, fiduciaries or beneficiaries of an estate or trust)?

(f) What other client, advisory, or referral relationships exist?

(g) Who are the other professionals involved (e.g., accountants, appraisers, brokers)?

(h) Are the expectations of the parties as to the outcome and timing of the lawyer's work reasonable and obtainable?

(i) What are the fee arrangements?

2. DEFINE THE SCOPE OF THE REPRESENTATION.

(a) Describe with appropriate specificity the objectives of the representation and the means by which those objectives are to be pursued.

(b) Describe the nature and consequences of any limitations on the scope of the representation, and obtain the clients' consent to such limitations.

(c) What do the parties expect the "style" of the representation to be (e.g., separate meetings with each party or combined meetings of all interested parties? Do the parties intend to share specific materials relating to finances: documents, either existing or to be prepared? Do they intend that information will be transmitted in writing or orally? What about the sharing of disclosures to or from accountants, appraisers, insurance and investment advisors, or other professionals)?

(d) Describe the extent to which the lawyer may elect or be required to share certain otherwise confidential information in order to comply with applicable standards of practice.

(e) Describe with appropriate specificity the time frame within which the various phases of the engagement will be completed. Consider mentioning any foreseeable delays or periods during which the lawyer may not be available during the engagement; consider identifying the other attorneys, legal assistants, and support personnel in the lawyer's office who may or should be consulted in the event of the lawyer's absence or unavailability.

(f) Because of the importance these issues have recently assumed in trust and estate matters, consideration should be given to including or excluding asset protection planning and the effect of the HIPAA regulations in the scope of the engagement.

(g) Make it clear that absent an updated engagement letter, the lawyer will not be obligated to provide services beyond the scope of the engagement as described in the original letter.

(h) Describe the extent to which the lawyer will rely upon information furnished by the parties and the extent, if any, to which the lawyer will attempt to verify this information. Describe the circumstances under which the lawyer may be required to verify some or all of the information furnished by the parties in order to comply with the applicable standards of practice (e.g., Circular 230). Describe the effect this investigation may have on the fee and any fee estimate.

3. IDENTIFY THE CLIENT OR CLIENTS.

(See the Supplemental Checklist for each practice scenario.)

4. EXPLAIN THE LAWYER'S DUTY TO AVOID CONFLICTS OF INTEREST AND HOW POTENTIAL OR ACTUAL CONFLICTS OF INTEREST WILL BE RESOLVED.

(a) Describe the effect and consequences of any simultaneous representation of multiple clients, including the potential conflicts of interest that might arise, how any future conflicts of interest will be resolved, and the possibility of the subsequent withdrawal by the lawyer or a decision of any one or more of the individual clients to seek separate counsel.

(b) If appropriate, describe the effect on the potential conflicts of interest resulting from any prior representation of one or more of the individual clients.

(c) Obtain the consent of all clients to any simultaneous representation of multiple clients. Confirm in the engagement letter that the lawyer discussed the implications of joint representation, and secure the informed consent of all of the clients. Consider who can properly sign for any entity involved and who should perhaps sign, even though they may not have formal roles in the entity.

(d) If appropriate, describe the possible conflicts of interest resulting from a prior or contemporaneous representation of a competitor of a client's business.

(e) Consider requesting authorization by all of the clients to the disclosure to all the interested parties of the actions of any one of the clients constituting fraud, a violation of the governing documents of any entity involved, or in contravention of a mutual estate plan.

(f) If appropriate, describe the possible conflict of interest if the lawyer is to receive an interest in any business as a part of the lawyer's fee.

(g) Describe the adverse consequences that would result if it becomes necessary for the lawyer to withdraw from the joint representation, including the question as to whether any further representation by the lawyer of any one or more of the clients is appropriate or prohibited if the joint representation fails.

(h) Identify which, if any, of the multiple clients the lawyer may or will continue to represent in the matter at hand or related matters if the joint representation fails for any reason [e.g., does the lawyer (or the lawyer's firm), on the basis of longstanding relationship with one of the clients, intend to represent that client in the future, even if the lawyer (or the firm) no longer represents another of the clients; or will the lawyer (and the firm) withdraw from representing any of the clients?].

(i) Describe the possibility of a future prohibition on the lawyer's representation of any of the clients, depending upon the identity of the initial client.

(j) Describe the opportunity of each of the parties to consult independent counsel before consenting to the joint representation.

5. EXPLAIN THE LAWYER'S DUTY OF CONFIDENTIALITY AND HOW CONFIDENTIAL INFORMATION WILL BE HANDLED.

(a) Describe the lawyer's duty of confidentiality and how confidential information will be handled among the various individual clients and other constituents of any business entity involved, and obtain the clients' consent to the sharing of information in this manner.

(b) Describe any implied authorization to disclose information to other professionals and consultants. Explain if separate interviews with multiple clients are to be held or not and that it is to be pursuant to client consent or instructions.

(c) Describe the advantages and disadvantages of communication by e-mail, cell phone, fax, etc., and obtain the clients' consent to the use of these forms of communication and any limitations on their use. (d) Describe the effect and consequences of any of the joint clients revoking the waiver of confidentiality and prohibiting any further sharing of confidential information.

(d) Describe the disadvantages resulting from the lawyer having to withdraw from the representation, or any client's decision to seek separate counsel, as a result of revocation by any of the individual clients of consent to the sharing of confidential information among all the clients.

(e) Describe how the diminished capacity or death of any individual client occurring after the representation is begun will affect the disclosure of confidential information.

(f) Point out that the duty of confidentiality and any waiver of the duty of confidentiality continue in effect, even after the engagement is terminated.

6. EXPLAIN THE FEE OR THE BASIS FOR THE DETERMINATION OF THE FEE AND THE BILLING ARRANGEMENTS [INCLUDING THE MATERIAL REQUIRED IN RULE 1.5 (b)].

(a) If a contingent fee is involved, obtain the client's consent in writing.

(b) If appropriate, describe how the fee will be shared with other lawyers outside the firm.

(c) If appropriate, describe the consequences of the lawyer's fee being paid by someone other than the client and obtain the consent of the client to the arrangement; give assurances that the arrangement will not in any way diminish the lawyer's duty of loyalty to the client, including the sharing of confidential information or the exercise of independent professional judgment by the lawyer on behalf of the client.

(d) Describe factors that might cause the fee to be different from any estimate and how and when changes in standard billing rates may affect the fee.

(e) Describe the circumstances under which the lawyer may be required to independently verify some or all of the information furnished by the client in order to comply with the applicable standards of practice (e.g., Circular 230). Describe the effect this investigation may have on the fee and any fee estimate.

(f) Describe the lawyer's billing and collection policies.

(g) Verify the client's billing address and contact information.

(h) Describe who is liable for the lawyer's fees and expenses. If the representation involves multiple clients, describe the extent to which each client is or may be liable for the lawyer's fees and expenses and whether the liability of multiple clients is to be individual or joint and several.

(i) Describe who will be responsible for the lawyer's fees and expenses if the representation is terminated for any reason before the engagement is completed.

7. TERMINATION OF THE REPRESENTATION

(a) Describe the events, dates, or circumstances that will terminate the representation.

(b) Describe the potentially adverse effects of any withdrawal from the representation by the lawyer. Describe the difference between mandatory and permissive withdrawal.

(c) If the representation involves multiple clients, describe what information, if any, the lawyer will give to the clients if the lawyer is required to withdraw from the representation.

(d) Describe what will happen when the lawyer withdraws and to whom the records will be sent.

8. BECAUSE OF THE IMPORTANCE THESE ISSUES HAVE ASSUMED IN A TRUST AND ESTATE PRACTICE, CONSIDERATION SHOULD BE GIVEN TO SPECIFICALLY INCLUDING A DISCUSSION OF THE LAWYER'S DOCUMENT OWNERSHIP, RETENTION, AND DESTRUCTION POLICIES.

9. DOCUMENT MULTIPLE REPRESENTATION

(a) Send out a proposed engagement letter to all of the prospective clients prior to a first meeting, or send out a letter to all of the clients after the first conference.

(b) Review the engagement letter with the client at the first conference following a checklist or memorandum filled in during the first conference.

(c) Identify all clients. See comment on Rule 1.7 as to who can sign for the entity (someone other than the represented principal). Consider including a representation by multiple clients that the interests being represented are not adversarial.

(d) Require that all clients sign the engagement letter or memorandum or otherwise acknowledge the terms of any multiple representation.

(e) Describe how the diminished capacity or death of any individual client occurring after the representation is begun will affect the representation; including, if appropriate, reference to, or summary of, the specific provisions of local law regarding the definition of diminished capacity, those persons who may be authorized to act on behalf of a client who has suffered diminished capacity, and the opportunity for the client to designate someone to act on his or her behalf in such an event.

(f) Consider periodically reviewing with the client the engagement letter, to confirm the client's continuing assent to the terms of the representation during the term of the long-term representation.

(g) Suggest that any potential client who is uncomfortable with any aspect of the arrangement consult another lawyer before signing.

CHAPTER 1. REPRESENTATION OF SPOUSES

Introduction

These forms illustrate issues that should be addressed in discussing potential problems regarding confidential information and conflicts of interest in connection with representing spouses in an estate planning context and present one way in which these potential problems may be resolved.

There are two forms of letter reflecting fundamentally different approaches to the representation. The first form suggests a joint arrangement in which the lawyer shares all information in his or her possession with both spouses, unless and until an event occurs that affects that representation; in which case, the form sets out options for dealing with that event and its effect on the representation. Practitioners and their clients usually choose this method of representation.

The second form contemplates concurrent separate representation, which is tantamount to separate and independent representation of each spouse. In this mode, each client instructs the lawyer to hold all information he or she receives from either spouse in confidence so that the situation approximates as closely as possible the situation if the spouses were represented by independent counsel. There is significant controversy as to whether this approach is viable in this context and others, although there are noted and respected practitioners who use it. In any event, it is recommended that, if this approach is attempted, the practitioner be aware of the potential pitfalls and proceed with caution.

Reference to the ACTEC Commentaries (Fourth Edition):
(Note that the page number shown below refer to the printed version of the ACTEC Commentaries)

Terminology (re Informed Consent and Writing), p. 13

General Principles (re Scope of Representation), p. 32

Encouraging Communication; Discretion Regarding Content, p. 56

Communications During Active Phase of Representation, pp. 56-57

Termination of Representation, pp. 57-58

Basis of Fees for Trusts and Estates Services, p. 63

Joint and Separate Clients, pp. 75-76

Joint Representation Presumed, pp. 75-76

Multiple Separate Clients, p. 76

Confidences Imparted by One Joint Client, pp. 76-77

General Nonadversary Character of Estates and Trusts Practice; Representation of Multiple Clients, p. 91

Disclosures to Multiple Clients, pp. 91-93

Joint or Separate Representation, pp. 92-93

Declining or Terminating Representation, pp. 140-143

Supplemental Checklist for Representation of Spouses
(Refer also to the General Checklist on pp. 4-8.)

1. ISSUES THE LAWYER SHOULD CONSIDER BEFORE ACCEPTING THE REPRESENTATION

(a) Determine what duties, if any, the spouses owe to each other, and how these duties would affect the lawyer's representation and ability to carry out instructions such as those contained in existing pre- or post-marital agreements, contracts to make wills, and rights under pension plans.

(b) Determine what duties, if any, either spouse owes to third parties regarding financial or property arrangements such as child support, parental support, obligations or rights to or from prior spouse and others by agreements, prior divorce decrees, or arising under compensation or retirement plans.

(c) Determine what conflicts of interest exist, or may exist, between the two spouses and how they would affect the representation (e.g., knowledge the lawyer has that the plan of one spouse might defeat the plan or adversely affect the interests of the other; knowledge the lawyer has that possible future actions by one spouse might defeat the plan or adversely affect the interests of the other; or knowledge the lawyer has that a spouse's expectations or understanding of the facts relating to the other spouse or such spouse's intentions are not correct).

2. IDENTIFY THE CLIENT.

Is the client one of the spouses only, or are both spouses to be represented jointly or separately?

3. EXPLAIN HOW POTENTIAL OR ACTUAL CONFLICTS OF INTEREST WILL BE RESOLVED.

If a joint representation fails for any reason, the lawyer should address which, if either, of the clients the lawyer may continue to represent in the matter at hand or related matters. Does the lawyer (or the lawyer's firm) on the basis of longstanding relationship with one of the clients intend to represent that client in the future, even if the lawyer (and the firm) no longer represents the other spouse? Or will the lawyer (and the firm) withdraw from representing either of the spouses in the matter at hand or related matters?

(a) Make it clear that the lawyer will be representing only one spouse or the other, or both of them, either jointly or separately.

(b) Describe the possibility of a future prohibition on the lawyer's representation of either one of the spouses separately in the matter at hand or in related matters.

(c) Describe the impact of gaining general knowledge regarding either spouse as opposed to knowledge of specific facts from prior representation, so as to avoid inadvertent disqualification.

Form of an Engagement Letter for the Representation of Both Spouses Jointly

[Date]

[Name(s) and Address(es)]

Subject: [Subject Matter of the Engagement]

Dear [Clients]:

You have asked me to [scope of representation]. I have agreed to do this work and will bill for it on the following basis: [DESCRIBE ARRANGEMENTS PERTAINING TO FEES, BILLING, ETC.]. If I am asked to perform tasks not described in this letter, an additional engagement letter may be required for that work.

It is common for a husband and wife to employ the same lawyer to assist them in planning their estates. You have taken this approach by asking me to represent both of you in your planning. It is important that you understand that, because I will be representing both of you, you are considered my client, collectively. Ethical considerations prohibit me from agreeing with either of you to withhold information from the other. Accordingly, in agreeing to this form of representation, each of you is authorizing me to disclose to the other any matters related to the representation that one of you might discuss with me or that I might acquire from any other source. In this representation, I will not give legal advice to either of you or make any changes in any of your estate planning documents without your mutual knowledge and consent. Of course, anything either of you discusses with me is privileged from disclosure to third parties, except (a) with your consent, (b) for communication with other advisors, or (c) as otherwise required or permitted by law or the rules governing professional conduct.

If a conflict of interest arises between you during the course of your planning or if the [number] of you have a difference of opinion concerning the proposed plan for disposition of your property or on any other subject, I can point out the pros and cons of your respective positions or differing opinions. However, ethical considerations prohibit me, as the lawyer for both of you, from advocating one of your positions over the other. Furthermore, I would not be able to advocate one of your positions versus the other if there is a dispute at any time as to your respective property rights or interests or as to other legal issues between you. If actual conflicts of interest do arise between you, of such a nature that in my judgment it is impossible for me to perform my ethical obligations to both of you, it would become necessary for me to cease acting as your joint attorney.

Once documentation is executed to put into place the planning that you have hired me to implement, my engagement will be concluded and our attorney-client relationship will terminate. If you need my services in the future, please feel free to contact me and renew our relationship. In the meantime, I will not take any further action with reference to your affairs unless and until I hear otherwise from you.

After considering the foregoing, if you consent to my representing both of you jointly, I request that you sign and return the enclosed copy of this letter. If you have any questions about anything discussed in this letter, please let me know. In addition, you should feel free to consult with another lawyer about the effect of signing this letter.

Sincerely,

[Lawyer]

CONSENT

Each of us has read the foregoing letter and understands its contents. We consent to having you represent both of us on the terms and conditions set forth. We each authorize you to disclose to the other and to our advisors any information regarding the representation that you receive from either of us or any other source.

Signed: _____, 20___ _____
(Client 1)

Signed: _____, 20___ _____
(Client 2)

Form of an Engagement Letter for the Representation of Both Spouses Concurrently but Separately

NOTE: Conflicts of interest and confidentiality are of paramount concern if a lawyer undertakes concurrent separate representation of spouses. Such representation should only be undertaken after careful consideration of all possible conflicts of interest and a determination that such representation is permissible in the lawyer's jurisdiction.

[Date]

[Name(s) and Address(es)]

Subject: [Subject Matter of the Engagement]

Dear [Clients]:

You have each asked me to [scope of representation]. I have agreed to do this work and will bill for it on the following basis: [DESCRIBE ARRANGEMENTS PERTAINING TO FEES, BILLING, ETC.]. If I am asked to perform tasks not described in this letter, an additional engagement letter may be required for that work.

It is common for a husband and wife to employ the same lawyer to assist them in planning their estates. You have taken this approach by asking me to represent both of you to [scope of representation]. However, each of you wants to maintain your right to confidentiality and the ability to meet separately with me. I have agreed to do this work on this basis and will bill for it on the following basis: [DESCRIBE ARRANGEMENTS PERTAINING TO FEES, BILLING, AND WHICH OF THE PARTIES, IF NOT BOTH, WILL BE RESPONSIBLE FOR PAYMENT.]. If I am asked to perform tasks not described in this letter, an additional engagement letter may be required.

I will represent each of you separately and will not discuss with either one of you what your spouse has disclosed to me. Each of you releases me from the obligation to reveal to you any information I may have received from the other that is material and adverse to your interest. Furthermore, I will not use any information I obtain from one of you in preparing the other's plan, even if the result is that the two plans are incompatible or one plan is detrimental to the interests of the other spouse. In short, the representation will be structured so that each of you will have the same relationship with me as if each of you had gone to a separate lawyer for assistance in your planning.

While I have agreed to undertake this representation on a separate and confidential basis, you should be aware that there might be disputes between you now or in the future as to your respective property rights and interests, or as to other issues that may arise between you. Should this occur, I would not be able to represent either of you in resolving any such dispute, and each of you would have to obtain your own representation. After considering the foregoing, if each of you consents to my representation of each of you separately, I request that each of you sign and return the enclosed copy of this letter. If you have any questions about anything discussed in this letter, please let me know. In addition, you should feel free to consult with another lawyer about the effect of signing this letter.

Sincerely,

[Lawyer]

CONSENT

We have read the foregoing letter and understand its contents. We consent to having you represent each of us on the terms and conditions set forth.

Signed: _____, 20___ _____
(Client 1)

Signed: _____, 20___ _____
(Client 2)

CHAPTER 2. REPRESENTATION OF MULTIPLE GENERATIONS OF THE SAME FAMILY

Introduction

This form illustrates issues that should be addressed in discussing potential problems regarding confidential information and conflicts of interest in connection with representing multiple generations of the same family in an estate planning context, and presents one way in which these potential problems may be resolved.

The letter does not propose to deal with issues regarding the style of representation within any one family unit, such as whether the husband and wife of any one generation are to be to represented, as between themselves, jointly or separately and concurrently. For example, it may be possible for the attorney to represent the husband and wife of each generation jointly as to each other but concurrently and separately as between the separate family units; or whether all of the assets of the parties are to be considered as a part of this engagement (for example, whether the disposition of the wife's property received from her former husband should be considered as a part of this engagement). It is suggested that those matters be dealt with in a separate letter to each separate family unit.

It is also important that the engagement letter define (and limit, as appropriate) the scope of the multiple representation engagement. For example, the lawyer might be representing members of the first generation jointly as to each other in connection with the disposition of the family business, but concurrently and separately as to each other in connection with other estate planning matters, such as the disposition of the wife's ancestral property to the children of her first marriage.

References to the ACTEC Commentaries (Fourth Edition):
(Note that the page numbers shown below refer to the printed version of the ACTEC Commentaries.)

General Principles (re Scope of Representation), p. 32

Encouraging Communication; Discretion Regarding Content, p. 56

Communications During Active Phase of Representation, pp. 56-57

Termination of Representation, pp. 57-58

Fee Paid by Person Other than Client, pp. 63, 69

Joint and Separate Clients, pp. 75-76

Joint Representation Presumed, pp. 75-76

Multiple Separate Clients, p. 76

Confidences Imparted by One Joint Client, pp. 76-77

Separate Representation of Related Clients in Unrelated Matters, p. 77

General Nonadversary Character of Estates and Trusts Practice; Representation of Multiple Clients, p. 91

Disclosures to Multiple Clients, pp. 91-93

Existing Client Asks Lawyer to Prepare Will or Trust for Another Person, p. 92

Joint or Separate Representation, pp. 92-93

Consider Possible Presence and Impact of Any Conflicts of Interest, pp. 92-93

Conflicts of Interest May Preclude Multiple Representation, p. 93

Declining or Terminating Representation, pp. 140-143

Supplemental Checklist for Representing Multiple Generations of the Same Family
(Refer also to the General Checklist on pp. 4-8.)

1. IDENTIFY THE CLIENT.

(a) Are the clients first generation, husband and/or wife; second generation, husband and/or wife; both generations, all spouses or selected parties; or other?

(b) In which of each party's capacity will the lawyer provide representation (e.g., individually, as a corporate officer or director, as a fiduciary, as general partner of the family partnership, etc.)? How many "hats" does each party wear, and in how many of those roles does the lawyer expect to represent each party?

(c) What duties, if any, does each party owe to other family members, and how does that affect the lawyer's ability to represent each party and to carry out each party's instructions?

2. CONSIDER ANY CONFLICTS OF INTEREST.

What conflicts of interest exist or may exist among the multiple clients, and how do these conflicts affect the multiple representation? In answering this question, the following considerations may be helpful:

(a) Are there any past, present, or likely future events that might indicate a conflict of interest between or among the parties (e.g., prior marriages, divorces, premarital agreements, property settlements, different domiciles, children from prior marriages, adoptions, children or other significant relationships outside of marriage, special needs of children or other family members, different plans for the distribution of the assets, different charitable motives, etc.)?

(b) How do the parties want the lawyer to respond if the lawyer acquires knowledge that the plan of one client would adversely affect the interests of another client; knowledge that possible future actions by one client would adversely affect the interests of another client; or knowledge that one client's expectations or understanding of another client's intentions are not correct?

Form of an Engagement Letter for the Joint Representation of Multiple Generations of the Same Family

[Date]

[Name(s) and Address(es) of First Generation]

[Name(s) and Address(es) of Second Generation]

Subject: [Subject Matter of the Engagement]

Dear [First Generation] and [Second Generation]:

Thank you for your confidence in selecting our firm to perform legal services in connection with the [subject matter of the engagement].

Scope of the Engagement

We will provide legal services in connection with [specific description of the subject matter and scope of the engagement].

Identification of the Client

You have asked us to represent all of you jointly in connection with [subject matter of the engagement].

Before agreeing to this joint representation, it is important that all of you understand and agree to the terms and conditions of such representation.

Previous Representation

[OPTIONAL: to be used when the law firm has previously represented the First Generation]
As all of you know, our firm has previously represented and continues to represent [First Generation Husband and Wife] in connection with their estate planning and other matters. We have also represented [Family Business, Family Corporation, Family Limited Partnership, and/or Family Private Foundation].

We have not represented [Second Generation Husband and Wife] previously. In our previous representation of [First Generation Husband and Wife], we were obligated not to disclose any details of their finances, estate plan, or estate planning documents to other members of the family. There is no reason why we cannot continue to represent [First Generation Husband and Wife] and represent [Second Generation, Husband and Wife] at the same time, as long as everyone is aware of the potential problems regarding the preservation or sharing of confidential information and the resolution of conflicts of interest that arise when our firm undertakes to represent more than one unit of the family.

Separate or Joint Representation – Confidential Information and Potential Conflicts of Interest

Lawyers may represent clients separately or jointly. There is a difference in the obligation of the attorney as follows:

A. Separate Representation

As attorneys for an individual client, we are required to preserve any confidential client information unless we are authorized by our client or by law to disclose such information to someone else. For example, in representing our client,

we would ordinarily be prohibited from making known to anyone else any information known to us relating to our client, even if we think the information might be important to the other person.

When we represent an individual client separately, we advocate for our client's personal interests and give our client totally independent advice. We have a duty to act solely in the best interests of our client, without being influenced by the conflicting personal interests of any other clients or anyone else. Such separate representation ensures the preservation of our client's confidences and the elimination of any conflicts of interest between our client and any other person as related to our representation of our client.

B. Joint Representation

If we undertake to represent two or more clients jointly, we are obligated to disclose to each client any information that is relevant and material to the subject matter of the engagement. As long as the joint representation continues, no client can disclose any information to us and expect that such information be withheld from the other clients if such information is relevant and material to the subject matter of the engagement.

In a joint representation, we represent all of the clients collectively and simultaneously. We are not permitted to become an advocate for any client's personal interests but serve to assist the clients in developing a coordinated plan for the accomplishment of their common and mutual objectives. We also encourage the resolution of any individual differences in the best interests of the clients collectively. Relevant and material information shared with us by any client, although confidential to all third parties, will not be kept from any of you. However, we would generally not disclose information made known to us outside the joint meeting that we do not think is relevant and material to the subject matter of the engagement. Although joint representation is intended to accomplish the joint clients' common and mutual objectives, and in a cost-efficient manner, it also could result in the disclosure of information that one client might prefer be confidential. It might produce dissension if the clients cannot agree on a particular issue.

Again, it is important that you understand the differences in these forms of representation, as we will be representing all of you jointly.

If a conflict of interest arises among you during our representation or there is a difference of opinion, we can point out the pros and cons of your respective positions or differing opinions. However, in joint representation, we are prohibited from advocating one of your positions over the others. Similarly, we would not be able to advocate one of your positions versus the others if there is a dispute at any time as to your respective rights or interests or as to other legal issues among you. If actual conflicts of interest arise of such a nature that in our judgment it is impossible for us to fulfill our ethical obligations to you, it would become necessary for us to cease acting as your joint attorneys.

In separate letters to [First Generation Husband and Wife] and [Second Generation Husband and Wife], we have addressed how each separate family unit chooses to be represented internally.

You may have differing and conflicting interests and objectives. Because each of your interests could potentially be affected by the interests of the others, it is necessary for each of you to consent to the form of our representation of you jointly.

Termination of the Engagement

[Prior representation of one of the family units. ALTERNATIVE 1: If previous clients revoke the waiver of confidentiality, lawyer will withdraw from representing any of the clients.]

As each of you is aware, our firm has previously represented [First Generation] personally and in matters related to their business interests. We have already advised [First Generation] that if we are engaged to represent all of you jointly in this matter, we may be required to disclose to [Second Generation] relevant and material information regarding [First Generation] that we otherwise would be prohibited from disclosing. [First Generation] has consented to such disclosure.

At any time, [First Generation] may invoke the duty of confidentiality so as to prevent us from disclosing to [Second Generation] any information received from [First Generation].

[OPTION 1: Lawyer will withdraw from representing any of the clients: "noisy withdrawal."] In such event, we would withdraw from representing any of you further in connection with this matter and would communicate to all of you the reason for our withdrawal.

[OPTION 2: Lawyer will withdraw from representing any of the clients: "silent withdrawal."] In such event, we would withdraw from representing any of you further in connection with this matter without communicating the reason for our withdrawal.

[Joint Representation and prior representation of one of the family units. ALTERNATIVE 2: If previous clients revoke the waiver of confidentiality, lawyer will continue to represent previous clients but will withdraw from representing the other clients.]

As each of you is aware, our firm has previously represented [First Generation] personally and in matters related to their business interests. We have already advised [First Generation] that if we are engaged to represent all of you jointly in this matter, we may be required to disclose to [Second Generation] relevant and material information regarding [First Generation] that we otherwise would be prohibited from disclosing. [First Generation] has consented to such disclosure.

At any time, [First Generation] may invoke a duty of confidentiality so as to prevent us from disclosing to [Second Generation] any information received from [First Generation]. In such event, we would continue to represent [First Generation] but would withdraw from representing [Second Generation] further in connection with this matter and would communicate to both of you the reason for such withdrawal.

[Joint Representation and no prior representation of either of the family units. ALTERNATIVE 1: Any client may revoke the waiver of confidentiality.]

If we begin with our firm representing all of you jointly, any one of you is free to engage separate counsel to represent you separately at any time. In addition, and whether or not you are represented by separate counsel, any one of you individually may invoke the duty of confidentiality as between you and others so as to prevent us from disclosing to the others any relevant and material information received from you that has not previously been disclosed to the other clients.

[OPTION 1: Lawyer will continue to represent remaining clients.] In either event, you should understand that our representation of the remaining clients will continue unless terminated by them.

[OPTION 2: Lawyer will withdraw from representing all of the clients: "noisy withdrawal."] In either event, we would withdraw from representing all of you further in connection with this matter and would communicate to all of you the reason for our withdrawal.

[OPTION 3: Lawyer will withdraw from representing all of the clients: "silent withdrawal."] In either event, we would withdraw from representing all of you further in connection with this matter but without communicating to you the reason for our withdrawal.

[Joint Representation and no prior representation of either of the family units. ALTERNATIVE 2: No client may revoke the waiver of confidentiality.]

If we begin with our firm representing all of you jointly, none of you individually may invoke the duty of confidentiality as among you and the others so as to prevent us from disclosing to the others any relevant and material information received from you. However, any one of you is free to engage separate counsel to represent you separately at any time.

[OPTION 1: Lawyer will continue to represent the other clients.] In such event, you should understand that our representation of the remaining clients will continue unless terminated by them.

[OPTION 2: Lawyer will withdraw from representing any of the clients: "noisy withdrawal."] In such event, we would withdraw from representing all of you further in connection with this matter and would communicate to all of you the reason for our withdrawal.

[OPTION 3: Lawyer will withdraw from representing all of the clients: "silent withdrawal."] In such event, we would withdraw from representing all of you further in connection with this matter, but without communicating to any of you the reason for our withdrawal.

After the [subject matter of the engagement] has been completed, our representation will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to any of you in connection with any future or ongoing legal issues affecting the [subject matter of the engagement], including any duty to notify any of you of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

Fees and Billing

[ALTERNATIVE 1: Flat Fee]
Our fee in connection with the [subject matter of the engagement] will be a flat fee of $____. This fee includes the normal office and telephone conferences, research, analysis, and advice associated with the [subject matter of the engagement]. Significant changes in the scope of the services required or significant revisions to any documents that we have prepared will be charged separately, but any additional charges will be explained to you before any revisions are begun. One-half of this fee is payable once this engagement letter is signed and you authorize us to proceed and is not refundable, even if you later decide not to complete the [objective of the engagement]. The balance of the fee will be payable at the time when the [subject matter of the engagement] is complete.

[ALTERNATIVE 2: Time-Based Billing]
Our fee in connection with the [subject matter of the engagement] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the [subject matter of the engagement], but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government

agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate measures are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorneys fees incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the retainer or advance fee deposit) when we expect that we will incur substantial costs on your behalf.

Each of you agrees that you will all be jointly and severally responsible for the payment of all amounts owed to us and that we can seek payment in full from any one of you at our election. Any agreement between any of you to limit your responsibility for payment of amounts owed to us will not be binding upon us unless we agree in writing to those limits. Your joint and several responsibility for the payment of our fees and expenses includes the situation in which our representation is terminated for any reason prior to the completion of the [subject matter of the engagement].

Effect of Disability

If any one of you becomes unable to make adequately-considered decisions regarding the [subject matter of the engagement] because of mental disability or other reasons, the ethics rules which govern the practice of law in this jurisdiction state that we may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian or to take other actions to protect your interests if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the [subject matter of the engagement] and to sign documents on your behalf. If you authorize someone to act for you, and if their authority is broad enough to allow them to instruct us with regard to your interest in the [subject matter of the engagement], we can continue to do work on your behalf by dealing with them, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege.

If you die during the course of this engagement, the personal representatives of your estate generally succeed to all of your rights with respect to this engagement and are entitled to act on your behalf. Thereafter, we could continue to do work on your behalf by dealing with your personal representatives, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work-product privilege.

Retention, Delivery, Retrieval, and Destruction of the Files

You should understand that the file that will be created by our firm in connection with your estate planning will belong to all of you jointly. During the course of this engagement, each of you will be furnished copies of all documents and of all significant correspondence. When the [subject matter of the engagement] is completed, we will deliver the originals of all documents to you jointly. We will retain physical and/or electronic copies of all of the documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. All of you acting together may direct us to turn over our file to any one of you or to anyone else that all of you designate, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at your expense, make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to you or at your request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you will have been furnished with the originals and/or copies of all

relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you to recover materials contained in a file that has been closed and placed in off-site storage, you agree that we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation in connection with [subject matter of the engagement], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the representation ten (10) years after the completion of the engagement. Before destroying the file, we will attempt to contact you to make arrangements for delivery of any original documents and the other contents of the file to you. This letter will serve as notice to you that if we are unable to contact you at the most recent address contained in our file, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or contact information, as the same may change from time to time.

Consent to the Terms of the Engagement

Before we begin, each of you must consider all of the factors discussed in this letter and consent to the form of the representation. After each of you has considered this decision carefully, we ask that each of you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, any one of you prefers a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete your estate planning, for which each of you would be financially responsible, we urge each of you to give careful consideration to the structure of the representation before we begin.

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by each of you will serve as authorization for us to proceed with [subject matter of the engagement]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If any one of you has any questions about anything discussed in this letter, please call us. Each of you should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the joint representation as outlined in this letter.

We appreciate the opportunity to work with you in connection with your estate planning, and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

We have each reviewed the foregoing letter concerning the various aspects of separate and joint representation, and we choose to have [Lawyer] represent all of us jointly in connection with [subject matter of the engagement] on the terms described above.

Signed:_____, 20____ _____
(Husband, First Generation)

Signed:_____, 20____ _____
(Wife, First Generation)

Signed:_____, 20____ _____
(Husband, Second Generation)

Signed:_____, 20____ _____
(Wife, Second Generation)

CHAPTER 3. REPRESENTATION OF MULTIPLE PARTIES IN A BUSINESS CONTEXT

Introduction

This form illustrates some of the issues to be addressed in the representation of business interests. The focus of the form is on the creation of the business entity. Here, the fact of creation of the entity itself, a new client, poses an immediate conflict of interest with the organizers as individuals.

Over time, there is likely to be an evolution in the representation of the entity and its owners, employees, officers, and other involved parties that may include spouses, other members of the same family, or others whose interests are related. For example, there may be a death or withdrawal of a significant owner, or there may be a change in control of the entity. The lawyer must be particularly alert to the impact of the new entity, the shifting interests within it and among the individuals involved, and the emerging potential for conflicts arising as a result of events that have not been identified in advance. It is important to require the client to keep the lawyer continuously advised as to the emergence of intra-organizational and inter-personal conflicts that, if not promptly resolved, may destroy the representation.

The form letters in this section contemplate the creation of a new entity as the reason for the engagement of counsel. If the entity has already been in existence, however, the lawyer may be retained for a specific purpose, e.g., to prepare appropriate buy/sell agreements, establish employee benefits, participate in designing compensation arrangements, or to establish rational succession planning. These forms may be tailored to meet those circumstances.

Whether or not there is an evolution in the representation, or the representation involves an existing business entity, it is important for the lawyer to constantly be aware of who is the client and, in this respect, to be careful to document the relationships as they may change from time to time.

In each situation, the engagement letter should define and limit the scope of the representation. As change occurs, amendments to the initial engagement letter may have to be delivered to all of the parties in interest and their consents to the continued representation obtained.

References to the ACTEC Commentaries (Fourth Edition):
(Note that the page numbers shown below refer to the printed version of the ACTEC Commentaries.)

General Principles (re Scope of Representation), p. 32

Time Constraints Imposed by Client, p. 51

Encouraging Communication; Discretion Regarding Content, p. 56

Communications During Active Phase of Representation, pp. 56-57

Termination of Representation, pp. 57-58

Fee Paid by Person Other than Client, pp. 63, 69

Joint and Separate Clients, pp. 75-76

Joint Representation Presumed, pp. 75-76

Multiple Separate Clients, p. 76

Confidences Imparted by One Joint Client, pp. 76-77

Separate Representation of Related Clients in Unrelated Matters, p. 77

Implied Authorization to Disclose, p. 78

Prospective Clients, pp. 75, 76, 91-92, 145-146

General Nonadversary Character of Estates and Trusts Practice; Representation of Multiple Clients, p. 91

Disclosures to Multiple Clients, pp. 91-93

Consider Possible Presence and Impact of Any Conflicts of Interest, pp. 92-93

Organization as Client, pp. 127-130

Declining or Terminating Representation, pp. 140-143

Supplemental Checklist for the Representation of Multiple Parties in a Business Context

(Refer also to the General Checklist on pp. 4-8.)

1. DEFINE THE SCOPE OF THE REPRESENTATION.

Describe with appropriate specificity the objectives of the representation and the means by which those objectives are to be pursued (e.g., advice and counsel regarding the choice of the business entity; the corporate and management structure of the business; the funding and financing of the business and its operations, and the federal and state income tax consequences of the organization; funding, operation, and sale or other disposition of the business; the preparation and filing of the organization documents; and the preparation and filing of documents to effect the initial funding and financing of the business, including telephone and office conferences and correspondence with the organizers and any accountants, lenders, brokers, and other related professionals).

2. IDENTIFY THE CLIENT.

Is the client the new entity, one or more of the organizers, or the entity and one or more of the organizers?

(a) If appropriate, describe the possible conflict of interest if the lawyer is to receive an interest in the business as a part of the lawyer's fee.

(b) Describe the adverse consequences of any necessity of the lawyer to withdraw from the joint representation, including the possible prohibition of any further representation by the lawyer of any of the joint individual clients if the joint representation fails.

(c) Make it clear if the lawyer will be representing the business entity or the individual constituents of the business or both.

(d) Describe the potential conflicts of interest resulting from the lawyer's representation of the entity or the lawyer's representation of the constituents individually.

(e) Describe the possibility of a future prohibition on the lawyer's representation of either the entity or the constituents, depending upon the identity of the initial client.

(f) Include a description of the effect on the conflict-of-interest rules, depending on the choice of entity and the lawyer's duty to the constituents or the entity under the entity or aggregation theory.

(g) Describe the impact of gaining general knowledge of entity policies and practices vs. knowledge of specific facts from prior representation so as to avoid inadvertent disqualification.

3. POSSIBLE CLASSIFICATION OF THE ROLE OF THE LAWYER AS AN INTERMEDIARY IN THE REPRESENTATION UNDER RULE 2.2 (TO THE EXTENT THAT RULE 2.2 MAY BE AVAILABLE OR APPLICABLE IN THE SUBJECT JURISDICTION)

(a) Describe the possibility of the lawyer serving as an intermediary rather than as an advocate and the resulting effect on the treatment of confidential information and potential conflicts of interest.

(b) Describe the differences in the duties of the lawyer in serving as an intermediary as opposed to a normal role as advocate, including a greater burden on the individual clients for making decisions.

(c) Describe the necessity and effect of any withdrawal of the lawyer if the intermediation fails.

(d) Make it clear that the engagement either is or is not an intermediation.

(e) If the lawyer is to serve as intermediary, have all the clients consent to the intermediation.

4. EXPLAIN THE FEE OR THE BASIS FOR THE DETERMINATION OF THE FEE AND THE BILLING ARRANGEMENTS [INCLUDING THE MATERIAL REQUIRED IN RULE 1.5 (b)].

(a) If the firm is to receive any form of ownership in the entity as part of its fee, describe how the quantity and value of the ownership interest is to be determined and the ethical issues involved (Rule 1.5).

(b) Describe who will be responsible for the fees and expenses if the new entity is never organized.

5. TERMINATION OF THE REPRESENTATION

Describe what will happen when the lawyer withdraws and to whom the records will be sent.

Form of an Engagement Letter for Representation in Connection with the Organization of a New Business Entity
(Representing the Entity Only)

[Date]

[Addressees]

Subject: Organization of [New Entity]

Dear [Client(s)]:

Thank you for your confidence in selecting our firm to perform legal services in connection with the organization of [New Entity].

Scope of the Engagement

We will provide legal services in connection with the formation of [New Entity] as a [corporation/partnership/ limited liability company/ etc.] under the laws of the State of [State], including providing advice and counsel regarding the choice of the business entity; the ownership and management structure of the company; the funding and financing of the company and its operations; and, subject to applicable standards of tax practice, the federal and state income tax consequences of the organization, funding, operation, and sale or other disposition of the company or its property; the preparation and filing of the organization documents; and the preparation and filing of documents to effect the initial funding and financing of the company. These services will include telephone and office conferences and correspondence with the organizers of the company and any accountants, lenders, brokers, and other related professionals. If appropriate, and if requested, we will also provide advice and counsel and document preparation in connection with the acquisition or leasing of property by [New Entity], transfer restriction agreements and buy-sell agreements between [New Entity] and its (shareholders/partners/members, etc.), and employment agreements between [New Entity] and its key employees.

Identification of the Client

Our client will be [New Entity]. As described below, we will not undertake to represent any of you individually.

It is important that each of you understands that the interests of [New Entity] may not always be identical to the interests of the [number] of you as its organizers, owners, and managers and that the interests of any one of the [number] of you may not always be identical to the interests of the others. Therefore, each of you should be aware that in your individual capacity you should carefully consider retaining independent counsel to advise and represent you separately from [New Entity] and from the others.

Separate Representation – Confidential Information and Potential Conflicts of Interest

You have asked us to represent [New Entity] separately in connection with its organization. We are happy to do this; however, it is important that each one of you understands and consents to the considerations involved in such representation. As attorneys for [New Entity], we are required to preserve any confidential information we become aware of concerning the company, unless we are authorized to disclose such information to someone else. We have a duty to act solely in the best interest of [New Entity], without being influenced by the conflicting personal interests of any of the [number] of you or of any other clients. For example, in representing [New Entity], we would ordinarily be prohibited from making known to any one or more of you individually any information known to us relating to [New Entity], even if we think the information might be important to you in making decisions affecting your interest in [New Entity]. This could include our knowledge of information affecting [New Entity] disclosed to us by one of the others of you. Nevertheless, because our client will be [New Entity] and you will be its initial governing constituents, even though we will not be representing any of you separately, we are obligated to disclose to each of you any information any of you discloses to us that is relevant and material to the organization of [New Entity] and none of you can disclose any information to us and require that such information be withheld from the others if such information is relevant and material to the organization of [New Entity].

Each of you may have differing and conflicting interests and objectives and your interests and objectives may be in conflict with the best interests of [New Entity]. For example, you may have different views on how the financial rights and governance rights of [New Entity] should be distributed among you. Some decisions regarding one or more of the legal or tax aspects of the structure and organization of [New Entity] may be favorable to one or more of you but unfavorable to others. These are just

general examples. Your own situation and interests are unique. However, because our client is [New Entity] and not any of you individually, we could not advise you that a proposal suggested by one of you might be adverse to your own personal interests.

Because each of your interests could potentially be affected by the interests of [New Entity], it will be necessary for each of you to consent to the form of our representation of [New Entity].

Separate Representation

Unlike joint representation [or intermediation], as described above, if each of you were to retain a separate attorney, each of you would have an advocate for your personal interests and would receive totally independent advice. Each of you would meet separately with your attorney, and information given by you to your attorney would be confidential and could not be disclosed by the attorney to anyone else without your consent. Separate representation would ensure the preservation of each of your confidences and the elimination of any conflicts of interest between you and your attorney; however, separate representation might result in each of you taking positions on issues relating to the organization of [New Entity] that would be adverse to each other and would result in a duplication of expenses in having separate attorneys.

Termination of the Engagement

[ALTERNATIVE 1: No prior representation of any of the organizers.]
If we begin with our firm representing [New Entity] and not any of you individually, any one of you is completely free to engage separate counsel to represent you separately at any time. In that event, you should understand that our representation of [New Entity] will continue unless terminated by the appropriate action of its duly authorized constituents. In addition, and whether or not you are represented by separate counsel, none of you individually can invoke a duty of confidentiality as between you and the others so as to prevent us from disclosing to the others any information received from you that is relevant and material to the organization of [New Entity].

[ALTERNATIVE 2: Prior representation of one of the organizers.]
As each of you is aware, our firm has previously represented [Client-Organizer] personally and in matters related to [his/her] business interests. We have already advised [Client-Organizer] that if we are engaged to represent [New Entity] in connection with its organization, we may be required to disclose to [New Entity] and its constituents and to each of you information regarding [Client-Organizer] that we might otherwise be prohibited from disclosing; and [Client-Organizer] has consented to any such disclosure to the extent it is relevant and material to the organization of [New Entity].

If we begin with our firm representing [New Entity] and not any of you individually, any one of you is completely free to engage separate counsel to represent you separately at any time. In that event, you should understand that our representation of [New Entity] will continue unless terminated by the appropriate action of its duly authorized constituents or unless [Client-Organizer] chooses to engage separate counsel or requests that we terminate our representation of [New Entity]. In such case, we would withdraw from representing [New Entity] further in connection with its organization and would communicate to all of you the reason for our withdrawal. In addition, and whether or not you are represented by separate counsel, none of you individually, other than [Client-Organizer], can invoke a duty of confidentiality as between you and the others so as to prevent us from disclosing to the others any information received from you that is relevant and material to the organization of [New Entity]. If [Client-Organizer] invokes a duty of confidentiality with respect to [himself/herself] and our firm so as to prevent us from disclosing to the others of you any information received from [him/her] that is relevant and material to the organization of [New Entity], we would withdraw from representing [New Entity] further in connection with its organization and would communicate to all of you the reason for our withdrawal.

When the organization of [New Entity] has been completed, our representation of [New Entity] and all of you as organizers will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to [New Entity] or to you in connection with any future or ongoing legal issues affecting [New Entity], including any duty to notify you of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

Fees and Billing

[ALTERNATIVE 1: Flat Fee]
Our fee in connection with the organization of [New Entity] will be a flat fee of $____. This fee includes the normal office and telephone conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization. Significant changes in the scope of the services required or significant revisions to the organizational documents will be charged separately, but any additional charges will be explained to you before any revisions are begun. One-half of this fee is payable once this engagement letter is signed and you authorize us to

proceed and is not refundable even if you later decide not to complete the organization. The balance of the fee will be payable at the time when the organization is complete.

[ALTERNATIVE 2: Time-Based Billing]
Our fee in connection with the organization of [New Entity] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization, but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate steps are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorneys fees incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the advance fee deposit) when we expect that we will incur substantial costs on your behalf.

Each of you agrees that you will be jointly and severally responsible for the payment of all amounts owed to us and that we can seek payment in full from any one of you at our election. Any agreement between any of you to limit your responsibility for payment of amounts owed to us will not be binding upon us unless we also agree in writing to those limits. Your joint and several responsibility for the payment of our fees and expenses includes the situation in which our representation is terminated for any reason prior to the completion of the organization of [New Entity].

Effect of Death or Disability

If any one of you becomes unable to make adequately-considered decisions regarding the organization of [New Entity] because of mental disability or other reasons, the ethics rules that govern the practice of law in this jurisdiction state that we may attempt

to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian or to take other actions to protect your interests if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the organization of [New Entity] and to sign documents on your behalf. If you authorize someone to act for you, and if their authority is broad enough to allow them to instruct us with regard to your interest in [New Entity] and its organization, we can continue to do work on your behalf by dealing with them, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege.

If you die during the course of this engagement, the personal representatives of your estate generally succeed to all of your rights with respect to this engagement and are entitled to act on your behalf. Thereafter, we could continue to do work on your behalf by dealing with your personal representatives, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work-product privilege.

Retention, Delivery, Retrieval, and Destruction of the Files

Each of you should understand that the file that will be created by our firm in connection with the organization of [New Entity] will belong to our client, as identified in this letter. During the course of this engagement, each of you will be furnished copies of all of the organizational documents and of all significant correspondence. When the organization of [New Entity] is completed, we will deliver the originals of all of the organization documents to the Secretary of [New Entity]. We will retain physical and/or electronic copies of all of the organizational documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. The client may direct us to turn over our file to [New Entity], to any one of you, or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of [New Entity], make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to [New Entity] or at its request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you and [New Entity] will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you or [New Entity] to recover materials contained in a file that has been closed and placed in off-site storage, we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation of [New Entity], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the organization of a new entity ten (10) years after the completion of the organization. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to the client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or any change in the address or contact information for [New Entity], as appropriate, as the same may change from time to time.

Conflicts with Other Clients

Sometimes our lawyers are asked to represent a client who has interests that are adverse to another client whom we represent in other matters. The ethics rules that govern the practice of law in this jurisdiction permit us to accept multiple representations if certain requirements are met. While we represent you and/or [New Entity], we will not represent another client in matters that are directly adverse to your interests or the interests of [New Entity] unless and until we have made full disclosure to you and to [New Entity] of all relevant facts, circumstances, and implications. You agree that we can represent those other clients whose interests are adverse to yours or to the interests of [New Entity] if we confirm to you in good faith that the following conditions are met: (1) there is no substantial relationship between the other client's matter and our work for you or for [New Entity]; (2) our representation of the other client will not involve or disclose any confidential information we have received from you or [New Entity] (with the use of any ethically-approved screening measures, if appropriate); and (3) the other client also consents to our continuing representation of you and/or [New Entity]. If you make a good-faith objection to our statement, we will have the burden of proving that these conditions have been met.

Consent to the Terms of the Engagement

Before we begin, each of you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete the organization of [New Entity], for which each of you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by each of you will serve as authorization for us to proceed with the organization of [New Entity]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the organization of [New Entity], and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

We have each reviewed the foregoing letter concerning the various aspects of joint and separate representation, and we choose to have [Firm] represent [New Entity] separately in connection with its organization on the terms described above.

Signed:_____, 20____ _____
(Organizer 1)

Signed:_____, 20____ _____
(Organizer 2)

Signed:_____, 20____ _____
(Organizer 3)

Form of an Engagement Letter for Representation in Connection with the Organization of a New Business Entity (Representing the Organizers Jointly and Not the Entity)

[Date]

[Addressees]

Subject: Organization of [New Entity]

Dear [Client(s)]:

Thank you for your confidence in selecting our firm to represent the [number] of you collectively in connection with the organization of [New Entity].

Scope of the Engagement

We will provide legal services in connection with the formation of [New Entity] as a [corporation/partnership/ limited liability company, etc.] under the laws of the State of [State], including providing advice and counsel regarding the choice of the business entity; the ownership and management structure of the company; the funding and financing of the company and its operations; and, subject to applicable standards of tax practice, the federal and state income tax consequences of the organization, funding, operation, and sale or other disposition of the company or its property; the preparation and filing of the organization documents; and the preparation and filing of documents to effect the initial funding and financing of the company. These services will include telephone and office conferences and correspondence with the organizers of the company and any accountants, lenders, brokers, and other related professionals. If appropriate, and if requested, we will also provide advice and counsel and document preparation in connection with the acquisition or leasing of property by [New Entity], transfer restriction agreements and buy-sell agreements between [New Entity] and its [shareholders/partners/members, etc.], and employment agreements between [New Entity] and its key employees.

Identification of the Client

Our client will be the [number] of you collectively in your capacity as the organizers and initial owners and managers of [New Entity]. As described below, we will be representing the [number] of you jointly, and we will not undertake to represent [New Entity] or any of you separately.

It is important that each of you understands that the interests of [New Entity] may not always be identical to the interests of the [number] of you as its organizers, owners, and managers and that the interests of any one of the [number] of you may not always be identical to the interests of the others. Therefore, each of you should be aware that in your individual capacity you should carefully consider retaining independent counsel to advise and represent you separately from [New Entity] and from the others.

Joint Representation – Confidential Information and Potential Conflicts of Interest

You have asked us to represent all of you collectively in connection with the organization of [New Entity]. We are happy to do this; however, it is important that each one of you understands and consents to the considerations involved in such a joint representation.

As your attorneys, we would normally owe each one of you a duty to preserve any confidential information you share with us, unless you authorize us to disclose such information to someone else. We would also owe you a duty to act solely in your best interest, without being influenced by the conflicting interests of other clients. If we represent two or more clients simultaneously in the same matter, we have a potential conflict of interest resulting from our conflicting duties to each of the separate clients. For example, in advising you regarding the organization of [New Entity], we would ordinarily be obliged to make known to you any information that we believe might be important to you in making decisions affecting your interest in [New Entity]. This could include our knowledge of information affecting [New Entity] disclosed to us by one of the others of you; however, because we are under a duty to preserve the confidential information made known to us by each of you, we cannot disclose this information to you unless the other person consents. Also, we could not advise you that a proposal suggested by one of you might be adverse to your own personal interests.

Each of you may have differing and conflicting interests and objectives. You may have different views on how the financial rights and governance rights of [New Entity] should be distributed among you. Some decisions regarding one or more of the legal or tax aspects of the structure and organization of [New Entity] may be favorable to one or more of you but unfavorable to others. These are just general examples. Your own situation and interests are unique.

Because each of your interests could potentially be affected by the interests of the others, it will be necessary for each of you to consent to the form of our representation of all of you.

In a joint representation, we represent all of you collectively and simultaneously, almost as if all of you were a single client. We will not be an advocate for any one of you personally, but will serve only to assist all of you in developing a coordinated plan for the structure and organization of [New Entity] and will encourage the resolution of your individual differences in an equitable manner and in the best interests of your on-going relationship as the owners and managers of [New Entity]. We will normally meet with all of you at the same time, and relevant and material information shared with us by any one of you, although confidential as to all others, cannot and will not be kept from any of you; however, we will generally not disclose to the others information any one of you makes known to us outside a joint meeting that we do not think is relevant and material to the organization of [New Entity]. Although the product of the joint representation is intended to be the organization of [New Entity] on terms agreeable to all of you, and in a cost-efficient manner, it could also result in the disclosure of information that one of you might prefer to remain confidential, and it could produce dissension if all of you cannot agree on a particular issue relating to the structure and organization of [New Entity].

Separate Representation

Unlike joint representation [or intermediation], as described above, if each of you were to retain a separate attorney, each of you would have an advocate for your personal interests and would receive totally independent advice. Each of you would meet separately with your attorney, and information given by you to your attorney would be confidential and could not be disclosed by the attorney to anyone else without your consent. Separate representation would ensure the preservation of each of your confidences and the elimination of any conflicts of interest between you and your attorney; however, separate representation might result in each of you taking positions on issues relating to the organization of [New Entity] that would be adverse to each other and would result in a duplication of expenses in having separate attorneys.

Termination of the Engagement

Fees and Billing

[ALTERNATIVE 1: No prior representation of any of the organizers]
If we begin with our firm representing all of you jointly, any one of you is completely free to change your mind and engage

separate counsel at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you that we have not previously disclosed to the others. In either case, we would withdraw from representing any of you further in connection with the organization of [New Entity] unless all of you consent to our continued representation of one or more of you, and we would communicate to all of you the reason for our withdrawal.

[ALTERNATIVE 2: Prior representation of one of the organizers]
As each of you is aware, our firm has previously represented [Client-Organizer] personally and in matters related to [his/her] business interests. We have already advised [Client-Organizer] that if we are engaged to represent all [number] of you collectively in connection with the organization of [New Entity], we may be required to disclose to each of you information regarding [Client-Organizer] that we might otherwise be prohibited from disclosing; and [Client-Organizer] has consented to any such disclosure to the extent it is relevant and material to the organization of [New Entity].

If we begin with our firm representing all of you jointly, any one of you is completely free to change your mind and engage separate counsel at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you that we have not previously disclosed to the others. In either case, we would withdraw from representing any of you further in connection with the organization of [New Entity], unless all of you consent to our continued representation of one or more of you, and we would communicate to all of you the reason for our withdrawal. Notwithstanding this, if we are requested by [Client-Organizer] to continue to represent [him/her] in connection with the organization of [New Entity], we would do so and, by agreeing to our representation of the [number] of you collectively as described in this letter, each of you consents to our continuing representation of [Client-Organizer] in that event.

When the organization of [New Entity] has been completed, our representation of [New Entity] and all of you as organizers will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to [New Entity] or to you in connection with any future or ongoing legal issues affecting [New Entity], including any duty to notify you of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

Fees and Billing

[ALTERNATIVE 1:Flat Fee]
Our fee in connection with the organization of [New Entity] will be a flat fee of $____. This fee includes the normal office and telephone conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization. Significant changes in the scope of the services required or significant revisions to the organizational documents will be charged separately, but any additional charges will be explained to you before any revisions are begun. One-half of this fee is payable once this engagement letter is signed and you authorize us to proceed and is not refundable even if you later decide not to complete the organization. The balance of the fee will be payable at the time when the organization is complete.

[ALTERNATIVE 2: Time-Based Billing]
Our fee in connection with the organization of [New Entity] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization, but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis. We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate steps are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorneys fees incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the advance fee deposit) when we expect that we will incur substantial costs on your behalf.

Each of you agrees that you will be jointly and severally responsible for the payment of all amounts owed to us and that we can seek payment in full from any one of you at our election. Any agreement between any of you to limit your responsibility for payment of amounts owed to us will not be binding upon us unless we also agree in writing to those limits. Your joint and several responsibility for the payment of our fees and expenses includes the situation in which our representation is terminated for any reason prior to the completion of the organization of [New Entity].

Effect of Death or Disability

If any one of you becomes unable to make adequately-considered decisions regarding the organization of [New Entity] because of mental disability or other reasons, the ethics rules that govern the practice of law in this jurisdiction state that we may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian or to take other actions to protect your interests if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the organization of [New Entity] and to sign documents on your behalf. If you authorize someone to act for you, and if their authority is broad enough to allow them to instruct us with regard to your interest in [New Entity] and its organization, we can continue to do work on your behalf by dealing with them, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege.

If you die during the course of this engagement, the personal representatives of your estate generally succeed to all of your rights with respect to this engagement and are entitled to act on your behalf. Thereafter, we could continue to do work on your behalf by dealing with your personal representatives, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work-product privilege.

Retention, Delivery, Retrieval, and Destruction of the Files

Each of you should understand that the file that will be created by our firm in connection with the organization of [New Entity] will belong to our client, as identified in this letter. During the course of this engagement, each of you will be furnished copies of all of the organizational documents and of all significant correspondence. When the organization of [New Entity] is completed, we will deliver the originals of all of the organization documents to the Secretary of [New Entity]. We will retain physical and/or electronic copies of all of the organizational documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. The client may direct us to turn over our file to [New Entity], to any one of you, or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of [New Entity], make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to [New Entity] or at its request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you and [New Entity] will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you or [New Entity] to recover materials contained in a file that has been closed and placed in off-site storage, we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation of [New Entity], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the organization of a new entity ten (10) years after the completion of the organization. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to the client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or any change in the address or contact information for [New Entity], as appropriate, as the same may change from time to time.

Conflicts with Other Clients

Sometimes our lawyers are asked to represent a client who has interests that are adverse to another client whom we represent in other matters. The ethics rules that govern the practice of law in this jurisdiction permit us to accept multiple representations if certain requirements are met. While we represent you and/or [New Entity], we will not represent another client in matters that are directly adverse to your interests or the interests of [New Entity] unless and until we have made full disclosure to you and to [New Entity] of all relevant facts, circumstances, and implications. You agree that we can represent those other clients whose interests are adverse to yours or to the interests of [New Entity] if we confirm to you in good faith that the following conditions are met: (1) there is no substantial relationship between the other client's matter and our work for you or for [New Entity]; (2) our representation of the other client will not involve or disclose any confidential information we have received from you or [New Entity] (with the use of any ethically-approved screening measures, if appropriate); and (3) the other client also consents to our continuing representation of you and/or [New Entity]. If you make a good-faith objection to our statement, we will have the burden of proving that these conditions have been met.

Consent to the Terms of the Engagement

Before we begin, each of you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete the organization of [New Entity], for which each of you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by each of you will serve as authorization for us to proceed with the organization of [New Entity]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the organization of [New Entity], and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

We have each reviewed the foregoing letter concerning the various aspects of joint and separate representation, and we choose to have [Firm] represent all of us collectively and jointly in connection with the organization of [New Entity] on the terms described above.

Signed:_____, 20____ _____
(Organizer 1)

Signed:_____, 20____ _____
(Organizer 2)

Signed:_____, 20____ _____
(Organizer 3)

Engagement Letter for Representation in Connection with the Organization of a New Business Entity
(Representing Both the Entity and the Organizers Jointly)

[Date]

[Addressees] Subject: Organization of [New Entity]

Dear [Client(s)]:

Thank you for your confidence in selecting our firm to represent the [number] of you collectively in connection with the organization of [New Entity], and to represent [New Entity].

Scope of the Engagement

We will provide legal services in connection with the formation of [New Entity] as a (corporation/partnership/ limited liability company/ etc.) under the laws of the State of [State], including providing advice and counsel regarding the choice of the business entity; the ownership and management structure of the company; the funding and financing of the company and its operations; and, subject to applicable standards of tax practice, the federal and state income tax consequences of the organization, funding, operation, and sale or other disposition of the company or its property; the preparation and filing of the organization documents; and the preparation and filing of documents to effect the initial funding and financing of the company. These services will include telephone and office conferences and correspondence with the organizers of the company and any accountants, lenders, brokers, and other related professionals. If appropriate, and if requested, we will also provide advice and counsel and document preparation in connection with the acquisition or leasing of property by [New Entity], transfer restriction agreements and buy-sell agreements between [New Entity] and its [shareholders/partners/members, etc.], and employment agreements between [New Entity] and its key employees.

Identification of the Client

Our client will be [New Entity] and the [number] of you collectively in your capacity as the organizers and initial owners and managers of [New Entity]. As described below, we will not undertake to represent any of you separately.

It is important that each of you understands that the interests of [New Entity] may not always be identical to the interests of the [number] of you as its organizers, owners, and managers and that the interests of any one of the [number] of you may not always be identical to the interests of the others. Therefore, each of you should be aware that in your individual capacity you should carefully consider retaining independent counsel to advise and represent you separately from [New Entity] and from the others.

Joint Representation – Confidential Information and Potential Conflicts of Interest

You have asked us to represent all of you collectively in connection with the organization of [New Entity] and to also represent [New Entity]. We are happy to do this; however, it is important that each one of you understands and consents to the considerations involved in such a joint representation.

As your attorneys, we would normally owe each one of you a duty to preserve any confidential information you share with us, unless you authorize us to disclose such information to someone else. We would also owe you a duty to act solely in your best interest, without being influenced by the conflicting interests of other clients. If we represent two or more clients simultaneously in the same matter, we have a potential conflict of interest resulting from our conflicting duties to each of the separate clients. For example, in advising you regarding the organization of [New Entity], we would ordinarily be obliged to make known to you any information that we believe might be important to you in making decisions affecting your interest in [New Entity]. This could include our knowledge of information affecting [New Entity] disclosed to us by one of the others of you; however, because we are under a duty to preserve the confidential information made known to us by each of you, we cannot disclose this information to you unless the other person consents. Also, we could not advise you that a proposal suggested by one of you might be adverse to your own personal interests.

It is also important that you understand that, in connection our representation of [New Entity], we are obliged to maintain the confidentiality of any information relating to [New Entity] that may be disclosed to us by other constituents (i.e., shareholders, partners, members, directors, governors, and officers) of [New Entity]. Because we are under a duty to preserve the confidential information made known to us by other constituents of [New Entity], we cannot disclose this information to you unless [New Entity], acting through its duly authorized governing body, consents. Without that consent, we could not make known to you any information that we believe might be important to you in making decisions affecting your interest in [New Entity], nor could we advise you that a proposal suggested by one of the other constituents of [New Entity] might be adverse to your own personal interests.

Each of you may have differing and conflicting interests and objectives, and your interests and objectives may be in conflict with the best interests of [New Entity].You may have different views on how the financial rights and governance rights of [New Entity] should be distributed among you. Some decisions regarding one or more of the legal or tax aspects of the structure and organization of [New Entity] may be favorable to one or more of you but unfavorable to others. These are just general examples. Your own situation and interests are unique.

Because each of your interests could potentially be affected by the interests of the others and of the interests of [New Entity], it will be necessary for each of you to consent to the form of our representation of all of you and of [New Entity].

In joint representation of [New Entity] and the [number] of you collectively, we will represent all of you and [New Entity] collectively and simultaneously, almost as if all of you were a single client. We will not be an advocate for any one of you personally, but will serve only to assist all of you in developing a coordinated plan for the structure and organization of [New Entity] and will encourage the resolution of your individual differences in an equitable manner and in the best interests of your on-going relationship as the owners and managers of [New Entity]. We will normally meet with all of you and any other constituents of [New Entity] at the same time, and relevant and material information shared with us by any one of you and by any other constituents of [New Entity], although confidential as to all others, cannot and will not be kept from any of you or any other constituents of [New Entity]; however, we will generally not disclose to any of the others information any one of you or any other constituents makes known to us outside a joint meeting that we do not think is relevant and material to the organization of [New Entity]. Although the product of the joint representation is intended to be the organization of [New Entity] on terms agreeable to all of you, and in a cost efficient manner, it could also result in the disclosure of information that one of you might prefer to remain confidential, and it could produce dissension if all of you cannot agree on a particular issue relating to the structure and organization of [New Entity].

Separate Representation

Unlike joint representation [or intermediation], as described above, if each of you were to retain a separate attorney, each of you would have an advocate for your personal interests and would receive totally independent advice. Each of you would meet separately with your attorney, and information given by you to your attorney would be confidential and could not be disclosed by the attorney to anyone else without your consent. Separate representation would ensure the preservation of each of your confidences and the elimination of any conflicts of interest between you and your attorney; however, separate representation might result in each of you taking positions on issues relating to the organization of [New Entity] that would be adverse to each other and would result in a duplication of expenses in having separate attorneys.

Termination of the Engagement

[ALTERNATIVE 1:No prior representation of any of the organizers]
If we begin with our firm representing all of you and [New Entity] jointly, any one of you is completely free to change your mind and engage separate counsel at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you which we have not previously disclosed to the others. In either case, we would withdraw from representing [New Entity] and any of you further in connection with the organization of [New Entity] unless all of you consent to our continued representation of [New Entity] or one or more of you, and we would communicate to all of you the reason for our withdrawal.

[ALTERNATIVE 2: Prior representation of one of the organizers]
As each of you is aware, our firm has previously represented [Client-Organizer] personally and in matters related to [his/her] business interests. We have already advised [Client-Organizer] that if we are engaged to represent [New Entity] and the [number] of you collectively in connection with the organization of [New Entity], we may be required to disclose to [New Entity] and its constituents and to each of you information regarding [Client-Organizer] that we might otherwise be prohibited from disclosing; and [Client-Organizer] has consented to any such disclosure to the extent it is relevant and material to the organization of [New Entity].

If we begin with our firm representing [New Entity] and all of you jointly, any one of you is completely free to change your mind and engage separate counsel at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality

as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you that we have not previously disclosed to the others. In either case, we would withdraw from representing any of you further in connection with the organization of [New Entity], unless all of you consent to our continued representation of one or more of you, and we would communicate to all of you the reason for our withdrawal. Notwithstanding this, if we are requested by [Client-Organizer] to continue to represent [him/her] in connection with the organization of [New Entity], we would do so and, by agreeing to our representation of [New Entity] and the [number] of you collectively as described in this letter, each of you consents to our continuing representation of [Client-Organizer] in that event.

When the organization of [New Entity] has been completed, our representation of [New Entity] and all of you as organizers will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to [New Entity] or to you in connection with any future or ongoing legal issues affecting [New Entity], including any duty to notify you of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

Fees and Billing

ALTERNATIVE 1: Flat Fee]
Our fee in connection with the organization of [New Entity] will be a flat fee of $____. This fee includes the normal office and telephone conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization. Significant changes in the scope of the services required or significant revisions to the organizational documents will be charged separately, but any additional charges will be explained to you before any revisions are begun. One-half of this fee is payable once this engagement letter is signed and you authorize us to proceed and is not refundable even if you later decide not to complete the organization. The balance of the fee will be payable at the time when the organization is complete.

[ALTERNATIVE 2: Time-Based Billing]
Our fee in connection with the organization of [New Entity] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization, but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

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We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the advance fee deposit) when we expect that we will incur substantial costs on your behalf.

Each of you agrees that you will be jointly and severally responsible for the payment of all amounts owed to us and that we can seek payment in full from any one of you at our election. Any agreement between any of you to limit your responsibility for payment of amounts owed to us will not be binding upon us unless we also agree in writing to those limits. Your joint and several responsibility for the payment of our fees and expenses includes the situation in which our representation is terminated for any reason prior to the completion of the organization of [New Entity].

Effect of Death or Disability

If any one of you becomes unable to make adequately-considered decisions regarding the organization of [New Entity] because of mental disability or other reasons, the ethics rules that govern the practice of law in this jurisdiction state that we may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian or to take other actions to protect your interests if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the organization of [New Entity] and to sign documents on your behalf. If you authorize someone to act for you, and if their authority is broad enough to allow them to instruct us with regard to your interest in [New Entity] and its organization, we can continue to do work on your behalf by dealing with them, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege.

If you die during the course of this engagement, the personal representatives of your estate generally succeed to all of your rights with respect to this engagement and are entitled to act on your behalf. Thereafter, we could continue to do work on your behalf by dealing with your personal representatives, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work-product privilege.

Retention, Delivery, Retrieval, and Destruction of the Files

Each of you should understand that the file that will be created by our firm in connection with the organization of [New Entity] will belong to our client, as identified in this letter. During the course of this engagement, each of you will be furnished copies of all of the organizational documents and of all significant correspondence. When the organization of [New Entity] is completed, we will deliver the originals of all of the organization documents to the Secretary of [New Entity]. We will retain physical and/or electronic copies of all of the organizational documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. The client may direct us to turn over our file to [New Entity], to any one of you, or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of [New Entity], make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to [New Entity] or at its request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you and [New Entity] will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you or [New Entity] to recover materials contained in a file that has been closed and placed in off-site storage, we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation of [New Entity], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the organization of a new entity ten (10) years after the completion of the organization. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to the client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will

destroy the file without further notice. It will be your responsibility to notify us of any change in your address or any change in the address or contact information for [New Entity], as appropriate, as the same may change from time to time.

Conflicts with Other Clients

Sometimes our lawyers are asked to represent a client who has interests that are adverse to another client whom we represent in other matters. The ethics rules that govern the practice of law in this jurisdiction permit us to accept multiple representations if certain requirements are met. While we represent you and/or [New Entity], we will not represent another client in matters that are directly adverse to your interests or the interests of [New Entity] unless and until we have made full disclosure to you and to [New Entity] of all relevant facts, circumstances, and implications. You agree that we can represent those other clients whose interests are adverse to yours or to the interests of [New Entity] if we confirm to you in good faith that the following conditions are met: (1) there is no substantial relationship between the other client's matter and our work for you or for [New Entity]; (2) our representation of the other client will not involve or disclose any confidential information we have received from you or [New Entity] (with the use of any ethically-approved screening measures, if appropriate); and (3) the other client also consents to our continuing representation of you and/or [New Entity]. If you make a good-faith objection to our statement, we will have the burden of proving that these conditions have been met.

Consent to the Terms of the Engagement

Before we begin, each of you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete the organization of [New Entity], for which each of you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by each of you will serve as authorization for us to proceed with the organization of [New Entity]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the organization of [New Entity], and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

We have each reviewed the foregoing letter concerning the various aspects of joint and separate representation, and we choose to have [Firm] represent all of us collectively and [New Entity] jointly in connection with the organization of [New Entity] on the terms described above.

Signed:_____, 20____ _____
(Organizer 1)

Signed:_____, 20____ _____
(Organizer 2)

Signed:_____, 20____ _____
(Organizer 3)

Form of an Engagement Letter for Representation in Connection with the Organization of a New Business Entity
(Representing the Organizers as an Intermediary)

[Date]

[Addressees]

Subject: Organization of [New Entity]

Dear [Clients]:

Thank you for your confidence in selecting our firm to represent you, acting as an Intermediary as described below, in connection with the organization of [New Entity].

Scope of the Engagement

We will provide legal services in connection with the formation of [New Entity] as a [corporation/partnership/ limited liability company, etc.] under the laws of the State of [State], including providing advice and counsel regarding the choice of the business entity; the ownership and management structure of the company; the funding and financing of the company and its operations; and, subject to applicable standards of tax practice, the federal and state income tax consequences of the organization, funding, operation, and sale or other disposition of the company or its property; the preparation and filing of the organization documents; and the preparation and filing of documents to effect the initial funding and financing of the company. These services will include telephone and office conferences and correspondence with the organizers of the company and any accountants, lenders, brokers, and other related professionals. If appropriate, and if requested, we will also provide advice and counsel and document preparation in connection with the acquisition or leasing of property by [New Entity], transfer restriction agreements and buy-sell agreements between [New Entity] and its [shareholders/partners/members, etc.], and employment agreements between [New Entity] and its key employees.

Identification of the Client

Our client will be the [number] of you collectively in your capacity as the organizers and initial owners and managers of [New Entity], and in connection with this representation, we will be acting as an Intermediary as described below. We will not undertake to represent [New Entity] or any of you separately.

It is important that each of you understands that the interests of [New Entity] may not always be identical to the interests of the [number] of you as its organizers, owners, and managers and that the interests of any one of the [number] of you may not always be identical to the interests of the others. Therefore, each of you should be aware that in your individual capacity you should carefully consider retaining independent counsel to advise and represent you separately from [New Entity] and from the others.

Intermediation

You have asked us to represent all of you collectively in connection with the organization of [New Entity] and to do so in the capacity as an Intermediary. We are happy to do this; however, it is important that each one of you understand and consent to the considerations involved in such a representation.

As your attorneys, we would normally owe each one of you a duty to preserve any confidential information you share with us, unless you authorize us to disclose such information to someone else. We would also owe you a duty to act solely in your best interest, without being influenced by the conflicting interests of other clients. If we represent two or more clients simultaneously in the same matter, we have a potential conflict of interest resulting from our conflicting duties to each of the separate clients. For example, in advising you regarding the organization of [New Entity], we would ordinarily be obliged to make known to you any information that we think might be important to you in making decisions affecting your interest in [New Entity]. This could include our knowledge of information affecting [New Entity] disclosed to us by one of the others of you; however, because we are under a duty to preserve the confidential information made known to us by each of you, we cannot disclose this information to you unless the other person consents. Also, we could not advise you that a proposal suggested by one of you might be adverse to your own personal interests.

Each of you may have differing and conflicting interests and objectives. You may have different views on how the financial rights and governance rights of [New Entity] should be distributed among you. Some decisions regarding one or more of the legal or tax aspects of the structure and organization of [New Entity] may be favorable to one or more of you but unfavorable to others. These are just general examples. Your own situation and interests are unique.

Because each of your interests could potentially be affected by the interests of the others, it will be necessary for each of you to consent to the form of our representation of all of you.

We may represent all of you collectively, acting as an Intermediary in connection with the organization of [New Entity]. The hallmarks of an intermediation include our impartiality while serving as an intermediary and the necessity of an open, candid,

and non-adversarial pursuit of the common objectives by each of you. Intermediation differs significantly from the partisan role normally played by lawyers because it requires that we be impartial as [between/among] the [number] of you, rather than serving as an advocate on behalf of any one of you. When we serve as an intermediary, each of you must assume greater responsibility for your own decisions than if each of you were independently represented. As an intermediary, we will seek to achieve your common objectives and to resolve potentially conflicting interests by developing your mutual interests. While we will maintain confidentiality as against outsiders, we will not keep information provided to us by any one of you confidential from the other [number]. We will withdraw from the representation, and from representing any one of you further in connection with the organization of [New Entity], if any of you requests or if one or more of you revokes our authority to disclose information to the others. Although the product of an intermediation is intended to be the structure and organization of [New Entity] on terms agreeable to all of you, and in a cost-efficient manner, it could also result in the disclosure of information that one of you might prefer to remain confidential, and it could produce dissension if all of you could not agree on a particular issue relating to the structure and organization of [New Entity].

Separate Representation

Unlike joint representation [or intermediation], as described above, if each of you were to retain a separate attorney, each of you would have an advocate for your personal interests and would receive totally independent advice. Each of you would meet separately with your attorney, and information given by you to your attorney would be confidential and could not be disclosed by the attorney to anyone else without your consent. Separate representation would ensure the preservation of each of your confidences and the elimination of any conflicts of interest between you and your attorney; however, separate representation might result in each of you taking positions on issues relating to the organization of [New Entity] that would be adverse to each other and would result in a duplication of expenses in having separate attorneys.

Termination of the Engagement

[ALTERNATIVE 1: No prior representation of any of the organizers]
If we begin with our firm representing all of you acting as an intermediary, any one of you is completely free to change your mind and terminate the intermediation at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you that we have not previously disclosed to the others. In either case, we would withdraw from representing any of you further in connection with the organization of [New Entity] and would communicate to all of you the reason for our withdrawal.

[ALTERNATIVE 2: Prior representation of one of the organizers]
As each of you is aware, our firm has previously represented [Client-Organizer] personally and in matters related to [his/her] business interests. We have already advised [Client-Organizer] that if we are engaged to represent the [number] of you collectively, acting as an intermediary, in connection with the organization of [New Entity], we may be required to disclose to each of you information regarding [Client- Organizer] that we might otherwise be prohibited from disclosing; and [Client-Organizer] has consented to any such disclosure to the extent it is relevant and material to the organization of [New Entity].

If we begin with our firm representing all of you acting as an intermediary, any one of you is completely free to change your mind and terminate the intermediation at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you that we have not previously disclosed to the others. In either case, we would withdraw from representing any of you further in connection with the organization of [New Entity], and we would communicate to all of you the reason for our withdrawal.

When the organization of [New Entity] has been completed, our representation of [New Entity] and all of you as organizers will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to [New Entity] or to you in connection with any future or ongoing legal issues affecting [New Entity], including any duty to notify you of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

Fees and Billing

[ALTERNATIVE 1: Flat Fee]
Our fee in connection with the organization of [New Entity] will be a flat fee of $____. This fee includes the normal office and telephone conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization. Significant changes in the scope of the services required or significant revisions to the organizational documents will be charged separately, but any additional charges will be explained to

you before any revisions are begun. One-half of this fee is payable once this engagement letter is signed and you authorize us to proceed and is not refundable even if you later decide not to complete the organization. The balance of the fee will be payable at the time when the organization is complete.

[ALTERNATIVE 2: Time-Based Billing]
Our fee in connection with the organization of [New Entity] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the organization of [New Entity] and the preparation and filing of the appropriate documents to complete the organization, but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate steps are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorneys fees incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the advance fee deposit) when we expect that we will incur substantial costs on your behalf.

Each of you agrees that you will be jointly and severally responsible for the payment of all amounts owed to us and that we can seek payment in full from any one of you at our election. Any agreement between any of you to limit your responsibility for payment of amounts owed to us will not be binding upon us unless we also agree in writing to those limits. Your joint and several responsibility for the payment of our fees and expenses includes the situation in which our representation is terminated for any reason prior to the completion of the organization of [New Entity].

Effect of Death or Disability

If any one of you becomes unable to make adequately-considered decisions regarding the organization of [New Entity] because of mental disability or other reasons, the ethics rules that govern the practice of law in this jurisdiction state that we may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian or to take other actions to protect your interests if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the organization of [New Entity] and to sign documents on your behalf. If you authorize someone to act for you, and if their authority is broad enough to allow them to instruct us with regard to your interest in [New Entity] and its organization, we can continue to do work on your behalf by dealing with them, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege.

If you die during the course of this engagement, the personal representatives of your estate generally succeed to all of your rights with respect to this engagement and are entitled to act on your behalf. Thereafter, we could continue to do work on your behalf by dealing with your personal representatives, and we can rely on instructions from them. We can communicate with them and disclose information they need to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work-product privilege.

Retention, Delivery, Retrieval, and Destruction of the Files

Each of you should understand that the file that will be created by our firm in connection with the organization of [New Entity] will belong to our client, as identified in this letter. During the course of this engagement, each of you will be furnished copies of all of the organizational documents and of all significant correspondence. When the organization of [New Entity] is completed, we will deliver the originals of all of the organization documents to the Secretary of [New Entity]. We will retain physical and/or electronic copies of all of the organizational documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. The client may direct us to turn over our file to [New Entity], to any one of you, or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of [New Entity], make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to [New Entity] or at its request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you and [New Entity] will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you or [New Entity] to recover materials contained in a file that has been closed and placed in off-site storage, we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation of [New Entity], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the organization of a new entity ten (10) years after the completion of the organization. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to the client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or any change in the address or contact information for [New Entity], as appropriate, as the same may change from time to time.

Conflicts with Other Clients

Sometimes our lawyers are asked to represent a client who has interests that are adverse to another client whom we represent in other matters. The ethics rules that govern the practice of law in this jurisdiction permit us to accept multiple representations if certain requirements are met. While we represent you and/or [New Entity], we will not represent another client in matters that are directly adverse to your interests or the interests of [New Entity] unless and until we have made full disclosure to you and to [New Entity] of all relevant facts, circumstances, and implications. You agree that we can represent those other clients whose interests are adverse to yours or to the interests of [New Entity] if we confirm to you in good faith that the following conditions are met: (1) there is no substantial relationship between the other client's matter and our work for you or for [New Entity]; (2) our representation of the other client will not involve or disclose any confidential information we have received from you or [New Entity] (with the use of any ethically-approved screening measures, if appropriate); and (3) the other client also consents to our continuing representation of you and/or [New Entity]. If you make a good-faith objection to our statement, we will have the burden of proving that these conditions have been met.

Consent to the Terms of the Engagement

Before we begin, each of you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter

to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete the organization of [New Entity], for which each of you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by each of you will serve as authorization for us to proceed with the organization of [New Entity]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the organization of [New Entity], and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

We have each reviewed the foregoing letter concerning the various aspects of the representation, and we choose to have [Firm] serve as an Intermediary in representing all of us collectively in connection with the organization of [New Entity] on the terms described above.

Signed:_____, 20____ _____
(Organizer 1)

Signed:_____, 20____ _____
(Organizer 2)

Signed:_____, 20____ _____
(Organizer 3)

CHAPTER 4. ESTATE PLANNING LAWYER SERVING AS A FIDUCIARY

Introduction

This form addresses ethical issues that arise when a client asks the estate planning lawyer to serve as a fiduciary. These ethical issues should be disclosed and discussed with the client. This form should be adapted to fit each specific factual situation and applicable state law.

There are a number of specific ethical issues in this setting, including full disclosure to and discussion with the client of the alternative possibilities for fiduciary appointment, relative cost effectiveness of each of the alternatives, possible elimination of normal bonding requirements, and possible inclusion of exculpatory language in the dispositive document, which will have an effect on the standard of care to which the fiduciary will be held for liability purposes. Care must be taken with these subjects since the fiduciary will have been the scrivener.

References to the ACTEC Commentaries (Fourth Edition):
(Note that the page numbers shown below refer to the printed version of the ACTEC Commentaries.)

Lawyer Serving as Fiduciary and Counsel to Fiduciary, pp. 36-37

Basis of Fees for Trusts and Estates Services, p. 63

Selection of Fiduciaries, p. 95

Appointment of Scrivener as Fiduciary, pp. 95-96

Exculpatory Clauses, pp. 108, 112-113

Prohibited Transactions, p. 112

Supplemental Checklist for the Estate Planning Lawyer Serving as a Fiduciary
(Refer also to the General Checklist on pp. 4-8.)

1. ISSUES A LAWYER SHOULD CONSIDER BEFORE ACCEPTING THE REPRESENTATION

(a) Does the lawyer or his or her law firm have a policy regarding lawyers serving as fiduciary? If so, what is the policy (encourage, discourage, prohibit)?

(b) Does the lawyer have adequate support staff to permit the lawyer to perform fiduciary services efficiently and cost effectively?

(c) Does the lawyer's professional liability policy include or exclude lawyers serving as personal representative? trustee? guardian or conservator? attorney-in-fact?

2. DEFINE THE CONTENTS OF THE LETTER.

What should the engagement letter include when the client requests the estate planning lawyer serve as fiduciary?

(a) Fact that client independently selected lawyer as fiduciary

(b) Disclosure of potential conflicts of interest

(c) Advantages and disadvantages of lawyer serving as fiduciary

(d) Compensation to be paid lawyer as fiduciary and lawyer's law firm for legal services

(e) Explanation of exculpatory language and available options with respect to its use

(f) Explanation of bonding requirements, including cost of bond, customary practice, and relationship to professional liability insurance

3. CONSIDER THE ADVANTAGES AND DISADVANTAGES OF CO-FIDUCIARIES.

(a) Two heads better than one

(b) Costs

(c) Checks and balances

Form of a Letter Regarding the Appointment of the Lawyer as a Fiduciary

[Date]

[Name(s) and Address(es)]

Subject: Serving as Your [Executor/Trustee]

Dear [Client(s)]:

At our recent estate planning conference, you requested that I serve as the [executor/trustee under your will/trustee of your trust (Fully Identify Trust)]. I am willing to undertake this responsibility. However, in accepting this responsibility, I want to explain certain ethical considerations to you and obtain your acknowledgment that conflicts of interest could develop in connection with my service as your [executor/trustee].

ALTERNATIVE 1: Responsibilities of Executor
The executor of your will is charged with the responsibility to collect, manage, and protect your assets; to pay your just debts and funeral expenses; to prepare and file required tax returns; to pay the taxes required to be paid by your estate; to pay the expenses of the administration of your estate; and to distribute your estate in the manner directed by your will.

ALTERNATIVE 2: Responsibilities of Trustee
The trustee of your trust is charged with the responsibility to manage, invest, reinvest, and protect the assets of the trust; to

prepare and file required tax returns for the trust; to pay taxes required to be paid by your trust and the expenses of the administration of your trust; and to distribute the trust income and assets in the manner directed by your trust agreement.

Your [executor/trustee] should exercise good judgment, prudence, common sense, diligence, fairness, honesty, and have reasonable skill and experience in the management of the types of assets that comprise your [estate/trust], or obtain assistance in connection with the management of those assets.

Others Who Could Be Nominated as [Executor/Trustee]

Others who might serve as your [executor/trustee] include your spouse, one or more of your children, a bank or trust company, an investment advisor, your accountant, a relative, a personal friend, or a business associate.

Potential Conflicts of Interest

I can serve as your [executor/trustee] if that is your desire. However, several potential conflicts of interest may arise from my service as your [executor/trustee]. One of these conflicts of interest relates to the probability that my law firm will serve as legal counsel for me as [executor/trustee].

A lawyer's independence may be compromised when he or she acts as both [executor/trustee] and lawyer for the [executor/trustee]. The normal checks and balances that exist when two unrelated parties serve separately as [executor/trustee] and lawyer for the [executor/trustee] are absent. Unless [the Probate Court/a court] is asked to intervene, there may not be an independent, impartial review to determine if the [executor/trustee] is exercising an appropriate level of care, skill, diligence, and prudence in the administration of your [estate/trust], and there may not be an independent, impartial evaluation as to whether or not the fees and expenses charged by the [executor/trustee] and the fees and expenses charged by the law firm are reasonable. There may be other potential conflicts that may arise that might not be anticipated at this time.

Compensation to the Lawyer Nominated as [Executor/Trustee]; Retention of Law Firm

Both the [executor/trustee] and the lawyer for the [executor/trustee] are entitled to compensation for services performed on behalf of the [estate/trust]. When a lawyer has been nominated as [executor/trustee], he or she can receive compensation for performing services as [executor/trustee] and as the lawyer for the [executor/ trustee], as long as he or she charges only once for services rendered and as long as the total compensation for serving as both [executor/trustee] and lawyer for the [executor/trustee] is reasonable.

When I am requested by a client to serve as [executor/trustee], it is my practice to charge [DESCRIBE BASIS FOR FEE OR COMMISSION AS (EXECUTOR/TRUSTEE).]. In addition to [an executor's/a trustee's] fee or commission, I would also be entitled to reimbursement for out-of-pocket expenses, including court costs and fidelity bond premiums. In serving as [executor/trustee], I will likely obtain professional investment advice, and that cost will be charged to your [estate/trust].

When I am requested by a client to serve as [executor/trustee], it is my practice to engage my law firm to represent me in my capacity as [executor/trustee]. It is our firm's practice to charge [describe basis for fees as lawyer]. In addition to these fees, our firm would also be entitled to reimbursement for all out-of-pocket expenses. I would be entitled to receive my distributive share of the law firm's compensation.

[OPTIONAL ADDITIONAL PARAGRAPH REGARDING COMPENSATION]
It has been my experience that where I have been requested to serve as [executor/trustee], the combination of my [executor's/trustee's] fees and the legal fee charged by my law firm are less than the combination of [an executor's/a trustee's] fee charged by a bank or trust company and the legal fee charged by our law firm.

[OPTIONAL ADDITIONAL PARAGRAPHS]

Waiver of Bond; Use of Exculpatory Language

A [will/trust] may include language relieving the [executor/trustee] from the normal obligation to post [an executor's/a trustee's] bond with the court for the faithful performance of his or her obligations as well as language absolving the [executor/trustee]

nominated in the will from liability for actions not involving negligence, fraud, or bad faith. For example, a [will/trust] may provide that the [executor/trustee] is not to be charged with losses resulting from the action or inaction of the [executor/trustee] in the exercise of reasonable care, diligence, and prudence.

CHOOSE ONE OF THE FOLLOWING]

[ALTERNATIVE 1:]
Where the [will/trust] nominates the lawyer who prepared the [will/trust] as [executor/trustee], there is a potential conflict of interest for the lawyer incorporating into the [will/trust] language that relieves the lawyer from the obligation to post bond or which absolves the lawyer from liability for his or her own actions. I normally include language that relieves the [executor/trustee] from the obligation to post bond. I normally include language that exonerates the [executor/trustee] from liability for decisions made in the exercise of reasonable care, diligence, and prudence.

[ALTERNATIVE 2:]
In [wills/trusts] where I am nominated to serve as [an executor/a trustee], I normally do not include any language that relieves the [executor/trustee] of the obligation to post bond or that exonerates the [executor/ trustee] from liability for decisions made as [executor/trustee]. Absent such language, under the laws of this state, I [may/would] be obliged to post a bond for the faithful performance of my duties as [executor/ trustee] and I am obliged to exercise the degree of care, skill, prudence, and diligence that a prudent person would use in the management of his or her own affairs. [NOTE: The "prudent person rule" differs from state-to-state. Be sure the rule is correctly stated for the jurisdiction in which the document is being drafted.] I estimate the annual faithful performance bond premium will cost approximately $____ annually and is payable out of the assets of the [estate/trust].

It is your choice whether or not to waive the requirements of [an executor's/a trustee's] bond and whether to include or exclude language exonerating me from liability as your [executor/trustee]. Please advise me of your decision.

ALTERNATIVE: Change of [Executor/Trustee]

It is quite common for a [will/trust] to grant to one or more individuals the right to remove a trustee with or without cause and to appoint a successor. [You have instructed me [not] to include such a provision in your [will/trust].]

Consulting Independent Counsel

Because of the potential for a conflict of interest in my advising you with regard to these matters [and the inclusion or exclusion of language relieving me of any potential liability], you may want to consider discussing these matters with another lawyer. [NOTE: Counsel should consider the implications of Fred Hutchinson Cancer Research Center v. Holman, 732 P.2d 974 (Wash. 1987), where the court held that an exoneration clause did not protect the scrivener fiduciary against liability: "as the attorney engaged to write the decedent's will, [defendant] is precluded from reliance on the clause to limit his own liability when the testator did not receive independent advice as to its meaning and effect." 732 P.2d at 980.]

Nominating the Lawyer as [Executor/Trustee]

If, after consideration of these issues, you want to nominate me as your [executor/trustee], I would like you to acknowledge and waive the potential conflicts of interest I have explained to you. Please review the statement of nomination below. After you have considered this decision carefully, I ask that you sign the consent that follows this letter to indicate your request that I serve as your [executor/trustee]. Please return a signed copy of the consent to me. If you have any questions about anything discussed in this letter, please let me know.

Sincerely,

[Lawyer]

Confirmation of Appointment

We have voluntarily nominated [Lawyer] as [executor/trustee] in our [wills/trusts]. [He/she] is also the lawyer who prepared these instruments for us. [He/she] did not promote [himself/herself] or consciously influence us in the decision to appoint [him/her] as [executor/trustee]. In addition, [he/she] has disclosed to us the potential conflicts of interest that might arise as a result of [his/her] serving as [executor/trustee], as described above, including an explanation of the responsibilities of the [executor/trustee], a list of others who might be nominated as [executor/trustee], the fees and expenses to be paid to the

[executor/trustee], the likelihood that [his/her] law firm will also serve as attorney for the [executor/trustee], an explanation of the risks and disadvantages of such dual service, and an explanation of the decision regarding the inclusion or exclusion of exculpatory language in our wills.

We direct that our [wills/trusts] [____ include ____ not include] language relieving our lawyer from the obligation to post a bond for the faithful performance of [his/her] duties as [executor/trustee] and [____ include ____ not include] language absolving the lawyer as [executor/trustee] from liability for losses resulting from decisions made in the exercise of reasonable care, diligence, and prudence.

Signed:_____, 20____ _____
(Husband)

Signed:_____, 20____ _____
(Wife)

CHAPTER 5. REPRESENTATION OF EXECUTORS AND TRUSTEES

Introduction

These forms illustrate specific issues that should be addressed when the lawyer is about to undertake general representation of an executor, administrator, or trustee.

Representation of guardians and conservators is beyond the scope of this material, as state laws typically set forth detailed requirements for representation of this class of fiduciaries.

This section comprises two checklists and specific language for two corresponding engagement letters. The first set pertains to representation of an estate's executor or administrator, and the second set pertains to the representation of a trustee.

These letters are not designed to describe every situation in which lawyers represent fiduciaries and should be modified as appropriate for applicable state laws, rules of practice, and particular circumstances.

References to the ACTEC Commentaries (Fourth Edition):
(Note that the page numbers shown below refer to the printed version of the ACTEC Commentaries.)

General Principles (re Scope of Representation), p. 32

Multiple Fiduciaries, p. 33

Communication with Beneficiaries of Fiduciary Estate, p. 33

Representation of Fiduciary in Representative and Individual Capacities, p. 33

Lawyer May Not Make False or Misleading Statements, p. 35

Disclosure of Acts or Omissions by Fiduciary Client, p. 35

Representation of Fiduciary in Representative, Not Individual, Capacity, p. 35

General and Individual Representation Distinguished, p. 35

Lawyer Should Not Attempt to Diminish Duties of Lawyer to Beneficiaries Without Notice to Them, p. 36

Duties to Beneficiaries, p. 36

Planning the Administration of a Fiduciary Estate, pp. 51-52

Advising Fiduciary Regarding Administration, p. 57

Termination of Representation, pp. 57-58

Basis of Fees for Trusts and Estates Services, p. 63

Implied Authorization to Disclose, p. 78

Disclosures by Lawyer for Fiduciary, pp. 73-74, 85

Designation of Scrivener as Attorney for Fiduciary, pp. 95-96

Prohibited Transactions, p. 122

Organization as Client, pp. 127-130

Truthfulness in Statements to Others, pp. 150, 151, 156

Dealing with Unrepresented Person, pp. 157-158

Supplemental Checklist for the Representation of an Executor in Connection with the Administration of an Estate

(Refer also to the General Checklist on pp. 4-8.)

1. IDENTIFY THE CLIENT.

(a) Under the majority view, the named executor or administrator (referred to for convenience as "the executor") hires the lawyer and becomes the client.

(b) Most courts hold that the executor is the lawyer's client. A few courts and commentators suggest that "the estate" is the client, or primary client, of the lawyer. However, typically the discussion or analysis that follows such an assertion speaks in terms of duties owed to the beneficiaries and even to any creditors. The practitioner should exercise special care to identify the client and anticipate and deal with potential or actual conflicts of interest. The forms that follow do not attempt to deal with conflicts of interest but do identify the client and identify those who are not clients, in accordance with the suggestions set forth in the ACTEC Commentaries.

2. CONSIDER THRESHOLD ISSUES.

(a) Does the lawyer have an impermissible conflict of interest, such as a client relationship with a party who is expected to have a claim against the estate?

(b) If the lawyer has, or has had, a client relationship with a beneficiary, heir, or creditor of the estate that the lawyer believes will not adversely affect the proffered representation, the lawyer must make disclosure and seek the informed consent of the former, present, and proposed clients in accordance with ethical rules.

(c) If the lawyer has a claim against the estate for prior services, is it appropriate for the lawyer to make disclosure to, and request consent from, the executor?

(d) If there are two or more executors, is there anything to indicate that the interests are otherwise than mutual, or are there reasons to consult with the executors and obtain their consents to

3. DEFINE THE CONTENTS OF THE ENGAGEMENT LETTER.

(a) Include a statement as to the proposed client relationship, e.g., the representation is of the executor in a fiduciary capacity and not representation of the beneficiaries.

(b) In connection with the explanation of the lawyer-client communications privilege and potential conflicts of interest, consider requesting that the executor agree to waive future conflicts (e.g., allowing the lawyer to continue to represent one or more co-executors if a split develops and a co-executor engages separate counsel and/or allowing the lawyer to disclose information to the court or the beneficiaries.)

(c) Include a suggestion that the executor should feel free to consult other counsel before agreeing to the terms of engagement.

(d) Explain how custody of the intangible assets of the estate will be handled, e.g., who has custody of the estate checkbook.

(e) Discuss how non-probate assets will be handled, including what responsibility the executor has or may have with respect to those assets and the rights of the estate to require contribution by the recipients of those assets for an appropriate share of taxes and administration expenses.

(f) Explain who will be responsible for the preparation of the estate and inheritance tax returns and the fiduciary income tax returns for the estate.

4. CONSIDER WHETHER A COPY OF THE ENGAGEMENT LETTER SHOULD BE GIVEN TO THE BENEFICIARIES. (THIS STEP IS REQUIRED IN SOME JURISDICTIONS.)

5. CONSIDER PROVIDING THE TRUSTEE WITH A COPY OF OR A REFERENCE TO "WHAT IT MEANS TO BE A TRUSTEE—A GUIDE FOR CLIENTS," PREPARED BY THE ACTEC PRACTICE COMMITTEE AND AVAILABLE ON THE ACTEC WEB SITE.

6. IN STATES THAT HAVE A STATUTORY LIST OF THE RESPONSIBILITIES OF AN EXECUTOR OR TRUSTEE, PROVIDE A COPY OF THE STATUTE. CONSIDER HAVING THE EXECUTOR OR TRUSTEE SIGN AN ACKNOWLEDGMENT THAT THE STATUTE HAS BEEN READ AND UNDERSTOOD (REQUIRED IN CALIFORNIA).

Form of an Engagement Letter for the Representation of an Executor in Connection with the Administration of an Estate

[Date]

[Name(s) and Address(es)]

Subject: [Subject Matter of the Engagement]

Dear [Client(s)]:

Thank you for your confidence in selecting our firm to perform legal services in connection with the [subject matter of the engagement].

Scope of the Engagement

We will provide those services that are necessary and appropriate to administer the estate under the law of [State], commencing with the petition to probate the will and have you qualified as executor. The normal services that will then be involved are the following: [OPTIONAL LANGUAGE: The following list includes the types of services that may be provided]

(a) Prepare and complete all notices of appointment of you as executor and other notices with respect to creditors as are required by the laws of the State of [State] and rules of court having jurisdiction of the estate.

(b) Assist you in preparing a complete inventory of all assets of any kind or nature that are subject to probate, and any non-probate assets such as life insurance, retirement benefits, and other assets.

(c) Help you make a thorough search for all debts, obligations, and contingent liabilities of the estate in order to determine the financial condition of the estate and advise you regarding other action that must be taken by you to secure, reinvest, or protect the assets and provide for the discharge of liabilities, including death taxes of the estate.

(d) Prepare and complete all interim reports to the Probate Court and the beneficiaries as required during the course of administration of the estate.

(e) Prepare all tax returns for the estate, including federal estate tax and generation-skipping tax returns, state inheritance tax, or any local or state property tax returns, as well as federal and state fiduciary income tax returns.

(f) Review and consider with you any post-death planning, such as alternative asset valuation options, use of disclaimers, funding of trusts as provided for in the estate plan, timing the distribution of assets that are beneficial to the estate and any beneficiaries, and election of income tax benefits to the estate and beneficiaries.

(g) Plan for the payment of all death taxes and the source of funds to be used in payment of any tax obligations, along with any elections for installment payment of taxes, if available.

(h) Prepare a plan of distribution of assets held in the estate, either outright or to separate continuing trusts, for the beneficiaries.

(i) Prepare all reports, notices, consents, receipts, and accountings for closing the estate and your discharge as executor.

(j) Counsel and advise on any related questions or matters arising out of the administration of the estate.

If there are other legal services that you wish us to perform for you as executor, we should first consult together and supplement this letter agreement before commencing those tasks.

Identification of the Client

You should understand that we represent you as executor. We do not represent the beneficiaries of the estate, even though we will, from time to time, provide them with information about the administration of the estate. In appropriate circumstances, we may advise beneficiaries to obtain independent counsel, as we do not represent them.

Apart from any applicable legal requirement to notify the beneficiaries that the will has been probated and the estate administration commenced, we consider it good practice to do so and to provide each beneficiary with a copy of the will. In doing so, we will make it clear that you, alone, are our client. Furthermore, we usually keep the beneficiaries advised as the administration of the estate progresses; for example, by furnishing copies of the formal inventory of estate assets as soon as that has been formalized.

[SPECIAL LANGUAGE IF THERE ARE MULTIPLE EXECUTORS:]
While there is nothing at this point to suggest that any differences of opinion will develop between you during the course of administration of the estate, it is possible that issues may arise on which the [number] of you do not agree. Ordinarily, under such circumstances, a law firm could not represent all of the co-executors without being involved in a serious conflict-of-interest problem.

Conflicts of interest may arise in a number of different contexts, including whether and to what extent discretionary distributions should be made from the estate, the investment policy to be followed by the coexecutors, and the payment of compensation to the co-executors. In the event that the co-executors should reach different conclusions concerning the management and administration of the estate, it might be best for each of you to have the benefit of independent counsel to avoid the possibility that our advice to one of you would be influenced in any way by our representation of one of the other co-executors. For now, we will represent all of you in the administration of the estate, with the understanding that each of you retains the right to obtain independent legal counsel at any time that it appears to you to be advantageous.

Although we do not anticipate that it will be necessary, if a conflict does arise [between/among] the coexecutors, and it is impossible in our judgment to perform our obligations to each of you in accordance with the standards that we would maintain in representing any individual client, we will withdraw from all further representation of the co-executors and advise one or all of you to obtain independent counsel. In such event, we would submit a statement for legal services rendered up to the date of such withdrawal. [NOTE: In some states, this will not be appropriate, and application would have to be made to the probate court for an award of a portion of the single statutory attorney's fee that will be awarded for ordinary legal services to the estate.]

As a part of my representation, there will be complete and free disclosure to each of you of all information concerning the estate that I may receive from [either/any] of you in your capacity as co-executor. Such information will not be confidential between you, collectively, and us as your lawyers, irrespective of whether the information is obtained in conferences at which all of you are present, or private conferences with one of you, including conferences that may have taken place before the date of this letter.

[SPECIAL LANGUAGE IF THE EXECUTOR IS ALSO A BENEFICIARY:]
Because you are a beneficiary of the estate, I must advise you that I only represent you in your capacity as executor, and can only represent you as a beneficiary if there is no conflict of interest by reason of such relationship. For example, a conflict could arise in distribution of assets to you if one of the other beneficiaries should object to your individual ownership of partial interest in an estate asset; or by reason of the amount of compensation that you may claim. In the event of such a conflict, consideration may have to be given by you to the employment of independent counsel to represent your personal interests.

Termination of the Engagement

When the [subject matter of the engagement] has been completed, our representation will be concluded unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to [you/any of you] in connection with any future or ongoing legal issues affecting the [subject matter of the engagement], including any duty to notify [you/any of you] of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

You may terminate this engagement at any time by notice in writing to us. Upon receipt of such notice, subject to such court approval as may be necessary in the context of the situation, we will promptly cease providing any service to you. You will be responsible for paying for our services rendered up to the time we receive such notice and for such reasonable services that we provide thereafter in connection with the transfer of responsibility for the matters we are handling at that time to your new counsel.

[SEE NOTES ABOVE ABOUT APPLICABILITY OF THIS TYPE OF ARRANGEMENT IN STATUTORY FEE STATES.]

We may terminate this engagement by giving you written notice. Upon termination of our representation, you will be responsible for paying for our services rendered up to the time we terminate our engagement and for such reasonable services that we provide thereafter in connection with the transfer of responsibility for the matters we are handling at that time to your new counsel. [SEE NOTES ABOVE ABOUT APPLICABILITY OF THIS TYPE OF ARRANGEMENT IN STATUTORY FEE STATES.]

Fees and Billing

[ALTERNATIVE 1: Flat Fee]
Our fee in connection with the [subject matter of the engagement] will be a flat fee of $____. This fee includes the normal office and telephone conferences, research, analysis, and advice associated with the [subject matter of the engagement]. Significant changes in the scope of the services required or significant revisions to any documents that we have prepared will be charged separately, but any additional charges will be explained to you before any revisions are begun. One-half of this fee is payable once this engagement letter is signed and you authorize us to proceed and is not refundable even if you later decide not to complete the [objective of the engagement]. The balance of the fee will be payable at the time when the [subject matter of the engagement] is complete.

[ALTERNATIVE 2: Time-Based Billing]
Our fee in connection with the [subject matter of the engagement] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the [subject matter of the engagement], but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest

outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate measures are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorneys fees incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the retainer or advance fee deposit) when we expect that we will incur substantial costs on your behalf.

You should understand that our fees will be payable whether or not approved by the inheritance and estate tax authorities or by the Probate Court. Although it is usual and customary to look to estate assets as the source of funds with which to pay our charges, the responsibility for payment ultimately is yours [NOTE: This arrangement would be prohibited in certain states that have statutory fee legislation].

Retention, Delivery, Retrieval, and Destruction of the Files

You should understand that the file that will be created by our firm in connection with the [subject matter of the engagement] will belong to our client, as identified in this letter. During the course of this engagement, you will be furnished copies of all documents and of all significant correspondence. When the [subject matter of the engagement] is completed, we will deliver the originals of all documents to our client. We will retain physical and/or electronic copies of all of the documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. Our client may direct us to turn over our file to you or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of our client, make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to our client or at its request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you to recover materials contained in a file that has been closed and placed in off-site storage, you agree that we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation in connection with the [subject matter of the engagement], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the representation ten (10) years after the completion of the engagement. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to our client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or contact information as the same may change from time to time.

Consent to the Terms of the Engagement

Before we begin, you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete the administration of the estate, for which you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

[OPTIONAL PROVISION:]
As a condition of this representation, we require that, notwithstanding normal rules of confidentiality, you authorize us to notify the probate court and creditors and beneficiaries of the estate, as the case may be, of any actions or omissions on your part that have a material effect on their interests in the estate, including acts or omissions that may constitute negligence, bad faith, or breach of your fiduciary duties. [NOTE: In many jurisdictions the attorney-client communications privilege might preclude this type of disclosure without the personal representative's informed waiver. Reference should be made to the law of the jurisdiction in which the estate proceeding is pending.]

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by you will serve as authorization for us to proceed with the administration of the estate. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the administration of the estate, and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

I have reviewed the foregoing letter concerning the various aspects of the representation, and I choose to have [Lawyer] represent me in connection with the administration of the estate of [Decedent] on the terms described above. [OPTIONAL PROVISION: I expressly waive the attorney-client privilege, my attorneys' duty to protect and preserve my confidences and secrets, and any other rule that may exist with respect to confidential information or secrets relating to my actions and activities as executor of the estate; and authorize and direct my attorneys to notify the probate court and the creditors and beneficiaries of the estate of all actions by me as executor of the estate that have any material effect on their interests in the estate, including actions that may constitute negligence, bad faith, or a breach of my fiduciary duties.]

Signed:_____, 20____ _____
(Executor)

Supplemental Checklist for the Representation of a Trustee in Connection with the Administration of a Trust
(Refer also to the General Checklist on pp. 4-8.)

1. IDENTIFY THE CLIENT.

(a) Under the majority view, the trustee should be and usually is the lawyer's client. However, a few courts and practitioners favor an entity approach. See Comments at 1.(b) of Estate Administration Representation Checklist on page 68.

(b) Inter vivos trusts:

1. Typically, as part of an estate planning engagement, the lawyer serves as scrivener and then advises and assists both the settlor and trustee with respect to funding and otherwise setting up the trust; all parties likely proceed on the assumption, or with the tacit understanding, that the trustee will look to that attorney for ongoing advice.

2. In the case of the typical irrevocable trust, the settlor retains no ongoing legal or equitable interest, making it unlikely that any conflicts will arise that would preclude the lawyer's continued representation of the settlor for other purposes or matters while also representing the trustee.

3. A revocable trust is usually for the settlor's own benefit and remains fully subject to the settlor's control as long as the settlor remains competent to amend or revoke; however, if differences arise [between/among] the parties, the lawyer may have no alternative but to advise the trustee to obtain separate counsel, at least for the purpose of resolving the differences. When the settlor dies and the trust becomes irrevocable, the lawyer should confirm or formalize the representation of the trustee.

(c) Testamentary trusts: Typically, the lawyer who has represented the executor will, more or less as a matter of course, come to represent the trustee as well. The transition from estate to trust will be "seamless" in many cases, especially if the same person serves in both fiduciary capacities. Nevertheless, an engagement letter is advisable to cover the points outlined below.

(d) Co-trustees: Especially if unanimous action is required to bind the trust, the lawyer should be able to represent the co-trustees jointly, absent indications that differences exist between or among the co-trustees.

2. DEFINE THE CONTENTS OF THE ENGAGEMENT LETTER

(a) Include a statement as to the client relationship, i.e., the representation is of the trustee in a fiduciary capacity and no one else.

(b) Give a specific description of the services to be rendered and, if appropriate, services not to be included. If there is a corporate or other professional fiduciary, the lawyer may simply indicate availability to perform those services the trustee may require from time to time.

(c) Explain how fees will be determined and billed, together with an explanation of how costs will be accounted for; how to deal with principal vs. income issues. Further, will it be prudent for the trustee to pay fees on an interim basis, without court approval?

(d) Describe lawyer-client communications privilege and potential conflicts of interest. Consider requesting that the trustee agree to waive future conflicts (e.g., allowing the lawyer to continue to represent one or more co-trustees if split develops and a co-trustee engages separate counsel, and allowing the lawyer to disclose information to the court or the beneficiaries).

(e) Explain how the lawyer/client relationship may be terminated.

(f) Consider suggesting that the trustee should feel free to consult other counsel before agreeing to the terms of engagement.

Form of an Engagement Letter for the Representation of a Trustee in Connection with the Administration of a Trust

[Date]

[Name(s) and Address(es)]

Subject: [Subject Matter of the Engagement]

Dear [Client]:

Thank you for your confidence in selecting our firm to perform legal services in connection with the [subject matter of the engagement].

[OPTIONAL PROVISION FOR AN IRREVOCABLE INTER VIVOS TRUST:]
As you know, I represented [Settlor] in connection with establishing this trust, which is irrevocable and in which [he/she] has retained no interest. Although I anticipate continuing to represent [him/her] for other purposes, I am able to represent you as trustee of the trust upon the terms set forth in this letter.

We will provide such advice and assistance in connection with the administration of the trust as may be appropriate and agreed to from time to time. In that connection, we would be pleased to discuss with you your duties and responsibilities as trustee and your obligation to the beneficiaries of the trust including any special circumstances with respect to beneficiaries that you should be aware of as trustee.

[OPTIONAL:]
We can provide, through a special custody account arrangement we have with [XYZ Trust Company], full administrative services, including record keeping, bill paying, handling periodic or special distributions, and daily sweeping of principal and income cash into selected short-term investment funds. We will provide full particulars if this custody arrangement is of interest to you.

[OPTIONAL:]
We are also prepared to advise you on tax questions that may arise in the administration of the trust and to handle federal and

state fiduciary income tax preparation and to deal with any property taxes that may be applicable.

[OPTIONAL:]
We will advise you of your powers and responsibilities with respect to trust investments, but cannot provide investment advice as such.

If there are other legal services that you wish us to perform for you as trustee, we should first consult together and supplement this letter agreement before commencing those tasks.

Identification of the Client

You should understand that we represent you as trustee. We do not represent the beneficiaries of the trust, even though we will, from time to time, provide them with information about the administration of the trust. In appropriate circumstances, we may advise beneficiaries to obtain independent counsel as we do not represent them.

Apart from any applicable legal requirement to notify the beneficiaries of the terms of the trust, we consider it good practice to do so and to provide each beneficiary with a copy of the trust agreement. In doing so, we will make it clear that you, alone, are our client. Furthermore, we usually keep the beneficiaries advised regarding the administration of the trust; for example, by furnishing copies of the income tax returns or other accounting reports of the trust each year.

[SPECIAL LANGUAGE IF THERE ARE MULTIPLE TRUSTEES:]
While there is nothing at this point to suggest that any differences of opinion will develop between you, during the course of administration of the trust, it is possible that issues may arise on which the [number] of you do not agree. Ordinarily, under such circumstances, a law firm could not represent all of the cotrustees without being involved in a serious conflict-of-interest problem.

Conflicts of interest may arise in a number of different contexts, including whether, and to what extent, discretionary distributions should be made from the trust, the investment policy to be followed by the cotrustees, and the payment of compensation to the co-trustees. In the event that the co-trustees should reach different conclusions concerning the management and administration of the trust, it might be best for each of you to have the benefit of independent counsel to avoid the possibility that our advice to one of you would be influenced in any way by our representation of one of the other co-trustees. For now, we will represent all of you in the administration of the trust, with the understanding that each of you retains the right to obtain independent legal counsel at any time that it appears to you to be advantageous.

Although we do not anticipate that it will be necessary, if a conflict does arise [between/among] the cotrustees, and it is impossible in our judgment to perform our obligations to each of you in accordance with the standards that we would maintain in representing any individual client, we will withdraw from all further representation of the co-trustees and advise one or all of you to obtain independent counsel. In such event, we would submit a statement for legal services rendered up to the date of such withdrawal. [NOTE: In some states, this will not be appropriate, and application would have to be made to the court for an award of a portion of the single statutory attorney's fee that will be awarded for ordinary legal services to the trust.]

As a part of our representation, there will be complete and free disclosure to each of you of all information concerning the trust that we may receive from either of you in your capacity as co-trustee. Such information will not be confidential between you, collectively, and us as your lawyers, irrespective of whether the information is obtained in conferences at which all of you are present, or private conferences with one of you, including conferences that may have taken place before the date of this letter.

[SPECIAL LANGUAGE IF THE TRUSTEE IS ALSO A BENEFICIARY:]
Because you are a beneficiary of the trust, we must advise you that we only represent you in your capacity as trustee and can only represent you as a beneficiary if there is no conflict of interest by reason of such relationship. For example, a conflict could arise in distribution of assets to you if one of the other beneficiaries should object to your individual ownership of partial interest in a trust asset; or by reason of the amount of compensation that you may claim. In the event of such a conflict, consideration

may have to be given by you to the employment of independent counsel to represent your personal interests.

Termination of the Engagement

When the [subject matter of the engagement] has been completed, our representation will be concluded unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to [you/any of you] in connection with any future or ongoing legal issues affecting the [subject matter of the engagement], including any duty to notify [you/any of you] of changes in the laws or the necessity to make any periodic or renewal filings or registrations.

You may terminate this engagement at any time by notice in writing to us. Upon receipt of such notice, subject to such court approval as may be necessary in the context of the situation, we will promptly cease providing any service to you. You will be responsible for paying for our services rendered up to the time we receive such notice and for such reasonable services that we provide thereafter in connection with the transfer of responsibility for the matters we are handling at that time to your new counsel. [SEE PREVIOUS NOTE ABOUT APPLICABILITY OF THIS TYPE OF ARRANGEMENT IN STATUTORY FEE STATES.]

We may terminate this engagement by giving you written notice. Upon termination of our representation, you will be responsible for paying for our services rendered up to the time we terminate our engagement and for such reasonable services that we provide thereafter in connection with the transfer of responsibility for the matters we are handling at that time to your new counsel. [SEE PREVIOUS NOTE ABOUT APPLICABILITY OF THIS TYPE OF ARRANGEMENT IN STATUTORY FEE STATES.]

Fees and Billing

Our fee in connection with the [subject matter of the engagement] will be the product of the time spent by our lawyers and other professionals multiplied times their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the [subject matter of the engagement], but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will bill you for our services on a monthly basis

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rate that was previously in effect.

Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.

In addition to our legal fees, as described above, we will be entitled to be reimbursed by you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies and travel expenses. Our internal costs include things like photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage, and retrieval, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest

outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate measures are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorneys fees incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the retainer or advance fee deposit) when we expect that we will incur substantial costs on your behalf.

You should understand that, although it is usual and customary to look to trust assets as the source of funds with which to pay our charges, the responsibility for payment ultimately is yours. [NOTE: This arrangement would be prohibited in certain states that have statutory fee legislation.]

Retention, Delivery, Retrieval, and Destruction of the Files

You should understand that the file that will be created by our firm in connection with the [subject matter of the engagement] will belong to our client, as identified in this letter. During the course of this engagement, you will be furnished copies of all documents and of all significant correspondence. When the [subject matter of the engagement] is completed, we will deliver the originals of all documents to our client. We will retain physical and/or electronic copies of all of the documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. Our client may direct us to turn over our file to you or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of our client, make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to our client or at its request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you to recover materials contained in a file that has been closed and placed in off-site storage, you agree that we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials.

Unless our firm is engaged to provide on-going representation in connection with the [subject matter of the engagement], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the representation ten (10) years after the completion of the engagement. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to our client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or contact information as the same may change from time to time.

Consent to the Terms of the Engagement

Before we begin, you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin will result in an increase in the time and expense needed to complete the administration of the estate, for which you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

[OPTIONAL PROVISION:]
As a condition of this representation, we require that, notwithstanding normal rules of confidentiality, you authorize us to notify the beneficiaries of the trust of any actions or omissions on your part that have a material effect on their interests in the trust, including acts or omissions that may constitute negligence, bad faith, or breach of your fiduciary duties.

[NOTE: In many jurisdictions the attorney-client communications privilege might preclude this type of disclosure without the trustee's informed waiver. Reference should be made to the law of the jurisdiction in which the estate proceeding is pending.]

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by you will serve as authorization for us to proceed with the administration of the trust. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the administration of the trust, and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

I have reviewed the foregoing letter concerning the various aspects of the representation, and I choose to have [Lawyer] represent me in connection with the administration of the [name of the trust] on the terms described above. [OPTIONAL PROVISION: I expressly waive the attorney-client privilege, my attorneys' duty to protect and preserve my confidences and secrets, and any other rule that may exist with respect to confidential information or secrets relating to my actions and activities as trustee of the trust; and authorize and direct my attorneys to notify the beneficiaries of the trust of all actions by me as trustee of the trust that have any material effect on their interests in the trust, including actions that may constitute negligence, bad faith, or a breach of my fiduciary duties.]

Signed:_____, 20____ _____
(Trustee)

CHAPTER 6. FIDUCIARY LITIGATION

Introduction

These forms illustrate specific issues that should be addressed when the lawyer is about to undertake general representation of an executor, administrator, or trustee in connection with litigation involving the estate or trust.

These forms are appropriate when the lawyer is representing the fiduciary in the fiduciary's representative capacity or when the lawyer is representing the fiduciary personally. However, the lawyer must consider carefully the fundamental aspects of such differing styles of representation and make it clear which form of representation is being undertaken, specifying the conditions of such representation, including the extent, if any, to which reimbursement of the lawyer's fees may be sought from the assets of the estate or trust.

These letters are not designed to describe every situation in which lawyers represent fiduciaries in the context of fiduciary litigation and should be modified as appropriate for applicable state laws, rules of practice, and particular circumstances.

References to the ACTEC Commentaries (Fourth Edition):
(Note that the page numbers shown below refer to the printed version of the ACTEC Commentaries.)

General Principles (re Scope of Representation), p. 13

Representation of Fiduciary in Representative and Individual Capacities, p. 33

Representation of Fiduciary in Representative, Not Individual, Capacity, p. 35

General and Individual Representation Distinguished, p. 35

Advising Fiduciary Regarding Administration, p. 57

Termination of Representation, pp. 57-58

Basis of Fees for Trusts and Estates Services, p. 63

Supplemental Checklist for Fiduciary Litigation
(Refer also to the General Checklist on pp. 4-8.)

1. ISSUES THE LAWYER SHOULD CONSIDER BEFORE ACCEPTING THE REPRESENTATION

(a) Describe the nature and consequences of any limitations on the scope of the representation and obtain the clients' consent to such limitations (e.g., retained to try to resolve case without litigation, retained to handle litigation but not related estate administration or trust administration, retained to handle part of larger litigation such as tax aspects, retained to address issues under one state's laws but not another, litigation does/does not include appellate work, etc.).

(b) What do the clients expect the "style" of the representation to be? (e.g., desire to try to retain family relationship to extent possible; desire to wage all out war, "no matter the cost")

(c) If appropriate, describe the possible conflict of interest that might arise if the lawyer is to be paid on a contingent (including partially contingent) fee basis.

2. IDENTIFY THE CLIENT.

(a) Is the client a fiduciary involved in the matter? If so, is the lawyer representing the fiduciary in its individual or representative capacity?

(b) Is the client a beneficiary of an estate or trust in the matter?

(c) Is the client a fiduciary and a beneficiary, and does the lawyer represent the client in both capacities? (If so, the lawyer must be prepared to explain the consequences of those dual capacities.)

3. EXPLAIN HOW CONFIDENTIAL INFORMATION WILL BE HANDLED.

(a) Explain ramifications of any of the clients revealing tactics, research and other information with parties on the "other" side or sides of a dispute and possible agreement among joint clients about "leaking" information.

(b) As appropriate, explain effects of a joint defense or plaintiffs agreement on confidentiality among co-parties (e.g. communications are confidential as to all others but not as among coparties).

Form of an Engagement Letter for Representation of One Beneficiary in Trust and Estate Litigation

[Date]

[Name and Address]

Subject: [Subject Matter of the Engagement]

Dear [Client]:

Thank you for your confidence in selecting our firm to perform legal services in connection with the [subject matter of the engagement].

Scope of the Engagement

We will provide legal services in connection with [specific description of the subject matter].

As your attorneys, we will assist you in all issues pertaining to this matter, including [LIST ANY SERVICES YOU ANTICIPATE THIS PARTICULAR DISPUTE/LITIGATION WILL ENTAIL, INCLUDING WHETHER YOU WILL REPRESENT CLIENT ON APPEAL; BE AS SPECIFIC AS POSSIBLE.]. We will counsel you on the legal and strategic aspects of the litigation and advise you as necessary. We will also prepare any required documentation and will provide legal advice to you pertaining to this dispute.

In matters that involve litigation, negotiations, or other interactions with third parties, our discussions with you may include assessments of the strengths and weaknesses of your case. Please note carefully that we can make no promises regarding the outcome of any part of this engagement. All legal matters, whether or not involving litigation, entail uncertainty because we can never be sure how other parties will behave or how the court will react to our arguments and the evidence presented. In addition, the discovery process may uncover facts detrimental to your position. Therefore, it is important that you understand at the outset that we cannot guarantee a favorable result. However, we can assure you of our best efforts on your behalf.

Alternatives to Litigation

Please know that there are alternative forms of dispute resolution, such as informal settlement negotiations, mediation and arbitration, and these alternatives may be less expensive and time-consuming than litigation. We will be happy to discuss these alternatives with you at any point during our representation. [NOTE ANY APPLICABLE STATUTORY OR LOCAL REQUIREMENT TO MAKE AN EFFORT TO MEDIATE.]

Identification of the Client

You are our client. When we represent an individual client separately, we become an advocate for our client's personal interests, and we give our client totally independent advice. We have a duty to act solely in the best interests of our client, without being influenced by the conflicting personal interests of any other clients or anyone else.

Confidentiality and Privilege

As your attorneys, we owe you a duty to preserve any confidential information you share with us, unless you authorize us to disclose such information or we are compelled legally to do so. It is critical that you engage in full disclosure in the matter at issue and inform us of any of your acts and doings, past and present, regarding this matter in order to avoid any problems that might otherwise arise from any failure to communicate fully. Such separate representation ensures the preservation of your confidences and the elimination of any conflicts of interest between you and any other person as related to our representation of you. Please note that you will lose the protection of the attorney-client privilege if you disclose communications between you and us to persons other than those who need to know the information in order to implement our advice. Generally, the law does not provide privileges for communications with other professional service providers, including accountants and financial and business consultants. We therefore recommend that you guard your attorney client privilege closely and consult with us before disclosing confidential communications to anyone else.

Fees and Billing

Our fee in connection with the [subject matter of the engagement] will be the product of the time spent by our lawyers and other professionals multiplied by their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the [subject matter of the engagement], but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will generally bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rates previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. [OPTIONAL: If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.]

[INSERT CONTINGENT FEE ALTERNATIVE, IF APPLICABLE; CONSIDER ANY STATE STATUTE OR LAW THAT MAY APPLY; TAKE INTO ACCOUNT RESOLUTION BY SETTLEMENT AND THE POSSIBILITY OF APPEALS.]

You should note that there are certain limited circumstances in which there is a possibility that the opposing party's costs and/or fees could be awarded against you, for instance if [INSERT APPLICABLE ELEMENTS, FOR INSTANCE, "you are removed as a fiduciary or are found to have breached fiduciary duties, or if your suit is deemed to have been frivolous, vexatious, groundless, or without substantial justification."] We will be discussing these issues with you from time to time during our representation, so you should not hesitate to ask about this if you have any concerns.

In addition to our legal fees, as described above, we will charge you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies, witness fees, transcriptions costs, and travel expenses. Our internal costs include items such as photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage and retrieval, postage, overnight delivery, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms and other experts. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement. We will seek your prior authorization to hire such persons if the anticipated expense will exceed $____. We have no obligation to incur or advance any expense exceeding $____ unless reimbursement is fully secured by an advance cost deposit.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate measures are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorney fees and costs incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the retainer or advance fee deposit) when we expect that we will incur substantial costs on your behalf.

[RETAINER ALTERNATIVE 1: Current Billing Option]

The firm requests a retainer of $____. This retainer will be placed in the firm's trust account. [OPTIONAL: This retainer will be placed in a special trust account in your name.] The retainer amount will be disbursed from the trust account for the payment of your current fees and costs. You will be expected to replenish the trust account to the required retainer level prior to the next billing period. All monies will be retained in the firm's trust account until earned and will be paid from the trust account after you have approved each statement we send to you. Any balance remaining at the end of the representation will be returned to you.

[RETAINER ALTERNATIVE 2: Deposit Option]

The firm requests a retainer of $____. This retainer will be placed in the firm's trust account. The retainer amount will be applied to our final statement, and any balance remaining at the end of the representation will be returned to you.

[INTEREST ALTERNATIVE 1: Interest Bearing]

Funds we retain in the firm's trust account bear interest, but interest is paid to the _____ Lawyer Trust Account Fund, rather than being disbursed to you. [CHECK APPLICABLE REQUIREMENTS.]

[INTEREST ALTERNATIVE 2: Non-interest Bearing]

Funds we retain in the firm's trust account bear interest, and we will disburse that interest to you at the end of the representation, or apply it to our final statement, as the case may be. [CHECK APPLICABLE REQUIREMENTS.]

It is understood that our fees and costs will be paid by you personally and will not be paid by, or from, the [trust/estate]. However, if the facts of this matter develop such that we believe that there is a basis for you to seek reimbursement from [the trust/estate/or other party] for some, or even all, of our fees and costs, then we will advise you accordingly.

Agreement to Arbitrate

If you have any questions about our fees or costs or the quality or appropriateness of our services, we encourage you to discuss them with us. However, if a dispute arises about any such matter and we cannot amicably resolve that dispute, then the dispute will be decided by the _____ Bar Association _____ Committee. [INSERT METHOD FOR SELECTING ARBITRATOR OR ARBITRATION ORGANIZATION.] If there is such an arbitration, each party will be responsible for paying his, her or its own fees and costs, including a share of the expenses charged by the arbitrator. Any such arbitration shall be governed by the Uniform Arbitration Act, as adopted by _____. By agreeing to arbitration, you are relinquishing your right to bring an action in court and to a jury trial. Also, discovery in an arbitration proceeding can be limited, and the grounds for appealing the arbitrator's decision are limited.

[OPTIONAL:] These provisions will apply to all claims or disputes between us, including claims for professional negligence.

Effect of Disability

[WARNING: YOU MUST DETERMINE WHETHER THE ETHICS RULES OF YOUR JURISDICTION WOULD ALLOW THE FOLLOWING PROVISIONS.] If you become unable to make adequately-considered decisions regarding the [subject matter of the engagement] because of mental disability or other reasons, the ethics rules that govern the practice of law in this jurisdiction provide that we may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian, or to take other actions to protect your interests, if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the [subject matter of the engagement] and to sign documents on your behalf. If you authorize someone to act as your agent, and if his or her authority is broad enough to allow him or her to instruct us with regard to your interest in the [subject matter of the engagement], we can continue to do work on your behalf by dealing with your agent, and we can rely on instructions from your agent. We can communicate with your agent and disclose information he or she needs to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work product privilege, without those privileges being waived.

Termination of the Engagement

When the [subject matter of the engagement] has been completed, our representation will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to you in connection with any future or ongoing legal issues affecting the [subject matter of the engagement], including any duty to notify you of changes in applicable law or the necessity to make any periodic or renewal filings or registrations.

You may terminate this engagement at any time by providing us with some form of written notice. Subject to any court approval that may be required, upon receipt of this notice, we will promptly cease providing services to you. You will be responsible for paying for our services rendered to you and costs incurred on your behalf up until the day we receive such notice, and for any services and costs we must necessarily provide or incur thereafter in connection with the transfer of responsibility to your new counsel for the matters we have been handling.

Similarly, we may terminate this engagement at any time by providing you with written notice. Subject to any court approval that may be required, upon your receipt of this notice, you will be responsible for paying for any services we have rendered and costs we have incurred on your behalf up to the point of termination, and any other services we must necessarily render to transfer the responsibilities of the matter to your new counsel or otherwise end our representation.

Retention, Delivery, Retrieval, and Destruction of the Files

You should understand that the file that will be created by our firm in connection with the [subject matter of the engagement] will belong to you. During the course of this engagement, you will be furnished copies of all documents and of all significant correspondence. [OPTIONAL: When the [subject matter of the engagement] is completed, we will deliver the originals of all documents to you.] We will retain physical and/or electronic copies of all of the documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. You may direct us to turn over our file to you, or to anyone else that you designate, at any time. In such case, we may retain in our possession all internal communications and notes prepared by our firm and, at your expense, make, retain, and store physical and/or electronic copies of our file to be delivered to you or at your request.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently, our fees. Because you will have been furnished with [OPTIONAL (see above): the originals and/or] copies of all relevant materials contained in our files during the course of the active phase of our representation, if you ask us to retrieve materials contained in a file that has been closed and placed in off-site storage, you agree that we shall be entitled to be paid by the requesting party a reasonable charge for the cost of retrieving the file and identifying, reproducing, and delivering the requested materials.

Unless our firm is engaged to provide ongoing representation in connection with the [subject matter of the engagement], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the representation ten (10) years after the completion of the engagement. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to our client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, subject to applicable law, we will destroy the file without further notice. It will be your responsibility to notify us of any change in your address or contact information.

[OPTIONAL PROVISION: Conflicts with other clients]

Sometimes our lawyers are asked to represent a client who has interests that are adverse to another client whom we represent in other matters. The ethics rules that govern the practice of law in this jurisdiction permit us to accept multiple representations if certain requirements are met. While we represent you, we will not represent another client in matters that are directly adverse to your interests, unless and until we have made full disclosure to you and to the other client of all relevant facts, circumstances, and implications. [You agree/each of you agrees] that we can represent those other clients whose interests are adverse to yours if we confirm to [you/each of you] in good faith that the following conditions are met: (1) there is no substantial relationship between the other client's matter and our work for you; (2) our representation of the other client will not involve a disclosure of any confidential information we have received from you or relating to our representation of you (with the use of any ethically-approved screening measures, if appropriate); and (3) the other client also consents to our continuing representation of you. If you make a good-faith objection to our statement, we will have the burden of proving that these conditions have been met.

Consent to the Terms of the Engagement

Before we begin, you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin may result in an increase in the time and expense needed to complete the [subject matter of the engagement], for which you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

We have enclosed an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by you will serve as authorization for us to proceed with the [subject matter of the engagement]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the [subject matter of the engagement], and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

I have reviewed the foregoing letter concerning the various aspects of the representation, and I agree to have [Firm] represent me in connection with the [subject matter of the engagement] on the terms described above.

Signed:_____, 20____ _____
(Client)

Form of an Engagement Letter for Representation of Multiple Beneficiaries in Trust and Estate Litigation

[Date]

[Name(s) and Address(es)]

Subject: [Subject Matter of the Engagement]

Dear [Client(s)]:

Thank you for your confidence in selecting our firm to perform legal services in connection with the [subject matter of the engagement].

Scope of the Engagement

We will provide legal services in connection with [specific description of the subject matter].

As your attorneys, we will assist you in all issues pertaining to this matter, including [LIST ANY SERVICES YOU ANTICIPATE THIS PARTICULAR DISPUTE/LITIGATION WILL ENTAIL, INCLUDING WHETHER YOU WILL REPRESENT CLIENT ON APPEAL; BE AS SPECIFIC AS POSSIBLE.]. We will counsel you on the legal and strategic aspects of the litigation and advise you as necessary. We will also prepare any required documentation and will provide legal advice to you pertaining to this dispute.

In matters that involve litigation, negotiations, or other interactions with third parties, our discussions with you may include assessments of the strengths and weaknesses of your case. Please note carefully that we can make no promises regarding the outcome of any part of this engagement. All legal matters, whether or not involving litigation, entail uncertainty because we can never be sure how other parties will behave or how the court will react to our arguments and the evidence presented. In addition, the discovery process may uncover facts detrimental to your position. Therefore, it is important that you understand at the outset that we cannot guarantee a favorable result. However, we can assure you of our best efforts on your behalf.

Alternatives to Litigation

Please know that there are alternative forms of dispute resolution, such as informal settlement negotiations, mediation and arbitration, and these alternatives may be less expensive and time-consuming than litigation. We will be happy to discuss these alternatives with you at any point during our representation. [NOTE ANY APPLICABLE STATUTORY OR LOCAL REQUIREMENT TO MAKE AN EFFORT TO MEDIATE.]

Duty of Confidentiality and Loyalty; Conflicts of Interest

You have asked us to represent all of you in this matter. As we have discussed, we are pleased to do so, but it is important that all of you understand that there are certain considerations that need to be addressed in a multiple representation situation that would not otherwise need to be addressed. We have pointed out to each of you that during the course of the contemplated litigation, conflicts of interest may arise among you with respect to your respective interests. In other words, circumstances might arise in the future in which action taken for the benefit of one of you might be to the detriment of one of the others.

As your attorneys, we owe you a duty to preserve any confidential information you share with us, unless you authorize us to disclose such information or we are compelled legally to do so. It is critical that each of you engage in full disclosure in the matter at issue and inform us of any of your acts and doings, past and present, regarding this matter, in order to avoid any problems that might otherwise arise from any failure to communicate fully. Note, however, that because we are representing all of you and each of you, matters disclosed to us by any of you may, and sometimes must, be disclosed by us to any of the others of you. In other words, nothing that any of you tells us that we believe is material to this matter will be kept confidential from the rest of you. Please note that you will lose the protection of the attorney-client privilege if you disclose communications between you and us to persons other than those who need to know the information in order to implement our advice. Generally, the law does not provide privileges for communications with other professional service providers, including accountants and financial and business consultants. We therefore recommend that you guard your attorney-client privilege closely and consult with us before disclosing confidential communications to anyone else.

We also owe you a duty to act solely in your best interests, without being influenced by the conflicting interests of other clients. Although we believe at this time that your respective interests in the [trust/estate] are the same, it could be that, as this matter proceeds, your interests could actually diverge or even become directly in conflict. Just as one example, a conflict could arise that is not even based on your interests in the trust and might simply be caused by a difference of opinion as to strategy. To illustrate, at some point one of you might want to settle the dispute out of court, and the others might not wish to do so. Based on the foregoing, in representing more than one beneficiary of the [trust/estate], potential conflicts of interest could arise resulting from our possibly conflicting duties to each of you.

Provided that each of you knowingly waives your right to separate counsel, we are prepared to represent the interests of all of you and each of you for as long as we believe we can provide competent and diligent representation to each of you and provided that all of you consent in writing to the multiple representation. We also want to note that at our meeting we agreed that you should designate one of you to be our primary point of contact. Although all of our correspondence, email, and so on will go to all of you, and all major decisions will have to be agreed upon by all of you, it will be more economical if you agree that if we determine that it makes sense to talk with one of you, as a representative who can then caucus with the others, then that is acceptable to you. It is our understanding that you have agreed to this and that you agree that [Client 1] should be our primary point of contact for such purposes.

On the other side of the confidentiality issue, we note that because we would be representing each of you and all of you, it is also critical for each of you to maintain secrecy and confidentiality as to our discussions, strategies, etc., with respect to persons other

than yourselves collectively. In fact, to the extent that any one of you violates the "group confidentiality," that may seriously harm your case and may also cause us at some point to withdraw as counsel, whether for one of you or all of you, as the circumstances warrant.

[OPTIONAL ELEMENT: Prior representation of one of the clients]
As each of you is aware, our firm has previously represented [Client 1] personally and in matters related to [his/her] business interests. We have already advised [Client 1] that if we are engaged to represent all of you collectively in connection with this matter, then we may be required to disclose to each of you information regarding [Client 1 or Client 1's business, estate planning, or whatever is relevant], which we might otherwise be prohibited from disclosing; and [Client 1] has consented to any such disclosure to the extent it is relevant and material to the litigation.

If we begin with our firm representing all of you jointly, any one of you is completely free to change your mind and engage separate counsel at any time. In addition, any one of you can revoke your waiver of our duty of confidentiality as between you and the others and re-invoke the duty so as to prevent us from disclosing any confidential information received from you that we have not previously disclosed to the others. In either case, we would withdraw from representing any of you further in connection with the litigation unless all of you consented to our continued representation of one or more of you and we would communicate to all of you the reason for our withdrawal. Notwithstanding this, if we are requested by [Client 1] to continue to represent [him/her] in connection with [his/her personal matters/business matters] unrelated to the litigation, then we would do so and, by agreeing to our representation of all of you collectively as described in this letter, each of you consents to our continuing representation of [Client 1] in that event.

[NOTE: This alternative element also involves a separate letter to Client 1 to obtain his/her consent to the above provisions. That consent should include an acknowledgment that there is no guarantee that you will be able to continue to represent Client 1.]

Fees and Billing

Our fee in connection with the [subject matter of the engagement] will be the product of the time spent by our lawyers and other professionals multiplied by their respective hourly rates. The time for which we are to be paid includes not only normal office conferences, research, analysis, and advice associated with the [subject matter of the engagement], but also the time involved in telephone calls, faxes, e-mail, and other forms of communication. We will generally bill you for our services on a monthly basis.

We adjust our hourly rates periodically. We consider the ability, experience, and reputation of our lawyers and paralegals when we set hourly rates. Changes are usually made each January 1, but sometimes they are made at other times. Any increase in rates will apply to all time beginning with the month when the rates are changed. Work done before that month will be billed at the hourly rates previously in effect. Different lawyers and paralegals in our firm may be involved in your work if that will result in lower fees, provide a specialized legal talent, or help us do your work more efficiently. We will try to assign lawyers and paralegals having the lowest hourly rates consistent with the skills, time demands, and other factors required for your work. We might not assign a lawyer or paralegal with the lowest hourly rate if, in our judgment, it may be in your best interests to assign a lawyer or paralegal with a higher hourly rate because of that lawyer's or paralegal's skill and experience or because of the time constraints of the work. We record and bill our time in one-tenth hour (six-minute) units. [OPTIONAL: If a lawyer's or paralegal's total time on your work is less than three-tenths of an hour for the entire day, three-tenths of an hour will be billed for that day. If the lawyer's or paralegal's total time on your work is more than three-tenths of an hour for that day (whether done at one time or not), only the time actually spent will be billed.]

[INSERT CONTINGENT FEE ALTERNATIVE, IF APPLICABLE; CONSIDER ANY STATE STATUTE OR LAW THAT MAY APPLY; TAKE INTO ACCOUNT RESOLUTION BY SETTLEMENT AND THE POSSIBILITY OF APPEALS.]

You should note that there are certain limited circumstances in which there is a possibility that the opposing party's costs and/or fees could be awarded against you, for instance if [INSERT APPLICABLE ELEMENTS, FOR INSTANCE, "you are removed as a fiduciary or are found to have breached fiduciary duties, or if your suit is deemed to have been frivolous, vexatious, groundless or without substantial justification."] We will be discussing these issues with you from time to time during our representation, so you should not hesitate to ask about this if you have any concerns.

In addition to our legal fees, as described above, we will charge you for out-of-pocket expenses that we pay on your behalf and for our internal costs. Out-of-pocket expenses include items such as filing fees charged by government agencies, witness fees, transcription costs, and travel expenses. Our internal costs include items such as photocopying, long-distance telephone calls, fax transmissions, document scanning and electronic transmission, storage and retrieval, postage, overnight delivery, courier services, computer research charges, and complex document production. Rather than tracking precise costs for every single internal charge (which would ultimately result in higher hourly rates for our clients), we charge fixed costs for these types of

expenses. Our charges for these internal costs may exceed the actual direct costs that we pay to outsiders (such as the telephone company or photocopying contractors).

Sometimes it is necessary to hire other persons to provide services for you, such as accounting or appraisal firms and other experts. Their work may have more confidentiality if we (rather than you) request their services, and so we may hire them. However, you will be responsible for paying their fees and expenses, whether paid directly to them or to us in reimbursement. We will seek your prior authorization to hire such persons if the anticipated expense will exceed $____. We have no obligation to incur or advance any expense exceeding $____ unless reimbursement is fully secured by an advance cost deposit.

Our bills are due when rendered. If a bill is not paid within 30 days after it is mailed to you, interest will accrue on the unpaid balance of that bill beginning on the thirty-first (31st) day and accruing thereafter at the rate of one percent (1%) per month. Interest charges will apply to specific monthly bills. Payments made on past-due accounts will be applied first to the oldest outstanding bill. If our bills are not paid reasonably soon after they are rendered, we reserve the right to stop work until your account is brought current and appropriate measures are taken to ensure prompt payment in the future. If we have to bring collection efforts for payment, you agree that you will pay the costs of collection procedures, including reasonable attorney fees and costs incurred by us (whether paid to our firm or another firm retained by us).

We may require a retainer or advance fee deposit for your work. Unless you and we agree otherwise, the retainer or advance fee deposit will be applied to our final statement, and any unused portion will be returned to you. We may also request an advance cost deposit (in addition to the retainer or advance fee deposit) when we expect that we will incur substantial costs on your behalf.

Each of you agrees that you will all be jointly and severally responsible for the payment of all amounts owed to us, and that we can seek payment in full from any one of you at our election. Any agreement among any of you to limit your responsibility for payment of amounts owed to us will not be binding upon us unless we agree in writing to those limits. Your joint and several responsibility for the payment of our fees and expenses includes the situation in which our representation is terminated for any reason prior to the completion of the [subject matter of the engagement].

[RETAINER ALTERNATIVE 1: Current Billing Option]
The firm requests a retainer of $____. This retainer will be placed in the firm's trust account. [OPTIONAL: This retainer will be placed in a special trust account in your name.] The retainer amount will be disbursed from the trust account for the payment of your current fees and costs. You will be expected to replenish the trust account to the required retainer level prior to the next billing period. All monies will be retained in the firm's trust account until earned and will be paid from the trust account after you have approved each statement we send to you. Any balance remaining at the end of the representation will be returned to you.

[RETAINER ALTERNATIVE 2: Deposit Option]
The firm requests a retainer of $____. This retainer will be placed in the firm's trust account. The retainer amount will be applied to our final statement, and any balance remaining at the end of the representation will be returned to you.

INTEREST ALTERNATIVE 1: Interest Bearing]
Funds we retain in the firm's trust account bear interest, but interest is paid to the _____ Lawyer Trust Account Fund, rather than being disbursed to you. [CHECK APPLICABLE REQUIREMENTS.]

[INTEREST ALTERNATIVE 2: Non-interest Bearing]
Funds we retain in the firm's trust account bear interest, and we will disburse that interest to you at the end of the representation, or apply it to our final statement, as the case may be. [CHECK APPLICABLE REQUIREMENTS.]

It is understood that our fees and costs will be paid by you personally and will not be paid by or from the [trust/estate]. However, if the facts of this matter develop such that we believe that there is a basis for you to seek reimbursement from [the trust/estate/or other party] for some, or even all, of our fees and costs, then we

In terms of how our fees and costs will be divided among you, [DESCRIBE BASIS FOR FEE DIVISION, SUCH AS EQUALLY, PROPORTIONATELY, ETC.; AND IF NOT EQUALLY, CONSIDER LISTING OF EACH CLIENT'S SHARE, AND ADDRESS WHETHER OR NOT THE CLIENTS ARE JOINTLY AND SEVERALLY RESPONSIBLE FOR THE FEES AND COSTS.].

Agreement to Arbitrate

If you have any questions about our fees or costs or the quality or appropriateness of our services, we encourage you to discuss them with us. However, if a dispute arises about any such matter and we cannot amicably resolve that dispute, then the dispute will be decided by the _____ Bar Association _____ Committee [INSERT METHOD FOR SELECTING ARBITRATOR OR ARBITRATION ORGANIZATION.]. If there is such an arbitration, each party will be responsible for paying his, her or its own fees and costs, including a share of the expenses charged by the arbitrator. Any such arbitration shall be governed by the Uniform Arbitration Act, as adopted by _____. By agreeing to arbitration, you are relinquishing your right to bring an action in court and to a jury trial. Also, discovery in an arbitration proceeding can be limited and the grounds for appealing the arbitrator's decision are limited. [OPTIONAL: These provisions will apply to all claims or disputes between us, including claims for professional negligence.]

Effect of Disability

[WARNING: YOU MUST DETERMINE WHETHER THE ETHICS RULES OF YOUR JURISDICTION WOULD ALLOW THE FOLLOWING PROVISIONS.] If any of you becomes unable to make adequately considered decisions regarding the [subject matter of the engagement] because of mental disability or other reasons, the ethics rules that govern the practice of law in this jurisdiction provide that we may attempt to continue a normal attorney-client relationship with you as much as is possible. Those rules also authorize us to seek the appointment of a guardian or to take other actions to protect your interests if we consider that to be necessary. You should be aware that, by means of a durable power of attorney, you can designate one or more other persons to make decisions for you about the [subject matter of the engagement] and to sign documents on your behalf. If you authorize someone to act as your agent, and if his or her authority is broad enough to allow him or her to instruct us with regard to your interest in the [subject matter of the engagement], we can continue to do work on your behalf by dealing with your agent, and we can rely on instructions from your agent. We can communicate with your agent and disclose information he or she needs to make informed decisions on your behalf, including information that is protected by the attorney-client privilege or the attorney work-product privilege, without those privileges being waived.

Termination of the Engagement

When the [subject matter of the engagement] has been completed, our representation will be concluded, unless arrangements for a continuing representation are made. We will be happy to provide additional or continuing services, but unless such arrangements are made and agreed upon in writing, we will have no further responsibility to you in connection with any future or ongoing legal issues affecting the [subject matter of the engagement], including any duty to notify you of changes in applicable law or the necessity to make any periodic or renewal filings or registrations.

Although we will begin with representing all of you, any one of you is completely free to change your mind and have separate counsel at any time.

[WITHDRAWAL ALTERNATIVE 1:]
In such case, we will withdraw from representing all of you, unless all of you consent to our continued representation of some or all of the others.

[WITHDRAWAL ALTERNATIVE 2:]
In such case, and depending on the circumstances, it is possible that we will have to withdraw from representing every one of you, or we may be able to continue representing all or some of the others, although it may be that our continued representation will require additional consents.

You may terminate this engagement at any time by providing us with some form of written notice. Subject to any court approval that may be required, upon receipt of this notice, we will promptly cease providing services to you. You will be responsible for paying for our services rendered to you and costs incurred on your behalf up until the day we receive such notice, and for any services and costs we must necessarily provide or incur thereafter in connection with the transfer of responsibility to your new counsel for the matters we have been handling.

Similarly, we may terminate this engagement at any time by providing you with written notice. Subject to any court approval that may be required, upon your receipt of this notice, you will be responsible for paying for any services we have rendered and costs we have incurred on your behalf up to the point of termination, and any other services we must necessarily render to transfer the responsibilities of the matter to your new counsel or otherwise end our representation.

If fewer than all of you terminate the engagement and we continue to represent the others, then a client who terminates the engagement will be responsible for paying for his or her share of our services rendered and costs incurred up until the day we receive such notice, and for any services and costs we must necessarily provide or incur on your behalf thereafter in connection with the transfer of responsibility to the terminating client's new counsel for the matters we have been handling.

If all of you terminate this engagement, then you will be responsible for paying for our services rendered to you and costs incurred on your behalf up until the day we receive such notice, and for any services and costs we must necessarily provide or incur thereafter in connection with the transfer of responsibility to your new counsel for the matters we have been handling.

Retention, Delivery, Retrieval, and Destruction of the Files

You should understand that the file that will be created by our firm in connection with the [subject matter of the engagement] will belong to you. During the course of this engagement, you will be furnished copies of all documents and of all significant correspondence. [OPTIONAL: When the [subject matter of the engagement] is completed, we will deliver the originals of all documents to you.] We will retain physical and/or electronic copies of all of the documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. You may direct us to turn over our file to you or to anyone else that you designate, at any time. In such case, we may retain in our possession all internal communications and notes prepared by our firm and, at your expense, make, retain, and store physical and/or electronic copies of our file to be delivered to you or at your request. Given our representation of more than one client in this case, we reserve the right to determine which of you will receive the original file if there are competing requests for it.

It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because you will have been furnished with [OPTIONAL (see above): the originals and/or] copies of all relevant materials contained in our files during the course of the active phase of our representation, if you ask us to retrieve materials contained in a file that has been closed and placed in off-site storage, you agree that we shall be entitled to be paid by the requesting party a reasonable charge for the cost of retrieving the file and identifying, reproducing, and delivering the requested materials.

Unless our firm is engaged to provide ongoing representation in connection with the [subject matter of the engagement], it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the representation ten (10) years after the completion of the engagement. Before destroying the file, we will attempt to contact our client, as identified in this letter, to make arrangements for delivery of any original documents and the other contents of the file to our client. This letter will serve as notice to you that if we are unable to contact our client at the most recent address contained in our file, subject to applicable law, we will destroy the file without further notice. It will be the responsibility of each of you to notify us of any change in your address or contact information.

[OPTIONAL PROVISION: Conflicts with other clients]
Sometimes our lawyers are asked to represent a client who has interests that are adverse to another client whom we represent in other matters. The ethics rules that govern the practice of law in this jurisdiction permit us to accept multiple representations if certain requirements are met. While we represent you, we will not represent another client in matters that are directly adverse to your interests, unless and until we have made full disclosure to you and to the other client of all relevant facts, circumstances, and implications. [You agree/each of you agrees] that we can represent those other clients whose interests are adverse to yours if we confirm to [you/each of you] in good faith that the following conditions are met: (1) there is no substantial relationship between the other client's matter and our work for you; (2) our representation of the other client will not involve a disclosure of any confidential information we have received from you or relating to our representation of you (with the use of any ethically-approved screening measures, if appropriate); and (3) the other client also consents to our continuing representation of you. If you make a good-faith objection to our statement, we will have the burden of proving that these conditions have been met.

Consent to the Terms of the Engagement

Before we begin, you must consider all of the factors discussed in this letter and consent to the form of the representation. After you have considered this decision carefully, we ask that you please sign the statement that follows this letter to indicate your consent to the conditions of the representation. If, after considering this matter, you prefer a different form of representation, please let us know.

Because any change in legal representation after we begin may result in an increase in the time and expense needed to complete the [subject matter of the engagement], for which you would be financially responsible, we urge you to give careful consideration to the structure of the representation before we begin.

We have enclosed an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by you will serve as authorization for us to proceed with the [subject matter of the engagement]. Also enclosed is a return-address envelope for your convenience in returning the signed copy of this letter.

If you have any questions about anything discussed in this letter, please call us. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

We appreciate the opportunity to work with you on the [subject matter of the engagement], and we look forward to hearing from you soon.

Sincerely,

[Lawyer]

Consent to the Representation and the Terms of the Engagement

We have each reviewed the foregoing letter concerning the various aspects of separate and joint representation, and we choose to have [Firm] represent us jointly in connection with the [subject matter of the engagement] on the terms described above.

Signed:_____, 20____ _____
(Client 1)

Signed:_____, 20____ _____
(Client 2)

Signed:_____, 20____ _____
(Client 3)

CHAPTER 7. DEALING WITH THE POTENTIAL FOR DIMINISHED CAPACITY

Introduction

With longer life expectancy, it is increasingly common for clients to experience a period of deteriorating mental abilities ("diminished capacity") due to physical or mental disabilities. The supplemental language in this chapter is designed as an optional addition to an estate planning engagement letter. It contemplates the possibility of future diminished capacity and expresses the manner in which the lawyer may provide legal services in that eventuality. It also briefly mentions the steps that the client might take to protect the client's interests and assure that the client's intentions are honored. Finally, it authorizes the lawyer to communicate with others if the lawyer becomes concerned regarding the client's capacity.

References to the ACTEC Commentaries (Fourth Edition):
(Note that the page numbers shown below refer to the printed version of the ACTEC Commentaries.)

Facilitating Informed Judgment by Clients, pp. 33-34

Client Who Apparently Has Diminished Capacity (re duty of Confidentiality), p. 75

Client with Diminished Capacity (re Conflict of Interest), p. 96

Client with Diminished Capacity, pp. 83, 96, 131-139

Supplemental Checklist for Dealing with the Potential for Diminished Capacity
(Refer also to the General Checklist on pp. 4-8.)

1. IDENTIFY THE CLIENT IF NO GUARDIANSHIP OR CONSERVATORSHIP IS INVOLVED.

(a) The identity of the client is ordinarily not an issue if the lawyer is providing general estate planning services for a competent client. If the lawyer will be paid by another person, the lawyer must comply with MRPC 1.8(f), which requires the client's informed consent, maintenance of confidentiality, and preservation of the lawyer's independence.

(b) If the lawyer is asked to provide services for a person whose mental capacity is in doubt, the identity of the client may be more doubtful. Some authorities suggest that a client with diminished capacity lacks authority to enter into a lawyer-client relationship. However, a client who has diminished capacity may have sufficient mental capacity to enter into or continue a lawyer-client relationship. MRPC 1.14 directs the lawyer to treat the client as a client with normal mental capacity for as long as that is possible.

(c) The lawyer and client may wish to discuss the advantages of pre-need planning for diminished capacity, including the possible use of revocable trusts, durable powers of attorney (both for financial and health care reasons), and health care directives.

(d) It may be desirable that the lawyer provide the client with an engagement letter that describes the services to be performed in connection with pre-need planning for diminished capacity.

2. IDENTIFY THE CLIENT IF A GUARDIANSHIP OR CONSERVATORSHIP EXISTS OR IS CONTEMPLATED.

(a) If the person who is, or may be, the subject of a guardianship or conservatorship was a client of the lawyer, that relationship may still exist. If so, the lawyer must determine whether the local law permits the lawyer to provide assistance to the fiduciary or person seeking appointment. Some jurisdictions permit the lawyer to seek the appointment of a guardian or conservator, while others, such as Florida, do or may not.

(b) If the lawyer has not represented the person for whom a guardianship or conservatorship exists or for whom a guardianship or conservatorship is sought, the lawyer is generally free to represent the guardian or conservator. In such a case the fiduciary or petitioner is generally considered to be the client. However, some authorities speak of the lawyer having a direct duty to the ward or protected person. Thus, the lawyer may, as a matter of substantive law, be required to take steps contrary to the interests of the fiduciary client because of a duty owed to the ward or protected person. Also note that additional issues regarding confidentiality and conflicts may arise if there are multiple fiduciaries or petitioners. Since any such action could also be viewed as a breach of the lawyer's duty of loyalty to the fiduciary client, the lawyer should consider addressing the issue in the engagement letter and describing how the lawyer will respond if the issue arises.

(c) The lawyer may choose to or may be required to enter into an engagement letter with the nominated or appointed fiduciary that also describes the duties the fiduciary owes to the ward or protected person and to the court and the duties that the lawyer owes to the fiduciary and to the ward or protected person.

(d) If the lawyer is representing a competent client and the lawyer intends to discuss with the client planning to protect the client if the client suffers from diminished capacity at a future date, the following provision could be added to the engagement letter.

Optional Addition to the Basic Engagement Letter
Dealing with the Potential for Diminished Capacity

As part of our services, we will discuss with you the steps you might take to protect your interests and to see that your wishes are carried out if your capacity to make either financial or health care decisions diminishes (either abruptly or over time). In particular, we will review with you the advantages and disadvantages of: (1) a durable power of attorney authorizing others to act on your behalf with respect to your financial interests or your health care; (2) a directive to physicians (often called a "Living Will"); and (3) a revocable trust. Using one or more of those tools may eliminate the necessity of appointing a guardian or conservator if you become unable to care for your own financial or personal needs. Importantly, using these tools, you may nominate a person to act for your benefit as your legal representative if the need arises. In any event, you may nominate a person to act as the guardian or conservator of you and your property if the appointment of a guardian or conservator is ever required.

If concerns develop regarding your capacity, [OPTIONAL: and our representation of you has not been terminated either by you or pursuant to your engagement letter with us,] we will continue to represent you and to protect your interests to the extent consistent with our standards of practice and our ethical responsibilities. To the extent we can continue to act on your behalf, we will only take actions that we reasonably believe to be in your best interests and consistent with your previously expressed wishes. Unless you direct us otherwise in writing, by signing this engagement letter, you will be authorizing us in such representation: (1) to communicate with your family, your physicians, and your other advisors and to disclose to them such pertinent, but limited, confidential information as we may determine to be reasonably appropriate under the circumstances; and (2) to represent any person you have chosen to be your legal representative in the event your mental capacity diminishes and a legal representative is needed. However, if legal action is taken to obtain a guardian or conservator for you, we will continue to represent your interests until such time as the guardian or conservator is appointed. If the person appointed is a person you have designated to be your guardian or conservator, by signing this engagement letter you will be authorizing us to represent the guardian or conservator. Please note that we may not be able to represent the person you have chosen for a variety of reasons, including conflicts of interest. Moreover, the person you have chosen to be your guardian or conservator is free to choose counsel of his or her choice. Accordingly, your authorization to act does not bind us to act for the person you choose, nor does it bind that person to use our services.

CHAPTER 8.

WITHDRAWING FROM REPRESENTATION

Form of a Letter Withdrawing from Representation of All Clients

[Date]

[Name and Address of Client 1]

[Name and Address of Client 2]

Re: [Subject Matter of the Engagement]

Dear [Client 1] and [Client 2]:

You requested that our firm represent you both simultaneously in this matter in which you have a common interest.

When we began this representation, we explained to both of you that if, during the course of the representation, either one of you should revoke his or her consent to the sharing of all confidential information that we consider relevant and material to the representation; or if other conflicts of interest should arise between you with respect to your respective interests in this matter that lead us to believe that our representation of either one of you would be adversely affected by our continued representation of the other of you, we would withdraw from the representation of both of you in this matter; and each of you would then have to obtain separate counsel.

ALTERNATIVE 1: Noisy Withdrawal]
We have become aware that [DESCRIBE NATURE OF THE CONFLICT.]. We believe that this represents a conflict that prevents us from representing and advising you both any further in this matter. Accordingly, we are hereby notifying both of you that we are withdrawing immediately from any further representation of either one of you in this matter. It will now be necessary for each of you to consider obtaining separate counsel.

[ALTERNATIVE 2: Silent Withdrawal]
We have become aware of circumstances that we believe represent a conflict that prevents us from representing and advising you both any further in this matter. Accordingly, we are hereby notifying both of you that we are withdrawing immediately from any further representation of either one of you in this matter. It will now be necessary for each of you to consider obtaining separate counsel.

[IF THE MATTER INVOLVES LITIGATION AND COURT APPROVAL IS REQUIRED, DESCRIBE THE PROCESS.]

Please acknowledge receipt of a copy of this letter by dating, signing, and returning one copy of this letter to our office.

Sincerely,

[Lawyer]

Acknowledgment of Receipt

I acknowledge receipt of a copy of this letter.

Signed:_____, 20____ _____
(Client 1)

Signed:_____, 20____ _____
(Client 2)

Form of a Letter Withdrawing from Representation of One Client and Continuing Representation of Another Client

[Date]

[Name and Address of Client 1]

[Name and Address of Client 2]

Re: [Subject Matter of the Engagement]

Dear [Client 1] and [Client 2]:

You requested that our firm represent you both simultaneously in this matter in which you have a common interest.

When we began this representation, we explained to [Client 2] that our firm has represented and advised [Client 1] and [his/her] family and businesses for many years, and we further advised both of you that if, during the course of the representation, either one of you should revoke his or her consent to the sharing of all confidential information that we consider relevant and material to the representation; or if other conflicts of interest should arise between you with respect to your respective interests in this matter that lead us to believe that our representation of either one of you would be adversely affected by our continued representation of the other of you, we would withdraw from the representation of [Client 2], but would continue to represent [Client 1]; and that [Client 2] would then have to obtain separate counsel.

[ALTERNATIVE 1: Noisy Withdrawal]
We have become aware that [DESCRIBE NATURE OF THE CONFLICT.]. We believe that this represents a conflict that prevents us from representing and advising you both any further in this matter. Accordingly, we are hereby notifying both of you that we are withdrawing immediately from any further representation of [Client 2] in this matter but will continue to represent [Client 1] in this and other matters. It will now be necessary for [Client 2] to consider obtaining separate counsel.

[ALTERNATIVE 2: Silent Withdrawal]
We have become aware of circumstances that we believe represent a conflict that prevents us from representing and advising you both any further in this matter. Accordingly, we are hereby notifying both of you that we are withdrawing immediately from any further representation of [Client 2] in this matter but will continue to represent [Client 1] in this and other matters. It will now be necessary for [Client 2] to consider obtaining separate counsel.

[IF THE MATTER INVOLVES LITIGATION AND COURT APPROVAL IS REQUIRED, DESCRIBE THE PROCESS.]

Please acknowledge receipt of a copy of this letter by dating, signing, and returning one copy of this letter to our office.

Sincerely,

[Lawyer]

Acknowledgment of Receipt

I acknowledge receipt of a copy of this letter.

Signed:_____, 20____ _____
(Client 1)

Signed:_____, 20____ _____
(Client 2)

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The American College of Trust and Estate Counsel Foundation
3415 S. Sepulveda Boulevard, Suite 330
Los Angeles, California 90034-6060
publications@actec.org

APPENDIX M
Script for Receptionist – Estate Planning

MEMO

TO: Anyone answering the telephone and making appointments for Hal

FROM: Hal

DATE: _____, 20___

RE: Estate Planning Appointments

When someone calls to make an appointment for estate planning services, please tell them the following:

"Mr. Moorman has asked me to tell you that part of properly preparing a will or trust is that the lawyer must have a good knowledge of what you have and what it is worth. Pleased be assured that all of this information is kept in strict confidence. For that reason, we ask that you bring along a current financial statement. It does not have to be in the same form that you would submit to a bank, but simply a list of what you have and what it is worth.

If you have any of the following documents, please bring them with you to your appointment. These will help Mr. Moorman in planning your estate.

1. Copies of any current wills or trusts you have established;

2. Copies of any prior gift tax returns;

3. Information regarding amounts and beneficiary designations of life insurance, retirement plans and IRA accounts."

If the person indicates it will take them a while to get this together, encourage them to come in with the information that they have and not delay in making the appointment.

If they indicate they don't want to disclose financial information, immediately tell them that's fine, also, and that Mr. Moorman will discuss this with them in the meeting.

If they ask about costs, tell them the following: "The fee depends on how complicated your estate is and what you want to have done. Mr. Moorman will meet with you at no charge or obligation for 15 minutes to determine what needs to be done and will quote a fee for his services. If that fee is not acceptable, then there's no obligation on you part."

If you have any questions about this memo, please let me know.

APPENDIX N
Intermediary Agreement

_____, 20___

CONSENT TO ATTORNEY REPRESENTATION AS AN INTERMEDIARY

The undersigned are parties to a business transaction and have asked the law firm of Moorman Tate Haley Upchurch & Yates, LLP to represent all of them in documenting the transaction and in discussions of the transaction.

Each of the undersigned understands that when an attorney acts as an intermediary for a number of parties, it is impossible for the attorney to zealously represent each of the parties. The advantage to common representation is less expense in terms of attorney's fees. The risks involved in such representation are that the attorney cannot pursue the interests of each client, that the attorney may not be able to adequately view each client's interest to the extent that independent counsel for each client would be able to, and that the attorney cannot keep confidences of one client from another client, the attorney-client privilege being waived as to the clients involved in the common representation. Each of the undersigned agrees the attorney has made himself available for further consultation with each client concerning the implications of common representation, including the advantages and risks involved, and the effect on the attorney-client privileges.

The attorney reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the undersigned's best interests, that each of the undersigned will be able to make adequate informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful. The attorney reasonably believes that common representation can be undertaken impartially and without improper effect on other responsibilities that the lawyer has to any of the undersigned. If any of the undersigned believe that any of the matters contained in this document are incorrect, he or she should not sign this agreement and should obtain independent counsel. **Each of the undersigned should consult independent counsel regarding this Consent Agreement.**

Alternate 1

While acting as intermediary, the attorney will consult with each of the undersigned concerning the decision to be made and the considerations relevant in making them, so that each of the undersigned can make adequately informed decisions.

Alternate Two

Because of time constraints involved each of the undersigned agree that * may act as the agent for all of the undersigned, consulting with the attorney on behalf of all of the undersigned.

All of the undersigned agree to keep themselves informed by contacting * in all of these matters

Remaining Language for Either Alternative

The firm will withdraw as intermediary if any of the undersigned so requests or if any of the conditions stated in this letter is no longer satisfied. Upon withdrawal, the firm shall not continue to represent any of the clients in the matter that is the subject of this agreement.

DATED this _____ day of _____, 200_ and signed in multiple counterparts.

_____

_____

_____

APPENDIX O
Probate Contract
[Letterhead of Law Firm]

Dear Client:

THIS IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM CANNOT REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

Please read this letter carefully. It describes the terms and conditions under which MOORMAN TATE HALEY UPCHURCH & YATES, LLP will undertake to represent you in connection with the legal matter described below. Our firm policy requires that each client sign a copy of this letter, agreeing to the terms and conditions set forth below, before we can engage in any representation. The terms and conditions of our agreement for engagement are as follows:

1. Scope of Engagement.

1.1. **Description of Representation**. You are retaining and employing us as your attorneys, to represent and provide legal services to you in connection with the probate of the Estate of _____ (all referred to in this agreement as the "Legal Matter"). This representation will include advising, counseling, negotiating, investigating, handling, prosecuting and/or defending such legal matters, to final settlement or adjudication. We will need to identify and value all of the assets owned whether or not they pass through probate. If you decide to engage us for additional legal matters, the terms and conditions of this agreement will apply to those matters as well, unless an agreement specific to those matters is signed by you and us. We will not be considered to be engaged for other matters without a written agreement.

1.2. **Use of Other Consultants and Assistance**. By signing this agreement, you are authorizing us to do whatever is reasonably necessary and appropriate, in our professional judgment, to represent you properly, and to incur the costs and expenses reasonably necessary to handle your matter. This includes the authorization and power to associate or employ such other persons or entities as we may deem necessary to assist us, such as consultants, support services, technical experts, or other attorneys who are not members of our firm (either "local counsel" in a distant forum, or contract legal services with attorneys or legal assistants). You will be consulted before any professionals or other experts are hired by us. In an effort to reduce overall legal costs, we may utilize legal assistant personnel and other support staff whenever appropriate. All such services are performed under the direction and supervision of an attorney, and within our discretion and judgment.

1.3. **Notify Beneficiaries**. Under Section 308.002 of the Texas Estates Code, you must notify all beneficiaries of the estate that the will has been probated and the estate administration has commenced with you as independent executor. We will be sending them a copy of the will. In doing so, we will make it clear that we represent only you. We will not disclose other information that you have confided in us without your consent to do so.

NOTE: MAY STRIKE ONE OR BOTH OF THE FOLLOWING

1.4. **Option Regarding Multiple Executors**. As independent co-executors of the estate, you have joint responsibility for the estate administration. Although there is no reason for us to anticipate any disagreement, it is possible that you might develop differences of opinion during the course of the administration of the estate on issues that might subsequently arise. Because you have requested us to represent you jointly, while we can discuss the issues and the advantages and disadvantages of your different positions, we cannot advocate one of your positions over the other, at least if we determine that both positions properly discharge your duties as independent co-executors. If you each had your own attorney, that attorney could advocate your position over the other co-executors and your individual attorney could keep matters that you disclose to that attorney confidential. This firm cannot keep confidences of one executor from the other. If actual conflict did arise between you of such a nature that it becomes impossible for us to fully represent you jointly, we would have to withdraw from further joint representation and advise you to obtain separate independent counsel. In that event, we would submit a statement for legal services rendered up to the date of such withdrawal. In order to undertake this joint representation, there must be full disclosure and sharing at all times with each of you of all information concerning the estate. There are advantages to

having one firm represent you. It is usually much less expensive. The work is usually done much more quickly. This is because there are no conferences and negotiations with other lawyers. ALL EXECUTORS MUST ALSO SIGN A SEPARATE MULTI-EXECUTOR CONFLICT WAIVER.

1.5. **Option Where Dual Representation of Executor and Beneficiaries**. Further, given that _____ is also a beneficiary of the estate, we can represent you jointly as independent co-executors and _____ as a beneficiary so long as our dual representation does not involve a conflict of in. If any conflict were to arise, _____ would have to consider engaging separate independent legal counsel to represent his personal interests.

2. Cooperation.

2.1 **Full Disclosure and Cooperation**. In order to enable us to effectively render the legal services contemplated by this agreement, you agree to fully and accurately disclose all facts and to keep us informed of all developments relating to the Legal Matter. We necessarily must rely on the accuracy and completeness of the facts and information and that you and your agents provide to us. To the extent it is necessary for you or your representatives to attend meetings in connection with the Legal Matter, we will attempt to schedule them in cooperation with you. Likewise, you must give us adequate notice if you will not be able to attend a meeting or provide information as requested. You acknowledge and agree that it is important to cooperate with us in scheduling meetings, conducting phone calls, reviewing documents, and providing responses to requests for information from us or the professionals or experts that we may employ. You agree to cooperate with us, to the best of your ability, in order to successfully conclude our representation of you.

2.2 **Permission to Investigate Credit and Background**. You agree and acknowledge that we may investigate your personal and professional background and we may check your credit history in deciding whether or not to represent you.

3. Fees.

3.1. **Basis for Fees**. Our firm's fees are based on the time spent by the lawyers and firm personnel on who work on the matter. You understand that, by accepting representation of you in this matter, we may have to forgo representation of other clients with a resulting loss of fees. You also acknowledge that our fees are set on the basis of what we consider to be a fair and reasonable charge for the services rendered, based upon the time, labor and skill required to perform the legal services properly, as well as the fee customarily charged by other attorneys for similar legal services. The fee is not set by law, but is negotiable.

3.2. **Hourly Rates**. Our fees for legal services are based on the attached schedule.

Our hourly rates usually increase at the beginning of each calendar year to take into account current levels of legal experience, changes in overhead costs and other factors. This increase will most likely be in the range of $10 to $15 per hour for attorneys and $5 per hour for support staff. Any increases in hourly rates will be disclosed to you on the billing statement.

You will be billed at the applicable hourly rate for all legal services that we provide. This may include legal research, drafting of pleadings, conferences, telephone conversations, preparation of documents, investigation of facts, preparing for and taking depositions, preparation for and appearances in court, and other tasks necessary to adequately handle the matter in controversy. You will also be billed for the time that we spend talking with you about the Legal Matter, sending you correspondence, or responding to requests for information from you or your representatives. An attorney's time involved in out-of-office representation will be measured from the time the attorney leaves the office until the attorney arrives back at the office. All time will be billed in minimum increments of one-quarter (1/4) hour, even though the time spent may be less than one-quarter (1/4) hour.

3.3. **Costs and Expenses**. In addition to our fees, you will be billed for other items incurred in connection with the performance of our legal services, such as filing fees, court costs, photocopying and other duplication costs, long distance telephone calls, facsimile transmissions, delivery charges, travel expenses, deposition costs, and specialized computer applications such as computerized legal research or public records searches as provided in the attached schedule. Unless special arrangements are otherwise made, the fees and expenses of other consultants and professionals (such as experts, investigators, accountants, appraisers, records handlers, consultants, or specialized or

local legal counsel) incurred on your behalf will be billed directly to you, and you will be responsible for paying them. Also, all invoices for costs and expenses in excess of $200 will be forwarded to you for direct payments.

Occasionally, when a bill for a specific matter is rendered near the conclusion of the matter, posting of some time and charges (such as telephone, copying, court costs, or similar items) may be delayed, or there may be an invoice which is not delivered to us until after the legal matter has been finalized. In such cases, the "after closing" expenses will also be billed to you, even though you may have previously received what was designated as a "final" bill. You will be responsible for paying these "after closing" expenses.

3.4. **DEPOSIT**. IT IS OUR USUAL PRACTICE TO REQUIRE PAYMENT OF A DEPOSIT BEFORE WE BEGIN WORK FOR A CLIENT. WE HAVE ASKED THAT YOU REMIT AND MAINTAIN WITH US, DURING THE ENTIRE COURSE OF OUR REPRESENTATION OF YOU IN THIS MATTER, AN INITIAL DEPOSIT IN THE SUM OF $_____ (THE "DEPOSIT"). WE WILL PLACE THE DEPOSIT INTO OUR TRUST ACCOUNT. IT WILL BE APPLIED TO OUR FINAL BILLING STATEMENT FOR FEES AND EXPENSES, OR, IN OUR DISCRETION, TO ANY PAST DUE MONTHLY STATEMENT. UPON THE TERMINATION OF OUR SERVICES, WE WILL PROMPTLY REFUND THE DEPOSIT TO YOU, LESS ANY BALANCE FOR FEES AND EXPENSES UNPAID AS OF THE DATE OF OUR FINAL BILL. WE WILL SEND YOU MONTHLY STATEMENTS FOR FEES AND EXPENSES. YOU AGREE TO PAY THE AMOUNT DUE IN FULL EACH MONTH. THE DEPOSIT WILL STAY ON DEPOSIT IN OUR TRUST ACCOUNT.

WE RETAIN THE RIGHT AND DISCRETION TO REQUEST A SUPPLEMENTAL COST DEPOSIT, OVER AND ABOVE THE INITIAL DEPOSIT, IN THE EVENT OF AN INCREASE IN OUR ANTICIPATED FEES AND EXPENSES DURING THE COURSE OF REPRESENTING YOU. IF WE MAKE SUCH A REQUEST, YOU WILL AGREE TO PROMPTLY DELIVER THE ADDITIONAL DEPOSIT TO US.

3.5. **Monthly Statements**. We will normally submit a bill to you on a monthly basis, and it is due and payable upon receipt. Each lawyer and support staff personnel contemporaneously records the time required to perform services, and these time records are put into a computer that generates a monthly bill which we try to send out around the end of the month. This bill describes the services performed and the expenses incurred. We encourage you to review the bill and to contact us if you have any questions about the services described or the expenses incurred. If we do not hear from you within five days after the bill is mailed, we will presume that you understand and approve of the charges included in the monthly statement.

There may be occasions involving unforeseen circumstances when a bill will go unpaid. In such instances, we will attempt to work with you, if you communicate the nature of the delay to us. However, we expect you to pay us on time each month; we do not want to become your creditor.

We reserve the right to deduct any outstanding fees, charges, expenses and interest that you owe us from any settlement or award to you in connection with the Legal Matter.

3.6. **INTEREST ON PAST DUE AMOUNTS. UNLESS WE OTHERWISE AGREE WITH YOU IN WRITING, UNPAID FEES AND EXPENSES WILL BE CONSIDERED PAST DUE IF NOT PAID WITHIN THIRTY (30) DAYS OF THE BILLING DATE. ALL PAST DUE AMOUNTS SHALL BEAR INTEREST AT THE RATE OF 1.5 % PER MONTH (18% ANNUAL PERCENTAGE RATE), OR THE MAXIMUM RATE ALLOWED BY LAW, UNTIL PAID. INTEREST CHARGES WILL BE CALCULATED ON ALL PAST DUE AMOUNTS AND ADDED TO THE NEXT MONTH'S BILLING STATEMENT.**

3.7. **Failure to Pay Fees**. You agree that we are relieved from the responsibility of performing any further work for you, should you fail to pay any monthly statement for fees and expenses (including bills for expenses received from third parties), or to timely respond to a request for a supplemental cost deposit, as stated above. By your signature on this engagement agreement, you also acknowledge and agree that, in accordance with Texas Law, we have a right to assert a lien against your files to secure payment of any unpaid amounts you owe us.

3.8. **Awards of Attorneys' Fees**. Occasionally, we will request reasonable attorneys' fees from another party in a legal proceeding. Regardless of how any court rules with respect to the award of attorneys' fees (or the reasonableness of legal fees requested in any pleading), you are agreeing to pay us the fees set forth in this engagement Agreement. If we receive any compensation as the result of an award of attorneys' fees, then we will, in

our discretion, either: (1) credit such receipt to the amount of any unpaid bill, or (2) reimburse you for the amount of the receipt (if, and only if, you do not owe us any fees or expenses at the time that the attorneys' fees are received).

3.9. **Estimates of Fees**. During the course of our discussion with you about handling the Legal Matter, we may have provided you with certain estimates of the magnitude of fees and expenses that will be required at certain stages. It is our firm policy to advise all of our clients that such estimates are just that, and that the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which the opposition files pretrial motions and engages in its own discovery. The reason why we submit bills to our clients on monthly basis, shortly after the services are rendered, is so that you will have a ready means of monitoring and controlling the legal costs you are incurring. If you believe the expenses are mounting too rapidly, you need to contact us immediately so that we can assist you in evaluating how they might be curtailed in the future. If we do not hear from you, you will be deemed to have approved of the overall level of activity on our part in this case on your behalf.

4. Conflicts of Interest

One of the most important considerations which we must have in accepting an engagement is whether the engagement will put us in conflict with any existing client interest. If we discover such a conflict after we have begun work for you, we may be disqualified from continuing our representation of you. You acknowledge that it is, therefore, very important for you to consider all the interests which are involved in the Legal Matter, to be certain that you have advised us fully in that regard. If we, in our judgment and discretion, determine that a conflict of interest does exist, we will notify you and all other affected clients, and will proceed in a manner consistent with the ethical standards contained in the Texas Disciplinary Rules of Professional Conduct (the "Disciplinary Rules").

5. Withdrawal from Representation

5.1. **Withdrawal of Firm**. You have requested our advice and counsel as a part of our services to you. In order for our representation of you to be successful, it is important that you follow our advice, reasonably cooperate with us, and abide by the terms and conditions of this agreement. In any of the following events, we reserve the right to withdraw from representing you in this matter at any time:

(a) You insist that we present a claim or defense that is not warranted under existing law and cannot be supported by a good-faith argument for an extension, modification, or reversal of existing law;

(b) You seek to pursue an illegal course of action;

(c) You fail to follow our advice or to reasonably cooperate with us, or, by your conduct, you render it unreasonably difficult for us to represent you;

(d) You insist that we engage in a course of conduct that is illegal or that is prohibited under the lawyers' Disciplinary Rules;

(e) You insist that we engage in conduct that is contrary to our judgment and advice, but not prohibited under the Disciplinary Rules;

(f) You fail to timely pay statements for our fees, expenses or costs, or you otherwise fail to fulfill or abide by the terms and conditions of this agreement;

(g) We determine, in our sole judgment and discretion, after further investigation, that the facts related to the Legal Matter are materially different from those you represented to us and upon which our agreement to represent you was based; or

(h) We are required to withdraw due to a conflict in interest, because an attorney with the firm becomes a witness in the case, or for any other reason required under the Disciplinary Rules.

In any of these events, you agree that we may move to withdraw as your counsel in any suit in which we have made an appearance on your behalf or from any matter in which we are representing you, and that you will promptly execute any documents required to accomplish this.

If we withdraw for any reason, we will take reasonable steps to avoid foreseeable prejudice to your rights, including giving proper notice, allowing reasonable time for your to employ other counsel, delivering to you all papers and property to which you are entitled, and complying with applicable laws and rules.

5.2. **Withdrawal by You**. It is our desire and goal that you be satisfied with our legal services at all times. At any time you wish, however, you may cease to use our services by notifying us in writing. You will be still responsible for payment of any and all fees, expenses, and costs that have been incurred in connection with our representation of you prior to the date that we receive your written notice.

5.3. **Resolution of Case; Death or Dismissal of Parties**. In the event of a bona fide resolution of the Legal Matter by the parties, or in the event that our services are no longer necessary for any reason, you must pay us or make suitable arrangements for the payment of the total amount of all fees, expenses, and costs still outstanding before the signing and filing of the instruments necessary to resolve the matter or terminate our services. If you die or are declared legally incompetent while any outstanding amount is owed to us under this agreement, your estate or guardian will owe us for those amounts.

5.4. **Suit for Fees**. In the event of any dismissal, withdrawal, or termination of our representation of you under this agreement, YOU AGREE AND UNDERSTAND THAT THE TERMS OF THIS ENGAGEMENT AGREEMENT PERTAINING TO THE PAYMENT OF FEES, COSTS AND/OR EXPENSES FOR OUR SERVICES RENDERED UP TO AND INCLUDING THE DATE OF SUCH DISMISSAL, WITHDRAWAL OR TERMINATION OF REPRESENTATION SHALL REMAIN IN FULL FORCE AND EFFECT. If we are compelled to intervene in a pending Lawsuit or to initiate any subsequent Lawsuit in order to cover those fees, costs, and/or expenses, you agree to pay us, in addition to the fees, costs and/or expenses due us, any and all attorneys' fees, costs and/or expenses incurred in that legal action.

6. No Asset Valuation or Title Search/Income Tax/Federal Estate Tax Return

6.1. **No Asset Valuation or Title Search**. You understand that our representation does not include valuation of any assets, nor do we claim to have expertise in this area. We will advise you to retain appropriate experts, such as accountants, financial advisors, or real estate or business appraisers, to assist in this regard. We do not automatically determine the validity of income and expense figures supplied to us by others or attempt to verify other underlying data, unless that is relevant to the issues involved in our representation. We will not search titles unless you ask us to do so. If there are questions in your mind concerning any of these issues, you should discuss them with us and authorize us to retain appropriate experts to provide assistance on your behalf.

6.2. **No Income Tax Advice**. You understand that our representation does not include rendering any income tax advice to you or the preparation of any income tax returns. You must seek such advice from your accountant or other financial advisor.

6.3 **Federal Estate Tax Return**. We will be advising you whether or not a federal estate tax return (IRS Form 706) is required. If required, we will prepare the return. Even though not required, it may be advisable to file a federal estate tax return. Once we are able to determine the size of the estate, we will write you advising you of your options.

7. Favorable Outcome Not Guaranteed

ALTHOUGH WE WILL USE OUR BEST REASONABLE, ETHICAL AND PROFESSIONAL EFFORTS IN REPRESENTING YOU, WE CANNOT PREDICT OR GUARANTEE THE RESULTS OF OUR EFFORTS OR THE OUTCOME OF THE LEGAL MATTER. YOU UNDERSTAND THAT WE HAVE MADE NO REPRESENTATION CONCERNING THE SUCCESSFUL DETERMINATION OR RESOLUTION OF THE LEGAL MATTER OR RELATED CLAIMS OR THE FAVORABLE OUTCOME OR ANY LEGAL ACTION THAT IS OR MAY BE FILED, AND WE HAVE NOT GUARANTEED THAT WE WILL OBTAIN REIMBURSEMENT TO YOU OF ANY OF THE FEES, COSTS, AND/OR EXPENSES INCURRED BY YOU IN THE PROSECUTION OR DEFENSE OF THE LEGAL MATTER. YOU FURTHER EXPRESSLY ACKNOWLEDGE THAT ALL STATEMENTS FROM US ON THESE MATTERS ARE STATEMENTS OF OPINION ONLY.

8. Document Retention

Although we generally attempt to retain copies of most documents generated by our firm, we cannot be held responsible in any way for failing to do so. Consequently, we request that you retain all originals and copies that you desire among your own files, for future reference.

9. Mediation

Before resorting to arbitration, any disputes arising out of or connected with this engagement agreement (including but not limited to the services performed by any attorney under this agreement) will be submitted to mediation in Washington County, Texas, in accordance with the rules for alternative dispute resolution set forth under Texas law. You and we will mutually cooperate to select the mediator to be used. Any and all information, negotiation, and results of the mediation will remain confidential.

10. Entire Agreement; Amendment

This engagement agreement constitutes the entire agreement between us with respect to the matters contained in it. This agreement may not be modified or revoked unless by a written agreement signed by both parties, which will be attached to this agreement and made a part of it.

11. Complaints and Grievances

All lawyers in Texas have an obligation to maintain a high standard of ethical conduct toward their clients and others. To enforce this standard, the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar office of General Counsel will provide you with information about how to file a complaint. If you feel that misconduct may have occurred, or if you have questions regarding the disciplinary process, you may call or write the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, (512) 463-1381 or 1-800-932-1900 (toll free). By your signature below, you acknowledge a receipt of the Texas Lawyer's Creed, which is attached to this agreement.

12. Circular 230

You may ask our advice regarding federal tax issues. The Internal Revenue Service (IRS) does not allow you to rely on informal tax advice rendered before you file your tax return to avoid tax penalties. If you want to rely on our federal tax advice to avoid federal tax penalties, the IRS requires us to issue formal written tax opinions regarding the tax issue(s). Formal written tax opinions are not within the scope of this engagement. The IRS rules also prohibit someone else from using the advice we provide to you. All communications from us are intended for your use only and include, and are intended to reflect, in substance, the following notice:

> Treasury Circular 230 Disclosure: to the extent this communication contains any statement of tax advice, such statement is not intended or written to be used, and cannot be used, by any person for the purpose of, or as the basis for, avoiding tax penalties that may be imposed on that person. This communication is not intended to be used, and cannot be used for the purpose of promoting, marketing, or recommending to another party any matter addressed in this communication. This legend is attached pursuant to U.S. Treasury Regulations governing tax practice, to comply with requirements imposed by the Internal Revenue Service.

You will let us know if you want a formal, legal opinion regarding tax issues. You agree to sign a separate engagement letter with us to show you want such an opinion. You understand that the cost of such an opinion will be substantial given the IRS requirements.

13. Place for Performance

The place for the performance of the majority of the work to be done under this Agreement is in Washington County, Texas.

14. Witness

You understand that if any attorney in the firm is called as a witness or asked to assist others acting on your or your estate's behalf in a later proceeding, you bind yourself and your estate to compensate us at our then prevailing hourly rates.

15. Optional Provisions Regarding Authorized Agents

You agree that _____ is/are authorized by you to receive confidential information from us, but it is not intended by you to have that information disclosed to third persons.

You agree that _____ has/have authority to obtain legal services or act on advice rendered by us on your behalf.

16. Electronic Mail

We use electronic mail ("email"). Email may not be a secure communication. If you use a work computer to send emails, your employer may have access to those emails. Please indicate below if we have your permission to communicate with you by email.

17. Acknowledgment of Agreement

WE HAVE DISCUSSED WITH YOU THE TERMS AND CONDITIONS OF OUR ENGAGEMENT BECAUSE WE BELIEVE THAT YOU ARE ENTITLED TO KNOW OUR POLICIES, AND IN ORDER TO AVOID ANY MISUNDERSTANDINGS LATER. BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT, IN ADDITION TO YOUR HAVING READ THIS AGREEMENT IN ITS ENTIRETY, I HAVE ANSWERED ANY QUESTIONS THAT YOU MAY HAVE CONCERNING THE AGREEMENT, AND THAT YOU UNDERSTAND THE AGREEMENT AND CONSIDER IT TO BE FAIR AND REASONABLE. BY YOUR SIGNATURE, YOU ALSO ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED BY US TO RETAIN INDEPENDENT LEGAL COUNSEL TO REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT AND THAT YOU HAVE HAD SUFFICIENT TIME TO DO SO. BY SIGNING BELOW, YOU ARE AGREEING TO THE TERMS AND CONDITIONS CONTAINED IN THIS ENGAGEMENT LETTER.

Signed on _____, _____.

ACCEPTED:

_____ _____

Client Client

____ Yes. You may communicate with me via email.
Initial Preferred email address _____

____ No. Please do not communicate with me via email.
Initial

Received the sum of $_____ in the form of check/cash on _____, 2012.

20XX FEE AND EXPENSE SCHEDULE
FEES – HOURLY RATES - STANDARD

FEES

R. Hal Moorman	$XXX
Larry P. Urquhart	$XXX
Steven C. Haley	$XXX
Laura J. Upchurch	$XXX
Wendy Yates	$XXX
Andrew J. Hefferly	$XXX
Support Staff	$XXX
Probate	$XX/$XX/$XXX
Law Clerks	$XX
Clerks	$XX

EXPENSES

Photocopies	XX¢ per page in firm, or cost of copy service
Color Photocopies	$X.00 per copy, or cost of copy service
Incoming Fax; Local Outgoing Fax	XX¢ per page
Outgoing Long Distance Fax	Long distance call expense + 10%
Long Distance Calls	Cost to firm + 10%
Other Expenses	Cost to firm
Costs Advanced	Cost to firm
Mileage	.51 per mile

APPENDIX P
Thomas Baird Contract

CONTRACT FOR LEGAL SERVICES

ATTORNEY: ["Attorney", "I", "we", "our", or "us"]

BAIRD, CREWS, SCHILLER & WHITAKER, P.C.
401 North 3rd Street, 2nd Floor
Post Office Box 1260
Temple, Texas 76503-1260
(254) 774-8333
(254) 774-9353 (fax)
Website: www.bcswlaw.com

CLIENT: ["Client", "you", or "your"]

I. ENGAGEMENT.
You have asked that we represent you in regard to business-planning matters. These may include the preparation of organizational documents, transaction documents, buy-sell arrangements, and transfer documents. We wish to describe the scope of our proposed representation and the circumstances under which we may provide representation.

II. CONTRACT TERM.
The term of this contract will begin on the date this contract is signed and delivered. The term of the contract will end 30 days after the business-planning documents are signed.

III. INFORMATION NEEDED FOR BUSINESS PLANNING.
Your obligation to us is to provide complete and accurate information about all the assets to be held by the business, with sufficient description of the property to transfer legal title. If this information is not complete when the primary business-planning documents are reviewed and signed, we should have the transfer documents ready for your review within 10 days after the information is delivered.

IV. FEES & EXPENSES.
You agree to the fees and expenses set out in this contract and guarantee payment according to the terms of this contract.

A. Fixed Fees.
The cost of our services for the work described as fixed-fee work is described on the attached Schedule of Services. This amount is called the "fixed fee". The fixed fee is payable upon execution of the primary business-planning documents. A description of the services included in the fixed-fee work we will be rendering for you are indicated on the attached Schedule of Services.

B. Other Services.
All services, other than the services described as fixed-fee work, including services of any kind provided after the expiration date of this contract, will be provided at an hourly rate of compensation. Our hourly rates include telephone calls to and from you. The current hourly rate for senior attorneys is $XXX per hour. The current hourly rate for associates is $XXX per hour. The current hourly rate for board certified legal assistants is $XXX and for staff is $XX per hour. All time will be recorded in quarter-hour units. These services will be billed monthly as incurred. Any increase in the hourly fees while representing you will be billed to you at the increased rates.

C. Expenses.
We may incur various expenses in connection with representing you in this matter. These expenses include postage, photocopying, telephone and other communication charges, filing fees, messenger delivery and transportation charges, and other miscellaneous disbursements. You agree to reimburse us for all expenses incurred or paid by us. If you are billed directly for the expenses or if the expenses are given to you to pay, you agree to make prompt, direct payments of the expenses. We will not incur any unusual or large expenses before you agree to the expense.

D. Circumstances Under Which Minimum Fees May Increase.
The only basis for service charges in excess of the minimum will be the occurrence of any of the following:

- Delivery of incomplete information, instructions, and late delivery of information.
- "Change-of-mind" redrafts of one or more of the documents. Changes made due to our misinterpretation of your instructions or a drafting error will be made at no additional charge.
- Out-of-town meetings or other work requiring traveling to another location that exceeds the time estimate indicated in the attached Schedule of Services.
- Any service, including a scheduled service, which continues beyond the term of this contract.

E. Services Not Included in Estimated Fees.

Our estimated fee does not include:

- Unless specifically included in the attached Schedule of Services, valuation services.
- Services provided by persons or organizations other than this firm.
- Filing and recording costs, special delivery.
- The preparation of deeds and other conveyance of title in any state other than Texas. This does not include the investigation, discovery, or correction of title. This does not include the transfer of working or royalty interests in minerals and oil and gas properties.
- Travel costs.

F. Billing.

Statements for fees and expenses will be delivered to you either in person, electronically (e-mail or facsimile), or by U.S. Mail and will be due upon receipt unless you have made some other arrangement with our firm. Unless you inform us otherwise, your statements will be delivered to you by e-mail. If you have more than one e-mail address, you will need to inform us of the e-mail address you prefer for your billing. If you do not have an e-mail address, your statements will be delivered to you either in person, by facsimile, or by U.S. Mail.

You may pay your bill by cash, check, Visa, or MasterCard. We do not accept any other credit cards. If you would prefer that we automatically charge your bill to your Visa or MasterCard, please fill out and sign the authorization on the last page of this Contract (before the addendums), and we will automatically charge the amount owing on the bill to your credit card no sooner than the fifth (5th) day following the day the electronic bill is sent by e-mail or facsimile or the paper bill is mailed.

G. Who Will be Billed?

Unless we receive joint instructions to the contrary, we will send our entire bill for fees and disbursements for organizing the entity to SET{ FILL IN "Fill in name of the person to bill" * MERGE FORMAT " * MERGE FORMAT . You should enter into a written agreement for reimbursement of . When you have reached an agreement on this subject, we will discuss with you whether we can ethically draft the agreement. If not, we will recommend an independent attorney for you. We cannot provide advice to any of you regarding any claim against another for indemnity or reimbursement of fees and disbursements billed by us in connection with this representation. Once the entity is formed and operating, we will bill the entity directly.

V. Communication

During the term of this engagement, we will attempt to be reasonably available to you. We are handling a number of clients and because of previous engagements, personal days, and matters unforeseen, we will sometimes not be immediately available to respond to your phone, electronic, or written communication. It is our policy that all client communication be returned as promptly as possible. Our firm has a voice-mail system for each attorney and staff member, and we urge you to leave a detailed message if you cannot reach your desired party directly. This will assist us in more quickly responding to you with an answer to any question you might have. If the desired attorney is unavailable, a staff member may often be of assistance. In addition, you may communicate with us by U.S. Postal Service, facsimile, or e-mail. We will provide draft copies of documents as they are prepared, and, whenever appropriate, we will also provide status reports in any of several different mediums. Open communication promotes a better working relationship and quicker completion of the work for which we have been engaged.

DISCLOSURE OF TYPES OF COMMUNICATION USED BY OUR FIRM: Although the use of communication technology such as cordless phones, cellular phones, e-mails, facsimiles, or communication through our website help us to communicate better and faster with you, there is an increased possibility that information transmitted over these various medium may be intercepted by an unauthorized third party or accidentally disseminated to an unauthorized third party, which compromises the attorney-client privilege between you and our firm. By your signature to this Contract, you expressly authorize the use of all forms of communication as described above. If because of the sensitivity of the information to be communicated to our firm you desire that one or more of the above described means of communication not be utilized by our firm with you, you agree that you will contact our firm and give the firm specific written instructions restricting or specifying the types of communications to be utilized between you and our firm.

VI. TERMINATION OF THE CONTRACT BEFORE CLIENT EXECUTES THE BASIC PLAN DOCUMENTS.

Any party to this contract, Client or Attorney, has the right to terminate this contract at any time. If terminated by the Client or Attorney before the basic business-planning documents are signed, Client will be obligated to pay the cost of legal services provided to date of termination. The cost of legal services will be based on the hourly rate of compensation previously described. The cost will include reasonable time and costs required to deliver to Client all original Client information in the Attorney's possession. This contract may be terminated by us only for reasons stated in the contract addendum entitled "Conditions of Service, Disclosures".

VII. CONDITIONS OF SERVICE, DISCLOSURES:

A. We Represent Only the Client.

Those listed above as "Client" will be our only client. We do not assume the representation of any person, family member, or business organization not listed above as "Client." And before entering into this engagement, we reserve the right to obtain waivers of any potential conflict from parties not listed as "Client" who may be affected by this transaction.

B. Conflicts of Interest.

We will assume there are no conflicts of interest between those listed above, and you affirmatively promise to disclose any conflicts that develop during the course of my representation.

C. Certified Public Accountant Must Be Involved.

You are advised that your Certified Public Accountant should be involved in this planning. Failure to involve the accountant could result in subsequent confusion, time, and cost when the accountant is asked to review your plan for the first time during tax season and in the course of the preparation of the added income and gift-tax returns which may result from your planning.

D. You Will Read All Documents.

You also promise to me that you will read or reread all of the documents you have signed within one month after the plan documents have been signed.

VIII. OPINION OF INDEPENDENT LEGAL COUNSEL.

Any question or doubt you may have about this contract should be resolved before you sign. This contract is the only time when the interest of our law firm may be in conflict with your own. It is always a prudent practice to seek the advice and counsel of another attorney as to your rights under this contract. You will never offend us, or jeopardize our relationship, in seeking a review of our work and a second opinion from qualified legal and tax counsel. This will be true at any time during our working relationship. Any attorney's service to a client should always be structured so that the attorney has no interest, other than the client's interest, in the outcome of any procedure or recommendation. This engagement contract is the only exception to that rule. The contract (and the contract addendum) is technical. The contract will govern our relationship. It is important that you resolve any question you may have before you sign this contract. If in doubt, we recommend that you seek the opinion of a qualified attorney or other trusted advisor.

IX. THE TEXAS LAWYER'S CREED.

A copy of The Texas Lawyer's Creed -- A Mandate for Professionalism is attached. It establishes the standards of professionalism for the legal profession. Some of its provisions may not be applicable to this situation. We pledge that the legal services we render will be in accordance with The Texas Lawyer's Creed -- A Mandate for Professionalism to the extent the provisions are applicable.

X. SUBSEQUENT REPRESENTATION.

We look forward to representing you. You should, however, understand that, after termination of this matter and any other matters in which we are representing you, this representation will not preclude our subsequent representation in other matters which may be adverse to you.

XI. BEFORE YOU SIGN THIS CONTRACT.

Any question or doubt you may have about this contract should be resolved before you sign. This contract is the only time when the interest of our law firm may be in conflict with your own. It is always a prudent practice to seek the advice and counsel of another attorney as to your rights under this contract. You will never offend us, or jeopardize our relationship, in seeking a review of our work and a second opinion from qualified legal and tax counsel. This will be true at any time during our working relationship.

XII. ACCEPTANCE OF THIS CONTRACT.

Other disclosures are made in an addendum attached to this contract entitled "Conditions of Service, Disclosures". This addendum provides specific terms and conditions which materially affect this engagement. Your acceptance of this engagement contract will indicate that you have read and agree to the terms stated in the contract and the addendum. Each person or organization identified as Client must communicate a written acceptance of this contract. Delivery and acceptance may be by

regular mail or facsimile delivered electronically. An instrument delivered by electronic facsimile will be considered to be an original.

DATED AND EFFECTIVE:	

ATTORNEY: Baird, Crews, Schiller & Whittaker, P.C. By	X

CLIENT:	X

ACKNOWLEDGMENT OF NON-REPRESENTATION: I have read the foregoing contract and understand that I am not being represented by you in this transaction, that there is no attorney-client relationship between you and me, and that you, as the attorney in this transaction, owe no duty of loyalty, confidentiality, or competence to me. I will not consider any information you provide to me as legal advice and will not rely upon that information in any decisions made by me.

	X

WAIVER OF CONFLICTS: We have read the foregoing contract and waive all conflicts.

	X

CREDIT CARD AUTHORIZATION	
I authorize Baird, Crews, Schiller & Whitaker, P.C. ("Firm") to charge all amounts owed by me to the Firm to my (circle one) MasterCard / Visa card #_____, which has an expiration date of _____. The name on my card is _____. It is my understanding that the amount owed will be charged to my account no sooner than the 5th day following the date the bill was transmitted as provided in this Contract. If there any questions, I can be reached at the following daytime phone number: _____.	
	_____ Signature

ADDENDUM
CONDITIONS OF SERVICE
DISCLOSURES

The Contract for Legal Services, to which this addendum is a part, and the continuation of service to you, is subject to the following conditions and disclosures.

A. Attorney's Duty is Only to the Client.

The "Client" will be the person or persons (including any business entity or enterprise) expressly identified as "Client" in the contract. We assume no duty to any other person or enterprise, nor any other member of your family, not identified as a client in the contract. We will not disclose any information to anyone other than to a client except as specifically permitted by you or as otherwise authorized in order to fulfill our representation. We reserve the right to refuse disclosure of confidential and privileged information under any condition or circumstances. If you become

incapacitated, you agree that we may, but are not required to, disclose certain information to your immediate family members or your legal representatives.

B. Representation of an Entity.

1. Automatic Potential Conflicts.

Representation of any entity automatically involves potential conflicts since entities are nothing more than the joining together of individuals or other entities with differing needs, for a common objective. It is impossible to enumerate all the possible effects this may have upon an attorney's representation of the entity. Each individual must understand when there is this adversity of interest:

- the attorney for the entity cannot provide legal representation for that constituent individual; and
- that discussions between the attorney for the entity and the individual may not be privileged insofar as that individual is concerned.

2. The Entity.

Unless Otherwise Specified, is the Primary Client. In connection with the representation of an entity, such as a corporation, partnership, limited liability company, joint venture, trust or association, Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct provides, in part, as follows:

"A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to and accept direction from an entity's duly authorized constituents... the lawyer shall proceed as reasonably necessary in the best interest of the organization..."

3. No Responsibility to Verify Authority.

In serving as legal counsel to the entity, we will respond to the instructions of the representatives authorized to act on behalf of the entity. Further, we have no responsibility to inquire or verify that authority and will not bear any responsibility for discovering whether the representative has committed acts of fraud, defalcation, forgery or other criminal or civil liability actions. For example, the following will be considered to have the authority and power to deal with us:

- The president or other authorized officer of a corporation.
- A member (if member-ruled), a manager (if manager-ruled), or other authorized officer of a limited liability company.
- The general partner of a partnership.

4. Disclosure of Wrongdoing.

If we represent multiple clients and we discover that a client has committed acts of fraud, defalcation, forgery or other criminal or civil liability actions, we will ask that the client who has performed that act to notify the other clients of their wrong doing. If the client who has performed the wrongdoing does not notify the other clients within a reasonable period of time of the wrongdoing, we will have an obligation to notify the other clients of the wrongdoing. If the wrongdoing is not resolved among the several clients within a reasonable period of time, you agree that we will have the right to either withdraw our representation from all clients and provide all confidential information in our possession to each client, or, in the alternative, withdraw from representing the client who has performed the wrongdoing and continue to represent the other clients with no obligation to make full disclosure of any confidential information in our file to the client who has done the wrongdoing even if this is to the detriment of the client who performed the wrongdoing. If this occurs, you agree not to have us disqualified from representing the other clients because of a conflict of interest. In either situation, all clients will be jointly and severally liable for payment of all our accrued legal fees and any outstanding expenses we have advanced on your behalf. If we have to withdraw, there may be an added expense caused by the representation by a new law firm.

5. Development of Conflicts of Interest.

*****OPTION ONE*****If we represent multiple clients and a conflict arises, we will provide all confidential information in our possession to each client, and you agree we have the right to withdraw our representation from all clients. *****OPTION TWO*****If there are multiple clients to this contract and the clients become adverse to one another or litigious, you agree that we may continue to represent " * MERGE FORMAT in the future and that we will be able to make full disclosure of all confidential information in our possession to and that we will withdraw representation from the other clients and will not be required to make full disclosure of all the confidential information that may be in our possession to any of the other clients even if it is to the detriment of those clients. If this occurs, you agree not to have us disqualified from representing the other clients because of a conflict of interest.*****END OF OPTIONS***** All clients will be jointly and severally responsible for payment of all our accrued legal fees and any outstanding expenses we have advanced on your

behalf. If we have to withdraw, there may be an added expense caused by the representation by a new law firm.

6. Disputes Between Parties Involved in Entity.

a. If Entity Is a Corporation.

If matters arise that cause any one shareholder, director, or officer to have a claim against another shareholder, director, or officer, we could represent neither shareholder, director, or officer. If matters arise that cause any shareholder, director, or officer to have a claim against the corporation, or that cause the corporation to have a claim against an individual shareholder, director, or officer, we retain the right to require the corporation to engage another attorney for that specific action.

b. If Entity Is a Limited Liability Company.

If matters arise that cause any one member, managers, or officer to have a claim against another member, manager, or officer, we could represent neither member, manager, or officer. If matters arise that cause any member, managers, or officer to have a claim against the limited liability company, or that cause the limited liability company to have a claim against an individual member, manager, or officer, we retain the right to require the limited liability company to engage another attorney for that specific action

c. If Entity is a Partnership.

If matters arise that cause any one partner to have a claim against another partner, we could represent neither partner. If matters arise that cause any partner to have a claim against the partnership, or that cause the partnership to have a claim against an individual partner, we retain the right to require the partnership to engage another attorney for that specific action.

7. Disputes Regarding Issues Involved in Organizing the Entity.

a. Types of Issues that May Arise.

At this time there does not appear to be any difference of opinion among any of you with regard to the major issues involved in organizing the entity. It may turn out, however, that, upon further consultation, one or more of you may have varying opinions with respect to the entity's capitalization and other organizational matters. Issues that investors may disagree about include

- the amount and type of ownership interest,
- terms of any loans or leases of property to the entity by the investors,
- debt-equity ratio,
- election of tax status,
- salaries and fringe benefits,
- ownership options,
- management responsibilities,
- restraints on the sale or other transfer of the ownership interest,
- circumstances under which the ownership interest of the entity may or must be purchased by the entity or other owners, and
- selection of the entity's fiscal year.

b. If Differences Arise that Cannot be Resolved.

It is our duty to explore each organizational issue with you. If we determine there are material differences on any organizational issue that cannot be resolved to each party's best interest, then we must at that time withdraw from representation. If this occurs, we will, if you wish, assist each of you in obtaining a new attorney. You would, of course, be responsible for payment of all our accrued legal fees and any outstanding expenses we have advanced on your behalf. If we have to withdraw, there may be an added expense caused by the representation by a new law firm.

C. If the Client is More than One Person.

If the identified Client is more than one person, including husband and wife, parent and child, business entity and owners:

1. Multi-Party Representation.

Each is advised, as recommended by the Texas Code of Professional Responsibility, of the hazards of multi-party representation by one attorney. An attorney is required to be impartial, loyal, and to exercise independent judgment with regard to the client group as a whole. An attorney may not promote the interest of any one member of a group to the disadvantage of another in the group of clients. An attorney may act as the

common representative for more than one person in a common enterprise for so long as their interests do not differ or potentially differ. If some later dispute arises between you as to the subject of the proposed representation, we would be unable to represent either of you without the permission of the other.

2. Separate and Independent counsel.

Each separate client is advised to obtain the service of independent legal counsel to insure that the client's interests are best protected. Obtaining independent representation, however, could result in increased attorneys fees and expenses.

3. Client's Duty to Report Conflicts.

Each Client has the affirmative duty to the Attorney to report:

- any fact or circumstance which may affect the Attorney's impartial representation of all those identified as Client; and
- any fact or circumstance which indicates that the Client's interest is in conflict with another.

4. Use Your Own Judgment.

One member of a family or business organization may serve as the spokesman for all. It is not uncommon for those who are passively involved in a business-planning endeavor to sign documents without thoroughly reading or understanding what they have signed. This cannot be permitted in this engagement. At least one court has held that documents signed by a wife were revocable by the wife because she did not receive effective legal representation. The wife claimed that she did not read or understand the documents and that she relied upon the judgment of her husband alone. In signing the contract, each person identified as Client affirmatively represents and promises:

- to read the documents;
- to ask questions when in doubt as to the meaning of any document or term; and
- To not sign the documents until he or she understands the documents and the business plan.

5. Conduct to Be Fair and Open.

You agree to discuss any issues that may arise with respect to the preparation and execution of any documents in good faith. You agree that your conduct at all times will be fair and open with one another and with us.

6. Complete and Free Disclosure.

You each agree that there will be complete and free disclosure and exchange of all information that we receive from you during our representation. This information will not be confidential as to each of the Clients. With common clients, communications relevant to a matter of common interest between the common clients is not protected by privilege.

7. Discovery of Confidential Information Not to be Disclosed Among Several Clients.

If we represent multiple clients and we become aware of confidential information that we are asked not disclose to all clients, we will ask that the client who has possession of this confidential information to disclose that information to the other clients. If the client who has the confidential information does not disclose that information to the other clients within a reasonable period of time, you agree that we have the discretion to either withdraw representation from all clients or to withdraw representation from the client who will not disclose the confidential information, continue to represent all other clients, and to disclose the confidential information to the other clients. If this occurs, you agree not to have us disqualified from representing the other clients because of a conflict of interest. In either situation, all clients will be jointly and severally liable for payment of all our accrued legal fees and any outstanding expenses we have advanced on your behalf. If we have to withdraw, there may be an added expense caused by the representation by a new law firm.

8. Disclosure of Confidential Information to Non-Client Family Members or Business Associates.

If you allow non-client family members or business associates to attend client conferences or provide them with copies of information that would otherwise be confidential, the attorney-client privilege may be jeopardized as to any information they may possess. You acknowledge that we have made you aware of this potential loss of confidentiality, and you agree to hold us harmless for any loss of the attorney-client privilege arising out of non-client attendance at client conferences or the delivery of confidential information to non-clients. We will provide confidential information to non-clients only as you may instruct.

9. Agreement Not to Disclose Confidential Information.

If we are representing one or more of the Clients on separate matters not related to this engagement, you agree that we are under no obligation to disclose any confidential information we may possess in regard to that separate matter.

10. Separate But Concurrent Representation.

If you have engaged us to represent each of you in a separate but concurrent representation, you agree that we may represent each of you separately, and we will be under no obligation to discuss with either of you what the other has disclosed to us. Each of you releases us from the obligation to reveal to you any information that may have been disclosed to us by the other unless it is material and adverse to your interests. Furthermore, we will not use any information that we receive from the other of you in preparing the other person's plan, even if the result is that the two plans are incompatible and that one plan may be detrimental to the plan of the other. The representation will be structured in such a way as if each of you had gone to a separate lawyer for assistance in planning.

11. Jointly and Severally Liable.

You agree to be jointly and severally liable for the payment of the fees set out in this contract and guarantee payment according to the terms of this contract.

D. Prior Clients.

We may have, in the past, represented one or more of the Clients, the Client's family members, and business entities of which the Client or the Client's family members have an ownership, management, or employment relationship ("prior clients"). This representation was for matters unrelated to this engagement. Prior clients include . We reserve the right to obtain consents from prior clients in connection with us serving as legal counsel to the Client. Consents may be obtained because our undertaking to represent the Client constitutes a potential conflict of interest. At this time, we do not believe that our representation of the prior clients will impair the exercise of our independent professional judgment on behalf of the Client. If we determine that because of differences between the prior clients and the Client we can no longer represent the Client impartially, or if an actual conflict arises while representing the Client, we will inform you of the matter or actual conflict. *****OPTION ONE*****We must then withdraw from representation and cease further representation of any party to the conflict. *****SECOND OPTION*****You agree that we may withdraw from representing the Client and to continue to represent the prior clients even in litigation by the prior clients against the Client. If this occurs, you agree not to have us disqualified from representing the prior clients because of a conflict of interest**.***END OF OPTIONS***** If we determine that we must withdraw from the representation, we will, if you wish, assist the Client in obtaining new counsel. The Client would, of course, be responsible for payment of all accrued legal fees and any outstanding expenses we have incurred on your behalf. We will return any unused portion of any advances that have been made. The need to obtain substitute counsel may, in addition, involve the occurrence of additional legal fees and expense.

E. Current Clients.

We may at the time this engagement contract is being executed be representing one or more of the Clients, the Client's family members, and business entities of which the Client or the Client's family members have an ownership, management, or employment relationship ("current clients") on separate matters unrelated to this engagement. Current clients include . We reserve the right to obtain consents from current clients in connection with us serving as legal counsel to the Client. Consents may be obtained because our undertaking to represent the Client constitutes a potential conflict of interest. At this time, we do not believe that our representation of the current clients will impair the exercise of our independent professional judgment on behalf of the Client. If we determine that because of differences between the current clients and the Client we can no longer represent the Client impartially, or if an actual conflict arises while representing the Client, we will inform you of the matter or actual conflict. *****OPTION ONE*****We must then withdraw from representation and cease further representation of any party to the conflict. *****OPTION TWO*****You agree that we may withdraw from representing the Client and to continue to represent the current clients even in litigation by the current clients against the Client. If this occurs, you agree not to have us disqualified from representing the current clients because of a conflict of interest**.***END OF OPTIONS***** If we determine that we must withdraw from the representation, we will, if you wish, assist the Client in obtaining new counsel. The Client would, of course, be responsible for payment of all accrued legal fees and any outstanding expenses we have incurred on your behalf. We will return any unused portion of any advances that have been made. The need to obtain substitute counsel may, in addition, involve the occurrence of additional legal fees and expense.

F. This Engagement Contract Controls.

If we have represented the Client prior to this engagement, you agree that this engagement contract now redefines our attorney-client relationship and that to the extent this agreement may conflict with any earlier engagement contract, this agreement supersedes any earlier engagement contractual relationships.

G. Representation of Adverse Clients.

You agree that we reserve the right to continue representing existing or new clients in any matter that is not substantially related to our work for you even if the interests of those clients in other matters are adverse to you.

H. Information to be Supplied by the Client.

An attorney can operate only upon the information the client elects to provide, and the attorney must assume that the information provided is complete and accurate.

I. Engagement Limited to Term of Contract.

The engagement evidenced by this contract is limited to the time prescribed by the contract and to the scope of the service to be provided as described by this contract. There is no implied representation that we can or will provide any further service beyond the engagement period and the scope of service without first negotiating a new contract. Any change as to scope of work or extension of the engagement period must be in writing to be binding. We will be reasonably available to you during the engagement period.

J. DISCLOSURE NOTICE

PURSUANT TO THE GRAMM-LEACH-BLILEY ACT, PUBLIC LAW NUMBER 106-102, AND THE RULE ISSUED BY THE FEDERAL TRADE COMMISSION REGARDING THE PRIVACY OF CONSUMER FINANCIAL INFORMATION, 16 CODE OF FEDERAL REGULATIONS PART 313, LAW FIRMS WHICH PROVIDE TAX PREPARATION AND TAX PLANNING SERVICES TO THEIR CLIENTS ARE CATEGORIZED AS FINANCIAL SERVICE PROVIDERS AND REQUIRED TO PROVIDE WRITTEN NOTICES TO CERTAIN CLIENTS REGARDING DISCLOSURE OF NON-PUBLIC PERSONAL INFORMATION. AS YOUR ATTORNEYS, WE COLLECT NON-PUBLIC INFORMATION ABOUT YOU FROM YOU, AND WITH YOUR AUTHORIZATION, FROM THIRD PARTIES SUCH AS ACCOUNTANTS, FINANCIAL ADVISORS, INSURANCE AGENTS, BANKING INSTITUTIONS, AND OTHER ADVISORS. WE DO NOT DISCLOSE ANY NON-PUBLIC PERSONAL INFORMATION ABOUT OUR CLIENTS OR FORMER CLIENTS TO ANYONE EXCEPT AS PERMITTED BY LAW, OR AS AUTHORIZED BY THAT CLIENT. IF WE ARE AUTHORIZED BY YOU, WE MAY DISCLOSE NON-PUBLIC PERSONAL INFORMATION TO UNRELATED THIRD PARTIES. SUCH UNRELATED THIRD PARTIES WOULD INCLUDE ACCOUNTANTS, FINANCIAL ADVISORS, INSURANCE AGENTS, OR GOVERNMENT AUTHORITIES IN CONNECTION WITH ANY TAX RETURNS PREPARED BY US OR TAX PLANNING. WE RESTRICT ACCESS TO NON-PUBLIC PERSONAL INFORMATION ABOUT YOU TO THOSE EMPLOYEES OF OUR LAW FIRM WHO NEED TO KNOW THE INFORMATION IN ORDER TO PROVIDE LEGAL SERVICES TO YOU. WE MAINTAIN PHYSICAL, ELECTRONIC, AND PROCEDURAL SAFEGUARDS THAT COMPLY WITH FEDERAL REGULATIONS AND OUR RULES OF ETHICS TO GUARD YOUR NON-PUBLIC PERSONAL INFORMATION.

K. ATTORNEY-CLIENT PRIVILEGE

While the foregoing federal laws and regulations establish rules and disclosure requirements, they do not limit the attorney-client privilege or the confidentiality rules for information provided to attorneys. The privilege and confidentiality rules are governed by state law, the rules imposed on attorneys under state law and our ethics standards. In circumstances where applicable federal laws might allow disclosure, we will continue to follow the stricter non-disclosure rules of attorney-client privilege and client confidentiality.

L. Business-Planning Documents are Complex.

The business-planning documents will be complex to read and understand.

1. Client's Duties.

It will be your affirmative duty to do the following:

- to involve your accountant, whose services will be necessary to maintain the plan, in the planning process;
- to give the business-planning documents a comprehensive review both before and after they have been signed and before the engagement ends;
- to submit the documents to your accountant for review before the engagement ends;
- to consult with us as to any document or provision you do not understand; and
- to read and review the documents thoroughly within one month from the date the business-planning documents are signed.

2. Client Must Thoroughly Review All Documents.

No attorney is error-proof. Your thorough review of the business-planning and transfer documents is important to insure that we have followed your business-planning objectives. Your thorough review will also insure that we have properly recorded business information. Any changes made due to our error will be made without cost to you.

3. Sensitive Provisions.

Certain sensitive provisions are usually included in the business-planning documents. These include transfer provisions that determine who an ownership interest may be transferred to and the conditions of that transfer. The final documents will include this provision unless you specifically require a deletion of it. The term of the

service contract is designed to give you the time you need to review the documents and planning procedures within the term of the contract.

M. Termination of the Contract.

We reserve the right to withdraw and terminate employment if any of the following occurs:

- if it becomes apparent that the motive for the planning is unlawful;
- if a conflict of interest develops;
- if invoices for services and costs are not paid within a reasonable time after delivery; or
- if frustration of purpose if we deliver notice of an impediment which materially affects the service we are to provide and if the impediment is not resolved within a reasonable time after delivery of notice.

N. Interpretation of the Business Plan.

1. Business Plan Formed Under State and Federal Law.

The business plan will be formed under state and federal law now existing. There is precedent in the law for every procedure used with regard to each business-planning organization having situs or location in the United States. The interpretation of existing law may vary from lawyer to lawyer and from court to court. Both federal and state laws are subject to change and subject to new and different interpretations. The "integrated business plan" is a new concept. Its goals are comprehensive and many aspects of the plan are considered to be aggressive or may be considered as aggressive as used by the client or others. For example, the Internal Revenue Service may not contest claiming minority discount which reduces the value of a partnership or other business interest by 15 percent or 30 percent. The Internal Revenue Service may, however, litigate the claim of a discount of 40 percent or more.

2. Resolution of Factual Issues.

The ultimate resolution of factual issues by a court, jury, or state or federal government agency cannot be known in advance and is beyond the attorney's control. The motivation issue is a difficult one because it involves a state of mind. It may not matter what the client actually intended at the time, but what the Court or a jury perceives the client's intent to have been at the time. No representation, guarantee, or warranty is made, nor can be made, with regard to the ultimate resolution of fact issues. Such issues may include:

- That the only purpose of a partnership or transfer was solely to reduce federal tax. Transactions with no purpose or effect other than to reduce taxes will be disregarded for federal tax purposes.
- That, in the view of a jury or judge, a partnership or transfers were motivated by an intent to hinder or defraud creditors.
- That a client lacked the required mental capacity at the time a business-planning document was executed.
- The ultimate resolution of a transfer or other procedure, despite clear directives prohibiting contests by the instrument.

O. Out-of-State Representation.

The Attorney may be requested to provide business-planning services to a client who is not a resident of Texas or services involving property not situated in Texas. If so, the client must employ an attorney in the jurisdiction of the client's residence or in which the out-of-state property is located to review all documents pertaining to the business plan and transfers. We will work with, and if necessary, under the supervision of, the attorney employed by the client for work pertaining to a jurisdiction other than Texas.

P. Choice of Management.

Your choice of any person (or institution) who is to have a custodial or administrative responsibility will govern our preparation of the documents. The authority vested in the business-planning documents is comprehensive in nature. Select your candidate wisely. A spouse, a child, or another who has your trust may not have the experience or ability to serve in a management capacity. An improper choice can destroy a good plan and substantially damage family and business relationships.

Q. Law Changes.

Changes will likely occur in tax, property, and other laws that could impact your business plan. We cannot review the file of each client to determine the impact of court cases, rulings, and other changes in the law. Furthermore, changes will likely occur in your own family, in marital status and in your finances, all of which could impact your business plan. You should, therefore, have your plan reviewed regularly. You acknowledge that we have no duty to review your documents or business plan unless you request us to do so and agree to pay a reasonable fee for that review. Many plans such as yours (especially if the plan is built around multi-business organizations) are high-maintenance plans. If you fail to keep up with some of the formalities required by law, there may be adverse business or tax consequences, or results that may not otherwise be anticipated. We do not assume any obligation to regularly contact you to verify that you are complying with any required legal formalities unless you specifically contract with us for this service. If facts

and circumstances change in the future or life threatening circumstances occur to you or anyone else associated with your family or business, you have a duty to contact someone in this firm to make sure you are properly maintaining your plan and that no additional action is needed. Failure to do so may be detrimental to you or your business affairs.

1. Requirement to Pay Attention to Estate Tax Law Over Next Several Years.

You are hereby advised of the uncertainty of the estate tax laws as they currently exist. You should pay particular attention to the estate tax laws over the course of the next several years, amending your documents in the event of substantial changes. Because we expect substantial changes to occur, you should be well aware that the documents that have been prepared for you currently or will be prepared for you may need to be significantly revised from time to time within the near future.

2. Requirement to Maintain Basis Information.

You are advised to keep detailed records of your basis in order to avoid potential problems if the Economic Growth and Tax Relief Reconciliation Act of 2001 is still in effect upon your death. Rather than have your executor to have to grapple with these problems, you should determine the adjusted basis and the date that each of your assets were acquired.

R. Business Risks.

There may be certain risks associated with your business plan. If the law changes or if the court interprets the facts or law differently than what is currently believed, there may be some adverse consequences. You acknowledge that the potential risks concerning your business-plan have been pointed out to you and that you accept those risks. We have discussed numerous different business-planning options. You acknowledge that you have made your choices after those discussions took place even though your choices may not maximize the greatest financial return or the best tax consequence, but were made because they met your individual business objectives or family situation. You understand that whatever decision, methodology, or manner that is chosen to use in preparation of your business plan, that that manner chosen may not be the only option. Another lawyer may approach your situation from a different point of view and have a different approach. You understand and agree that it is not necessary for us to raise every possible option with you in determining your plan.

S. Use of Exculpatory Language.

You acknowledge that we have discussed with you different types of exculpatory language that may be included in your documents. Exculpatory language is included in legal documents to provide protection for a person acting in management or place of responsibility. We have made you aware that the choice of any particular exculpatory language may have a significant impact on any liability that a particular manager or person having responsibility may have and may limit the ability of others to recover for damages caused by that person's intentional or unintentional acts. You agree to carefully read all legal documents prepared for you to make sure that the language accurately reflects the duties and obligations of all parties and to insure that the correct exculpatory language is included in the documents. You acknowledge that we have discussed with you the problems that may arise out of your choices for those who are in positions of management or authority, and you agree that you will carefully select those persons to be placed in positions of management or authority. You acknowledge that you understand that if disputes arise and the persons you have chosen remain in those positions of management and authority, there may be adverse consequences that may be detrimental to you and your business interests.

T. Client Will Retain Original Documents.

All original business-planning documents, upon execution and after copying, will be delivered to the client. Upon receipt by you of the executed business-planning documents, you need to keep all these documents in a safe and secure place.

U. File Retention by the Attorney.

We will keep the file relating to this transaction for five years from the termination of this contract, after which time the file may be destroyed. You agree to request from the Attorney in writing any documents of which you may want copies before the end of the five-year period.

Schedule of Services

Schedule of Work to be included in the Contract for Professional Services

The following schedule identifies the specific services to be provided by Baird, Crews, Schiller & Whitaker, P.C.
A mark "Yes" will indicate that a described service is to be included in your contract. A mark "optional" indicates that you may add this option to your business plan, during the contract period, at no additional cost. The term "BHR" identifies that a particular service is provided on an hourly rate of compensation. The term "Included" shows the service is included without charge.

Any non-scheduled item which you add to your plan will be billed as a separate item according to this Schedule or at the applicable hourly rate if the time cost of planning, preparation and review exceeds the prescribed minimum fee.
Unless otherwise indicated, all recorded values are in U.S. dollars.

Advanced Planning With the Limited Partnership or Limited Liability Company				
Included (Yes/No)	Description	Number	Typical Cost	Estimated
	Master Limited Partnership as Centerpiece Planning Entity		$XXX	
	• Specific Purpose Limited Partnerships or Limited Liability Company		$XXX	
	• Filing Fee with Secretary of State (includes $25 expediting & 2.1% processing fee)		$XXX	
	• Recording book, Compact Disc copies, Xeroxing, etc.		$XXX	
	• Management Trust Formed to Serve as General Partner of Limited Partnership		$XXX	
	• Corporation Formed to Serve as General Partner of a Limited Partnership		$XXX	
	• Filing Fee with Secretary of State (includes $25 expediting & 2.1% processing fee)		$XXX	
	• Limited Liability Company Formed to Serve as General Partner of Limited Partnership		$XXX	
	• Filing Fee with Secretary of State (includes $25 expediting & 2.1% processing fee)		$XXX	
	• Specific Purpose Limited Liability Company to serve as General Partner		$XXX	
	General Partnership		$XXX	
Life Insurance and Liquidity Planning				
	Planning, Due Diligence		BHR	
	Split-Dollar Life Insurance Planning		BHR	
	Charitable Split-Dollar Planning		BHR	
Qualified Retirement Plans and Accounts				
Yes	Planning for the Over-Funded Retirement Account		BHR	Included
	Qualified Beneficiary Designation – Spousal Roll-Over		BHR	
	Qualified Beneficiary Designation – Roll-Over, Remainder to Family Foundation or Advised Account		BHR	
Business Planning Services Incident to an Integrated Business Plan				
	Reorganization, S Corporation, Voting and Non-Voting Stock		BHR	
	Buy-Sell, Business Continuity Planning (as a part of an integrated plan)		BHR	
	Preferred Stock Reorganization		BHR	
	Professional Corporation or Association		BHR	
	Professional Limited Liability Company		BHR	
	Sale/Lease Back Transactions		BHR	
	Agriculture – Special Use Lease		BHR	
Other Services				
TOTAL ESTIMATE				

Travel, Time and Cost
Travel consumes working time, time which we would otherwise use to produce income for our law firm. We charge for this time. Travel time will be billed at the applicable hourly rate, with a day rate cap. For travel time which involves part of a day, travel time after 5 P.M. will be charged at ½ of the applicable hourly rate. We charge for the cost of travel (automobile, air travel, and taxi), lodging, and meals.

Associated Costs
If not specifically outlined above, documents necessary to transfer property (such as deeds, assignments, and transfers) will be priced separately. Filing fees to county clerks and the Secretary of State, court costs, and out-of-pocket expenses are additional costs to client.

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate legal means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contests of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.
12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.
13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.
17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.
18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.
19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.
3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.
4. I will be punctual.
5. I will not engage in any conduct which offends the dignity and decorum of proceedings.
6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.
7. I will respect the rulings of the Court.
8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.
9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

APPENDIX Q
Fixed Fee – Estate Planning Representation Agreement (Married Couple)

Clients: _____, 20____

This document is the agreement between you, the clients named above, and us, the law firm of Law Firm, for estate planning legal services.

Ethical matters

You are our clients. As far as your estate planning is concerned, you are our only clients; neither your children, if any, nor any other relatives or associates of yours are our clients for this purpose. As and when you aks us to do so, we may discuss your estate plan with your family members and answer questions they may have, but this will always be in our capacity as your lawyers.

Potential conflicts of interest. By hiring us jointly, instead of each retaining your own independent counsel, you help minimize legal fees and facilitate a well-coordinated estate plan; however, you also forego the benefit of having your own lawyer to advocate your own interests. Most couples have reasonable differences of opinion about some aspect of their estate plan (e.g., with respect to property ownership or the preferred disposition of their property). As attorneys for both of you we cannot take sides with just one of you; instead, we must endeavor to balance both views (sometimes playing "devil's advocate) and help you resolve any disagreements before they rise to a conflict between you; however, if any conflict which could affect your estate planning arises, you have an obligation to let us know promptly. If it cannot be resolved, we may be compelled to withdraw and not serve as attorneys for either of you.

Confidentiality. Generally, all information you provide to us will be kept confidential and will not be disclosed to persons outside our office without your consent. However, you authorize us to discuss your estate planning and share your confidential information: (1) with other professional advisors to either of you (such as CPAs, financial planners, insurance agents, etc.); (2) with persons named as an agent, trustee or other fiduciary in estate planning documents signed by either of you or prepared at the request of either of you; and (3) whenever your mental capacity is in question, with your children and other immediate family members, your health care providers, and other interested persons. As between the two of you, you authorize (but do not require) complete and free disclosure and exchange of all information that we receive from either of you; information we receive from one of you will be shared with the other whenever we feel it is appropriate (and will be kept in confidence when we feel it is appropriate).

Other clients. Under applicable ethics rules, we are permitted to continue to represent existing and new clients regarding their estate planning or other matters even if these other clients are related to you (professionally or personally) and even if the interests of the other clients in those matters may be adverse to you, but only as long as the matter is not substantially related to our work for you. (For example, we might prepare Wills for members of your family or business associates).

Scope of our representation

At this time, we have agreed to prepare the following estate planning documents for you in accordance with out discussion to date (strike those that do not apply):

- Wills for both of you.
- Joint Revocable Trust / Separate Revocable Trusts for both of you.
- Declarations of Guardian for both of you (naming guardians for your children).
- "Impaired-Judgment Documents" for both of you (Directive to Physicians a/k/a/ "Living Will", Medical Power of attorney, and Statutory Durable Power of Attorney).
- Instructions for preparing beneficiary designations for your life insurance, IRAs and retirement plans, and for dealing with joint/survivorship accounts and other "nonprobate" assets (but not actual beneficiary designations or account agreements).

It is very important that you understand the legal effect of the documents we prepare for you. Therefore, you both agree to confer with us as to any document or provision you do not understand. We agree to answer your questions and provide a reasonable amount of consultation and advice regarding your estate planning generally and the documents we prepare specifically.

Our fee

Based on our fee schedule for estate planning services (and the specialized provisions you have requested, if any), we have agreed on a total fixed fee of $_____. You agree to pay 50% of this fee ($_____) up front, and we will begin work on

your behalf when we received this payment. The balance will be due when you sign the documents described above, or, if sooner, one month after we first deliver to you proposed drafts of the documents described above.

The fixed fee covers: (1) our initial conference, (2) preparation of first drafts of the estate planning documents indicated above in accordance with our discussions to date and (3) an in-office signing conference (up to one hour). The fixed fee also includes up to _____ hour(s) of additional attorney time until the date of three months after we deliver the initial drafts for: (a) any additional conferences and communications relating to your estate planning (in person, by phone, or by e-mail) with you or others on your behalf, (b) any revisions to the initial drafts (e.g., where you change your mind or because information you have given us so far proves to be inaccurate or incomplete), and (c) any other legal services requested by you or related to the above (including research, inter-office conferences, extended signing conferences, etc.). (Please note that we charge our time in minimum units of 1/4 hour–15 minutes).

There will be additional fees for: (1) legal services listed above (in items a, b, and c) that exceed the included additional hours; (2) all legal services that occur more than three months after we deliver the initial drafts (including services listed above in items a, b, and c); and (3) all drafting or reviewing actual beneficiary designations (occurring at any time). Unless we agree to a different amount, the additional fees will be based on our standard "Hourly Fee" provisions (copy attached). There is also an additional fixed fee if you don't finalize and sign your estate planning documents within six months of the date we deliver the proposed drafts. Finally, our fixed fee includes standard expenses (basic photocopying, postage, etc.) but does not include additional expenses we may incur on your behalf (such as messenger delivery charges, staff overtime when you request rush service, filing and recording fees, long distance charges, extra photocopies, etc.), which we will bill to you.

Future legal services

Changes likely will occur in tax, property, probate, and other laws which could impact your estate plan. We cannot – on our own – economically review the file of each client to determine the impact of court cases, rulings, and other changes in the law. Furthermore, changes likely will occur in your own family, in marital circumstances, and in your finances, all of which could impact your estate plan. Therefore, you should contact us or other competent estate planning advisors to have your plan reviewed regularly. We can frequently answer simple questions you may have for no additional fee; however, we will address significant questions and review your documents or estate plan only on your request and for a reasonable fee.

Termination

You have the right to terminate our employment at any time and we have the right to resign as your attorneys at any time. Our active role as your attorneys will terminate when your documents are signed and we have sent you a confirming letter. However, no termination will waive any of the remaining provisions of this agreement, including: (1) your agreement to pay us for all work performed prior to termination, (2) your consent to complete disclosure of confidential information to either of you and to others (to the extent authorized above), and (3) our ethical duties to you, such as our duty not to disclose your confidential matter to third parties (except as authorized above).

Hourly Fee Provisions

When providing legal services on an "hourly fee" basis, we may provide an estimated fee (either orally or in writing), based on the information provided to us and the specific documents or services we are asked to provide. However, our actual fee is a reasonable fee based primarily upon the hours we expend: drafting instruments, researching legal issues, consulting with you or with others on your behalf--in person or over the phone, etc. (Also, please note that we charge our time in minimum units of ¼ hour--15 minutes.) Currently, hourly rates for our paralegals and lawyers for matters of this type vary from $80 to $320.

In accordance with the criteria for reasonable fees described in the Attorney Code of Professional Responsibility (adopted by the Texas Supreme Court), we also may adjust our fee, up or down, for such factors as the complexity, novelty, and magnitude of the issues involved, the skill required to perform the services, the speed with which you need or desire our services, the value to you of the results achieved, the extent to which you benefit from work we have done for other clients, the extent to which work we do for you may benefit other clients, etc.

In addition to our hourly fees for legal services rendered, we bill for expenses, including postage, photocopying, long distance and other communication charges, filing fees, messenger delivery and transportation charges, staff overtime (where you request rush service) and other miscellaneous out-of-pocket disbursements in accordance with our customary practices.

We bill monthly for fees and expenses and our bill is due upon receipt. In most circumstances we request an up-front retainer of 50% of the estimated fee, and we begin work when we receive the retainer funds. The retainer is held in our trust account and is applied to our last invoice. If our last bill is less than the retainer balance, we will refund the excess. We may also apply all or any part of the retainer to any interim bill; however, we will still deliver the bill to you and you agree to pay us the amount of the bill so that we may restore your retainer balance.

* * *

If the foregoing correctly reflects our agreements, please sign in the space provided below. Thank you for giving us an opportunity to provide these professional services for you. We look forward to working with you.

_____ LAW FIRM
Husbands signature

_____ By: _____
Wife's signature

APPENDIX R
Fixed Fee – Estate Planning Representation Agreement (Single Person)

Client: _____, 20___

This document is the agreement between you, the client named above, and us, the law firm of Law Firm, for estate planning legal services.

Ethical matters

You are our client. As far as your estate planning is concerned, you are our only client; neither your spouse or your children, if any, nor any other relatives or associates of yours are our clients for this purpose. As and when you aks us to do so, we may discuss your estate plan with your family members and answer questions they may have, but this will always be in our capacity as *your* lawyers.

Confidentiality. Generally, all information you provide to us will be kept confidential and will not be disclosed to persons outside our office without your consent. However, you authorize us to discuss your estate planning and share your confidential information: (1) with your other professional advisors (such as CPAs, financial planners, insurance agents, etc.); (2) with persons named as an agent, trustee or other fiduciary in estate planning documents signed by you or prepared at your request; and (3) whenever your mental capacity is in question, with your spouse, children and other immediate family members, your health care providers, and other interested persons.

Other clients. Under applicable ethics rules, we are permitted to continue to represent existing and new clients regarding their estate planning or other matters even if these other clients are related to you (professionally or personally) and even if the interests of the other clients in those matters may be adverse to you, but only as long as the matter is not substantially related to our work for you. (For example, we might prepare Wills for members of your family or business associates).

Scope of our representation

At this time, we have agreed to prepare the following estate planning documents for you in accordance with out discussion to date (strike those that do not apply):

- Will.
- Revocable Trust.
- Declaration of Guardian (naming guardians for your children).
- "Impaired-Judgment Documents" (Directive to Physicians a/k/a/ "Living Will", Medical Power of attorney, and Statutory Durable Power of Attorney).
- Instructions for preparing beneficiary designations for your life insurance, IRAs and retirement plans, and for dealing with joint/survivorship accounts and other "nonprobate" assets (but not actual beneficiary designations or account agreements).

It is very important that you understand the legal effect of the documents we prepare for you. Therefore, you agree to confer with us as to any document or provision you do not understand. We agree to answer your questions and provide a reasonable amount of consultation and advice regarding your estate planning generally and the documents we prepare specifically.

Our fee

Based on our fee schedule for estate planning services (and the specialized provisions you have requested, if any), we have agreed on a total fixed fee of $_____. You agree to pay 50% of this fee ($_____) up front, and we will begin work on your behalf when we received this payment. The balance will be due when you sign the documents described above, or, if sooner, one month after we first deliver to you proposed drafts of the documents described above.

The fixed fee covers: (1) our initial conference, (2) preparation of first drafts of the estate planning documents indicated above in accordance with our discussions to date and (3) an in-office signing conference (up to one hour). The fixed fee also includes up to _____ hour(s) of additional attorney time until the date of three months after we deliver the initial drafts for: (a) any additional conferences and communications relating to your estate planning (in person, by phone, or by e-mail) with you or others on your behalf, (b) any revisions to the initial drafts (e.g., where you change your mind or because information you have given us so far proves to be inaccurate or incomplete), and (c) any other legal services requested by you or related to the above (including research, inter-office conferences, extended signing conferences, etc.). (Please note that we charge our time in minimum units of 1/4 hour–15 minutes).

There will be additional fees for: (1) legal services listed above (in items a, b, and c) that exceed the included additional hours; (2) all legal services that occur more than three months after we deliver the initial drafts (including services listed above in items a, b, and c); and (3) all drafting or reviewing actual beneficiary designations (occurring at any time). Unless we agree to a different amount, the additional fees will be based on our standard "Hourly Fee" provisions (copy attached). There is also an additional fixed fee if you don't finalize and sign your estate planning documents within six months of the date we deliver the

proposed drafts. Finally, our fixed fee includes standard expenses (basic photocopying, postage, etc.) but does not include additional expenses we may incur on your behalf (such as messenger delivery charges, staff overtime when you request rush service, filing and recording fees, long distance charges, extra photocopies, etc.), which we will bill to you.

Future legal services

Changes likely will occur in tax, property, probate, and other laws which could impact your estate plan. We cannot – on our own – economically review the file of each client to determine the impact of court cases, rulings, and other changes in the law. Furthermore, changes likely will occur in your own family, in marital circumstances, and in your finances, all of which could impact your estate plan. Therefore, you should contact us or other competent estate planning advisors to have your plan reviewed regularly. We can frequently answer simple questions you may have for no additional fee; however, we will address significant questions and review your documents or estate plan only on your request and for a reasonable fee.

Termination

You have the right to terminate our employment at any time and we have the right to resign as your attorneys at any time. Our active role as your attorneys will terminate when your documents are signed and we have sent you a confirming letter. However, no termination will waive any of the remaining provisions of this agreement, including: (1) your agreement to pay us for all work performed prior to termination, (2) your consent to complete disclosure of confidential information to others (to the extent authorized above), and (3) our ethical duties to you, such as our duty not to disclose your confidential matter to third parties (except as authorized above).

Hourly Fee Provisions

When providing legal services on an "hourly fee" basis, we may provide an estimated fee (either orally or in writing), based on the information provided to us and the specific documents or services we are asked to provide. However, our actual fee is a reasonable fee based primarily upon the hours we expend: drafting instruments, researching legal issues, consulting with you or with others on your behalf--in person or over the phone, etc. (Also, please note that we charge our time in minimum units of ¼ hour--15 minutes.) Currently, hourly rates for our paralegals and lawyers for matters of this type vary from $80 to $320.

In accordance with the criteria for reasonable fees described in the Attorney Code of Professional Responsibility (adopted by the Texas Supreme Court), we also may adjust our fee, up or down, for such factors as the complexity, novelty, and magnitude of the issues involved, the skill required to perform the services, the speed with which you need or desire our services, the value to you of the results achieved, the extent to which you benefit from work we have done for other clients, the extent to which work we do for you may benefit other clients, etc.

In addition to our hourly fees for legal services rendered, we bill for expenses, including postage, photocopying, long distance and other communication charges, filing fees, messenger delivery and transportation charges, staff overtime (where you request rush service) and other miscellaneous out-of-pocket disbursements in accordance with our customary practices.

We bill monthly for fees and expenses and our bill is due upon receipt. In most circumstances we request an up-front retainer of 50% of the estimated fee[3], and we begin work when we receive the retainer funds. The retainer is held in our trust account and is applied to our last invoice. If our last bill is less than the retainer balance, we will refund the excess. We may also apply all or any part of the retainer to any interim bill; however, we will still deliver the bill to you and you agree to pay us the amount of the bill so that we may restore your retainer balance.

* *

If the foregoing correctly reflects our agreements, please sign in the space provided below. Thank you for giving us an opportunity to provide these professional services for you. We look forward to working with you.

_____ LAW FIRM

Client signature

By:_____

[3] For "rush" projects, the up-front retainer is 100% of the estimated fee.

APPENDIX S
ARCE Waiver/Arbitration Bonus Fee Agreement

Re: Terms of Engagement for _____ Trust Matters

Dear _____:

1. Introduction.

The purpose of this engagement letter is to establish the terms of our representation in the following matters. We appreciate the selection of our firm, and we look forward to developing a professional relationship in the course of our representation. This Agreement governs our relationship and, as a result, you should read it carefully. We cannot represent you in connection with this agreement and you should feel free to consult a lawyer regarding its terms.

2. Scope of Engagement.

You hereby engage the law firm of _____, or its successors or assigns (hereinafter "_____"), in connection with any investigation and litigation related to your dispute with the Trustees of various Trusts established for your benefit (the "Case"). _____ undertakes and agrees to assume the following duties in the Case:

1. Investigate the Case and advise you regarding it;
2. File any appropriate lawsuits;
3. Prepare the Case and manage its development;
4. Present and defend against any motions in court;
5. Prepare and review pleadings, arrange for filing and support activities;
6. Participate in discovery and provide research as to Texas law;
7. Try the Case; and
8. Any and all matters that are necessary and proper to the accomplishment of the above tasks.

Our engagement does not involve any appeal of the Case unless we mutually agree to assume that obligation in writing.

3. Attorneys Responsible for Your Matters.

_____ and _____ will serve as the Partners in Charge of your Case and will utilize the services of such other partners or associates at _____ to prosecute the Case as they deem necessary and proper.

4. Payment for Services Rendered by_____.

In exchange for _____ services on the Case, you agree to pay _____ for all time worked on the Case by _____ on the hourly rates specified below ("Hourly Work") plus any bonus in accordance with Section 6 below. You also agree to reimburse _____ for all expenses incurred in connection with the Case in accordance with Section 8 below.

_____ shall bill for its Hourly Work on a monthly basis. The statements shall reflect the time spent by each attorney on the daily basis and a brief description of the work performed. You agree to pay each monthly bill within thirty days of its receipt.

5. Billing Rates for Hourly Work.

_____'s current billing rate is $_____ per hour and _____'s rate is $_____. The billing rates for the other associates and partners in the firm range from $_____ to $_____ an hour. Billing rates for legal assistants range from $_____ to $_____ an hour in addition to any overtime. We usually adjust these rates annually and apply updated rates prospectively, in this case we will agree to limit any escalation on a yearly basis to_____% applicable to all lawyers and other professionals, except _____, whose rate will remain at the above stated rate until trial is completed should trial be required.

We record and bill our time in one-tenth hour (six minute) increments and adjust the bill to reflect the Texas ethical considerations.

6. Bonus Amounts.

In addition to payment for the Hourly Work as specified above in Section 5, and upon the conclusion of the Case (meaning the execution of final settlement documents or the entry of a final judgment and the exhaustion of all appeals), _____ shall be entitled to a "Success Bonus of $_____ payable as follows: a) within 30 days from any settlement (regardless of when the settlement occurs); or, b) upon achieving a "successful" completion of the litigation with "Successful" meaning achieving all of the following goals:

HERE LIST GOALS

In addition to the foregoing "Success Bonus", _____ shall be entitled to a "Discretionary Bonus" should the Clients, in their sole discretion, be pleased with the services rendered by _____.

All Bonus amounts set forth above are payable within 30 days of the conclusion of the Case.

7. Disclaimer of Any Result or Warranty.

A trial is an unpredictable event, the outcome of which is based upon facts we do not know at this time and on law that may change. There can be no assurances, and we make no representations, guarantees or warranties as to the particular results from our services, the response and timeliness of action by the court, or any party involved in the Case, or the outcome of the Case. **You may win or lose at trial, and any trial decision could be upheld, reversed or modified on appeal.**

8. Expenses.

Our internal charges typically include such items as long distance telephone tolls, facsimile transmissions, messenger services, overnight courier services, charges for terminal time for computer research and complex document production, secretarial and paralegal overtime and charges for photocopying or printing materials sent to the client or third parties or required for our use.

During the course of our representation, it may be appropriate or necessary to engage third parties to provide services on your behalf. These services may include such things as consulting or testifying experts, investigators, providers of computerized litigation support, court reporters, providers of filing services and searches of governmental records, filings, mock trial experts and local counsel. Because of the legal "work product" protection afforded to services that an attorney requests from third parties, our firm may assume responsibility for retaining the appropriate service providers. _____ will not incur expenses in excess of $_____ without first obtaining permission in writing from at least one of you. Such permission may be provided by email or any other means. A ____% per month interest rate will be charged on the outstanding balance advanced for any costs and unpaid and past due legal fees. Legal fees and expenses are due 30 days after receipt of our invoice. Receipt by Client is deemed to be three days after the bill is mailed or otherwise transmitted by _____. In the case of any bonus due under the terms of this Agreement, the interest will begin and run from the payment date specified in this Agreement.

9. Scope of Engagement.

We will provide services of a strictly legal nature. You should not rely upon us for business, investment, or accounting decisions, or to investigate the character or credit of persons with whom you may be dealing, or to advise you about changes in the law that might affect you in matters unrelated to the Case. We will keep you advised of developments as necessary. You have directed me to communicate with both of you regarding this case.

10. Conflicts.

1. In this Case a number of interests are represented or could be affected that raise the issue of conflicts of interest as between members of the group. The group includes _____ and their heirs and assigns (collectively, the "Clients").

2. Included Matters: _____ and _____ will represent the ownership rights and interests of the Clients as a group in certain trusts and other assets received and to be received from _____, including certain ownership issues and disputes involving the _____ (the "Representation").

3. Excluded Matters: Representation of any of the Clients' individual, in contrast to group, interests regarding such ownership rights, except to the extent (i) required in connection with the Included Matters and (ii) consented to in writing by each of the Client Representatives defined below.

4. Conflicts of Interest: _____ will advise the Client Representatives from time to time during the Representation with respect to any matter that _____ believes could create a conflict of interest in _____'s Representation of the Clients or with respect to the interests of any of the Clients versus the interests of the other Clients. The Clients likewise shall bring to the attention of _____ in writing any conflict of interest that each may discover.

5. Conflict Issues and Examples: Each of you may have different interests from the other. These different interests may become a conflict of interest. For example, one may wish to settle, and the other may not. One of you may select one litigation strategy and the other may wish to pursue as different strategy. One may have personal information that you may wish to keep secret that affects the other. These types of situations may present a conflict of interest. By signing this Agreement you hereby waive any such conflicts of interest that may arise in our dual representation of each of you and affirm that to the extent either of you determines you have a conflict of interest and that we are not serving your interest, you will (i) pay all amounts due under this Agreement including in bonus if applicable; and (ii) not move to disqualify or attempt to prevent the representation of the others in the group who may wish _____ to continue its preparation.

6. Right to Engage Separate Counsel: Each of the You is entitled to engage separate counsel to represent You individually at any time and any such counsel shall act as co-counsel with _____ in representing You.

7. Direct Supervision of Representation: You agree that _____ will have final control over all decisions regarding strategy and staffing with respect to all aspects of the Representation of the Clients, subject to _____'s agreement to consult with and obtain the approval of the Client Representatives with respect to any such strategy or staffing that could have a material effect on the Representation (including without limitation the decision to commence litigation or to enter into any settlement or similar agreement or to retain any additional legal counsel).

8. Client Representatives: The Clients designate _____ (the "Client Representatives") to work with, supervise and manage _____'s Representation of the Clients, and the Client Representatives will have authority to advise _____ regarding issues that may arise in connection with the Representation of the Clients with respect to the Included Matters, except as otherwise provided in a written notice to _____ on behalf of any Client; and the Clients will have the right to change the Client Representatives at any time by written notice to _____ from _____.

11. Termination of Engagement.

You have the right at any time to terminate our services and representation upon written notice to the firm. We reserve the right to withdraw from our representation if any fact or circumstance would, in our view, render our continuing representation a potential loss of money uneconomic, unlawful or unethical. If we elect to withdraw, you will take all steps necessary on behalf of the company to free us of any obligation to perform further, including the execution of any documents necessary to complete our withdrawal. Therefore, if for example, we decide that we cannot afford to go forward with the Case, we can and will withdraw.

Termination of our engagement in no way affects your obligation to pay for services or expenses due or incurred and interest thereon until fully pa*Id*

12. Governing Law.

OUR AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL DISPUTES RELATED DIRECTLY OR INDIRECTLY TO ANY ASPECT OF OUR REPRESENTATION OR RELATIONSHIP OF ANY OF OUR PARTNERS, THEIR EMPLOYEES OR EMPLOYEES OF THE FIRM WITH YOU SHALL BE ARBITRATED IN DALLAS, TEXAS PURSUANT TO AND BY JAMS ENDISPUTE SIMPLE FORM (HOWEVER DESIGNATED BY JAMS BY WHATEVER TITLE) OR ITS SUCCESSOR. NOTWITHSTANDING THE PROVISIONS SET FORTH ABOVE, _____ AND CLIENTS SHALL BE ENTITLED TO DISCOVERY SUFFICIENT TO MAKE THAT DETERMINATION.

13. Waiver of Certain Remedies.

WITH RESPECT TO _____, ITS EMPLOYEES OR THE EMPLOYEES OF THE PARTNERS OF _____, CLIENT HEREBY WAIVES THE REMEDIES OF PUNITIVE DAMAGES AND THE REMEDY OF

DISGORGEMENT OF ANY ATTORNEY'S FEES OR EXPENSES. ***WARNING: YOU SHOULD REVIEW THIS LETTER WITH A LAWYER BEFORE YOU EXECUTE THIS ENGAGEMENT LETTER.***

14. Notice of Clients.

THE STATE BAR OF TEXAS INVESTIGATES AND PROSECUTES PROFESSIONAL MISCONDUCT COMMITTED BY TEXAS ATTORNEYS. ALTHOUGH NOT EVERY COMPLAINT AGAINST OR DISPUTE WITH A LAWYER INVOLVES PROFESSIONAL MISCONDUCT, THE STATE BAR'S OFFICE OR GENERAL COUNSEL WILL PROVIDE YOU WITH INFORMATION ABOUT HOW TO FILE A COMPLAINT. PLEASE CALL 1-800-932-1900 TOLL-FREE FOR MORE INFORMATION.

15. **This Agreement can be executed and shall become effective and fully enforceable even if signed by the parties separately and in multiple counterparts.**

I look forward to representing you in this matter and we are pleased that you have chosen us. To signify your agreement to the terms and conditions set forth herein, please execute your signature below and return to me.

Sincerely,

Name of Firm

Date: _____ By: _____
(Attorney)

AGREED:

Date: _____ By: _____

Date: _____ By: _____

Date: _____ By: _____
_____, Individually

Date: _____ By: _____
_____, Individually

APPENDIX T
Guardianship Fee Agreement

Date: _____, 2005

[Proposed client's name and address]

Re: Engagement of [law firm name] for the rendition of legal services regarding the Guardianship of the Person and Estate of [proposed ward's name]

Dear [proposed client's name]:

This letter sets forth the agreement between [law firm], (the "Firm") and, [proposed client], individually, as Proposed Guardian of the Person and Estate of [proposed ward] with respect to the terms of the engagement of the Firm to represent you in connection with seeking a Guardianship of the Person and Estate of [proposed ward's name] and any contest in connection with the application for appointment of guardian of the person and estate.

Our representation, with respect to this matter, will include advising, counseling, processing, litigating, and assisting you with the guardianship application. Our services may also include advising you regarding the administration of the guardianship so that you may properly carry out your duties and responsibilities as guardian. Our representation will not, however, extend to tax matters or tax compliance matters.

Before we proceed with seeking your appointment as guardian, we want you to be aware of the eligibility requirements and the potential reasons that a person would be found to be "ineligible" to be appointed as a guardian. Specifically, Section 681 of the Texas Probate Code provides that a person may not be appointed guardian if he or she is:

- under the age of eighteen;
- a person whose conduct is notoriously bad (such as being convicted of a felony);
- an incapacitated person;
- a person who is a party or whose parent is a party to a lawsuit concerning or affecting the welfare of the incapacitated person, unless the court (i) determines that the lawsuit of the person who has applied to be appointed guardian is not in conflict with the lawsuit of the incapacitated person; or (ii) appoints a guardian ad litem to represent the interests of the incapacitated person throughout the limitation of the lawsuit;
- a person indebted to the incapacitated person unless the person pays the debt before appointment;
- a person asserting a claim adverse to the incapacitated person or his or her property;
- a person who, because of inexperience, lack of education, or any other good reason, is incapable of properly and prudently managing and controlling the incapacitated person or his or her estate;
- a person, institution, or corporation found unsuitable by the Court;
- a person disqualified by the incapacitated person in a declaration which is signed by the incapacitated person, prior to his or her incapacity.
- a non-resident of the state of Texas who has not filed with the Court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship.

Please advise us immediately if any of these disqualifications apply to you.

Based on our understanding that you are qualified to serve, we will prepare an Application for Appointment of Guardian of the Person and Estate upon receipt of the signed agreement and retainer. In short, the application for guardianship will ask the _____ County Probate Court to appoint you as the guardian of your [father's/mother's] person and estate. Note that, the court cannot act on a permanent application, and, thus, appoint a guardian, for a minimum of ten (10) days after the filing of the application.

We also want to alert you to the possibility that a third party could "contest" your application to be appointed as guardian. The general rule is that anyone has standing to initiate or complain about actions relating to a guardianship of an incapacitated person. For example, [her/his] [husband/wife] could intervene and contest your appointment.

In order to enable us to render effective legal services, you agree to keep us apprised of all facts and developments relating to your application for guardianship and the estate. This is very important as any advice we give must be based on accurate and complete facts and information. Of course, we shall also keep you informed as to the progress of your case, and every effort will be made to expedite this matter promptly and efficiently according to the highest legal and ethical standards.

In consideration of the Firm's representation, you agree to pay the attorneys' fees charged by the Firm, generally based on the standard hourly rates of the attorneys of the Firm working on such matter from time to time, as such hourly rates may be adjusted from time to time. My hourly rate is $_____. A schedule showing hourly rates is attached to this letter. In some situations, the standard hourly rates referred to above may be adjusted either upward or downward based upon several factors which are prescribed by the rules promulgated under the Texas Disciplinary Rules of Professional Conduct, including the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the amount involved and the results obtained in the representation, the time limitations imposed by you or by the circumstances, and the nature and length of the professional relationship with you.

In addition, you agree to pay for reasonable expenses incurred by the Firm in the performance of the Firm's work, such as travel expenses, delivery expenses, long-distance telephone charges, deposition costs, filing fees, printing and reproduction costs, and other similar expenditures (collectively, the "Related Expenses").

It is difficult to predict exactly how much time will be required to complete our legal work regarding the matter. The Firm will devote, however, the time that we deem necessary to carry out the representation.

From time to time, the Firm will bill you for legal services rendered pertaining to the matter and Related Expenses incurred by the Firm in handling the matter during the period covered by the invoice. These invoices are generally sent monthly, but may be forwarded more or less frequently. You agree to pay all invoices on a current basis within ten (10) days following the mailing of each invoice by the Firm. We will, however, seek reimbursement of your fees and expenses related to seeking guardianship from your [father's/mother's] estate. The Court may authorize reimbursement if it determines you sought this application in good faith and with just cause.

A failure by you to pay sums due to the Firm will, at the option of the Firm, result in a cessation of work then in progress until the invoice is pa*Id* In this regard, you agree to permit the Firm to withdraw from any representation of you by the Firm (including withdrawal from any court proceeding in which the Firm is representing you) if you do not pay any sums due under this letter or for any other reason desired by the Firm. Any time spent by the Firm and any Related Expenses incurred by the Firm in the collection of outstanding invoices issued by the Firm to you under this agreement shall also be billed to you at the Firm's standard hourly rates.

In order for the Firm to commence representation under this letter, it will require the payment of a $_____ retainer, which will be held in a trust account. The retainer is to be held by the Firm (without interest) until the conclusion of the case (or other termination of the Firm's representation under this letter) and is to be applied to the final bill; it is not to be applied to any earlier invoice unless the Firm so elects. The deposit of the retainer will not eliminate or modify your obligation to pay promptly, as provided above, invoices, which the Firm hereafter periodically renders. Upon conclusion of the work or other termination of the Firm's representation under this letter, any excess funds in the trust account remaining from the retainer (after application to all charges by the Firm provided for in this letter) will be refunded to you.

The Firm has the exclusive right to determine what procedures to follow in connection with the representation as well as what strategies and actions to take in connection with such representation. The Firm does not guarantee any results from the actions taken by the Firm on your behalf. We assure you, however, that we will take appropriate professional action to represent your interests, and we look forward to doing so.

You have the right to terminate the Firm's representation of you at any time by written notice to the Firm in which case you will be liable for the following, whether invoiced before or after such termination: (1) the Firm's charges for legal services rendered to you and Related Expenses incurred by the Firm incurred up to the time of such termination; plus (2) the Firm's charges and Related Expenses incurred after such termination which relate to the Firm's withdrawal from the representation, such as, by way of example but not limited to withdrawal as counsel or substitution of new counsel in court proceedings, transfer of file papers to appropriate parties and related communications (oral or written) with various parties pertaining to the subject matter of this engagement.

Any dispute that may arise with respect to any aspect of this fee agreement shall, on the written request of either of us, be submitted to arbitration in accordance with appropriate statutes of the state of Texas and the Commercial Arbitration Rules of the American Arbitration Association; and, judgment upon the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. Each party shall appoint one person as arbitrator, and a third arbitrator shall be chosen by the two arbitrators previously selected by the parties; provided however, if there is no agreement as to the third arbitrator within 60 days after the notice of arbitration is served, then the third arbitrator shall be selected by a district or probate judge in _____ County, Texas, having subject matter jurisdiction over the dispute. We further agree that the expenses of arbitration shall be paid in such proportions as the arbitrators decide, except that the successful party in any such proceeding seeking enforcement of the provisions of this agreement shall be entitled to receive from the party not prevailing reasonable and necessary attorney's fees and expenses, in addition to any other sums to which such successful party may be entitled. The arbitrators shall decide the identity of the successful party for purposes of the preceding sentence. We also agree that each of the arbitrators shall be either

(i) Board Certified as an Estate Planning and Probate Law specialist by the State Bar of Texas, or (ii) a Fellow of the American College of Trust and Estate Counsel. **ARBITRATION IS FINAL AND BINDING ON THE PARTIES. THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS. THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.**

As suggested by the Code of Professional Responsibility for Attorneys, we are enclosing a brochure from the State Bar of Texas, which advises you of your more significant rights with respect to our attorney/client relationship. We advise you to read it at your convenience, and let us know if you have any questions.

If the foregoing accurately sets forth our mutual agreement, please sign one copy of this letter in the space below and return that signed copy to us.

Very truly yours,

[LAW FIRM]

BY:_____
[ATTORNEY]
For the Firm

Enclosure

AGREED AND ACCEPTED:

I, [proposed client's signature], hereby agree to the engagement of [attorney] and the law firm of [law firm name], [city], [state], as my attorneys with respect to the above-referenced matters, and I agree to the conditions and terms of the foregoing letter pertaining to the representation by [attorney] and the law firm of [law firm], including the payment of fees and expenses charged by such firm.

BY: _____
[PROPOSED CLIENT'S SIGNATURE]

NAME OF LAW FIRM

Attorneys	Rate Per Hour
Shareholders	$.00 - $.00
Members	$.00 - $.00
Associates	$.00 - $.00
Paralegals	$.00 - $.00

APPENDIX U
Engagement Letter

NOTE: This is preceded by an explanation of the various options the client has chosen, and an explanation of the estate tax and the GST tax which the author asked me not to disclose.

ENGAGEMENT

As I had not earlier sent a formal engagement letter, the remainder of this letter will answer questions about our billing procedures and spell out the terms of my engagement. I would appreciate your reviewing this letter and returning it for my records. Hopefully, it will answer any questions you may have about the work we have done. This confirms that you hired me to represent you in connection with preparing your Wills, trusts for your children, and collateral personal management documents. After that is completed, I understand that you might also want to talk about setting up a partnership.

Legal fees ultimately depend on the nature of what I may be asked to handle for you and the time I spend. I estimate the fee for preparation of the Wills and collateral personal management documents to be in the range of $_____. Estimates are neither a minimum nor maximum fee because the total fees will include not only the drafting and signing of your documents, but also the amount of time that I spend meeting with you regarding these matters. In arriving at this estimate for preparation of your Wills and collateral documents, I have included our initial conference and an estimate of conference time to answer questions and to sign those documents, if you want to sign them here. However, some clients wish for an extended opportunity to review and discuss the documents.

PROFESSIONAL FEES

My fees will be dependent on the complexity of the work, the specific situations that we may encounter, and the amount of time that I spend working on your file and meeting with you in person or by phone or other means of communication regarding your work.

Many factors are taken into account before a statement is rendered. However, in determining my fees, and those of my legal assistant, the principal factor is the amount of professional time spent on the matter and our regular hourly rates for such services. My hourly rate is $_____ an hour. My associate attorney's and my legal assistant's time is charged at $_____ per hour. These rates are reviewed periodically and are adjusted from time to time, generally on an annual basis. Other factors taken into account include the results obtained, the novelty and difficulty on the questions involved, the time constraints imposed by your work, and the circumstances and likelihood that the engagement will preclude my engagement by other clients.

We will be keeping tract of our time by quarter hour segments. By doing so, we do not intend to charge you every time we communicate, but rather only when our contacts by phone or other means result in some substantive action or response. This will avoid accounting for and your being billed for communications of short duration.

OPTION NO RETAINER: I have not asked for a deposit or retainer, knowing that you will take care of your statement promptly. However, I reserve the right to ask for a payment in the nature of a deposit to be held as security against the cost of future legal services as a condition to continued representation, especially if a statement is not paid in a timely manner. If a deposit is requested, it will be held to be applied against a final statement or applied to an interim statement in my discretion.

OPTION FOR RETAINER: I have asked for a deposit in the amount of $_____ / OR: This will acknowledge receipt of your retainer in the amount of $_____. The deposit will be held and may be applied against a final statement or applied to an interim statement in my discretion.

EXPENSES

Rather than to bill you for out-of-pocket costs and routine expenses incurred in performing your work, I propose to charge an initial file set up and maintenance fee of $_____. Absent extraordinary expenses, that charge will be in lieu of billing you for routine long distance, fax and in-house copying charges. However, court costs and filing fees, or certain projects handled by outside service suppliers (an example is the filing fee for the powers of attorney, which is $_____) will be accounted for and billed to your account. If such customary charges incident to my work should prove to exceed my estimate or become non-routine, I reserve the ability to include those on a future statement for your review and payment.

STATEMENTS

All statements will be reviewed by me personally to ensure that the charges are appropriate. Likewise, I ask that you review the statements carefully as well. If there is anything on a statement that you do not understand, or question, I will consider it a favor for you to call me within a week of your receipt of the statement. By doing so, I believe that we can handle your questions promptly while the matter is still fresh on our minds. If you do not have any questions, or if I do not hear from you within that time, I will consider that you have approved my statement and that you will put it in line for payment.

I will generally bill on a monthly basis. Statements are due upon receipt, and are payable at my office in NO TOWN, NO County, Texas. Also, if you have any balance in your account, such balance may be credited against any outstanding statement. If a statement is not paid within thirty (30) days of the statement date, I reserve the right to charge interest on the unpaid balance at 10% per annum or, if less, at the highest nonusurious rate of interest permitted by applicable law.

You will have the right to terminate my services at any time. I may also do so, with or without cause, subject to my obligation to give reasonable notice so that you can arrange for alternative legal representation.

USE OF ELECTRONIC MAIL

While we encourage the use of electronic mail ("e-mail") to communicate information between us, I think it appropriate that we have a clear understanding of the limitation on it s use. I, like you, may receive hundreds of e-mails on a daily basis, but some of my e-mails never come to me because they may contain catch words that are screened out by security software. I want to make our relationship as easy as possible on you but, I must insist that communications by e-mail will not be regarded as reflecting an intention by you to conduct a transaction or make an agreement by electronic means. What this means is that if you are requesting action from this office by e-mail, please know that our policy is that e-mail communications are not deemed to be actionable until your request has been acknowledged by us in writing, by voice confirmation, or by a return electronic mail communication.

TAX ADVICE

From time to time, you may ask our advice regarding federal tax issues. Please be aware that the Internal Revenue Service does not allow you to rely on informal tax advice rendered before you file your tax return to avoid tax penalties. If you want to rely on our federal tax advice to avoid federal tax penalties, the Internal Revenue Service requires us to issue formal written tax opinions regarding the tax issue(s). Such formal written tax opinions are not within the scope of this engagement. The Internal Revenue Service rules also prohibit someone else from using the advice we provide to you. Accordingly, you should consider that all communications from us are intended for your use only and include, and are intended to reflect, in substance, the following notice:

> **Treasury Circular 230 Disclosure**: to the extent this communication contains any statement of tax advice, such statement is not intended or written to be used, and cannot be used, by any person for the purpose of, or as the basis for, avoiding tax penalties that may be imposed on that person. This communication is not intended to be used, and cannot be used for the purpose of promoting, marketing, or recommending to another party any matter addressed in this communication. This legend is attached pursuant to U.S. Treasury Regulations governing tax practice, to comply with requirements imposed by the Internal Revenue Service.

If you desire a formal, legal opinion regarding tax issues, please advise us. We can discuss with you the cost of such communications, which likely are to be substantial, given the scope of what the Internal Revenue Service requires to be included in such a communication.

OFFICE POLICIES

I will ask you to use my fax and call note services at any time. Both will be checked every business day. It will be my goal to return your inquiry within one business day. If that were not to occur, you have my assurance that it is only because I am, at that time, giving my full focus and attention to another matter and that I will return to your work with the same focus. I ask you to make full use of my staff. They are here to expedite your legal work, is knowledgeable about most everything that I do and can generally receive your questions and organize the documents that I need to see in order to given you an answer. Also, feel free to leave direct and specific messages on my call notes. That will also help us know what you want before we return your call.

After your consideration of this letter, if it is your wish that I represent you, and if you agree that this letter accurately reflects your understanding and agreement concerning my fees, I will ask that you sign and return the attachment to this letter. This sets out our engagement agreement. If this engagement agreement contains anything with which you disagree, please contact me so that we can discuss what changes you deem necessary.

I will look forward to talking to you. Thank you for the opportunity to be of service.

APPENDIX V
Pre-Engagement Letter

_____, 20___

_____

_____

_____

Dear **Person Who Is Not My Client**:

Thank you for calling my office today. You and I discussed the possibility of my representing you. I told you that before I would be able to represent you, you would need to come in the office, sign an engagement letter, and pay a retainer fee. Until that time, I am not your lawyer.

I am writing this letter to make our relationship clear and to avoid any future misunderstandings. The law prescribes certain time limits within which you must take certain action or be forever precluded from doing so. It is important that you hire a lawyer to represent and advise you regarding this matter as soon as possible.

Sincerely yours,

LAWYER

APPENDIX W

Legal Services Employment Contract

THIS LEGAL SERVICES EMPLOYMENT CONTRACT IS A LEGAL CONTRACT BETWEEN YOU AND THE LAW FIRM. YOU ARE ADVISED TO HAVE INDEPENDENT LEGAL COUNSEL REVIEW THIS CONTRACT ON YOUR BEHALF. THE LAW FIRM CANNOT REPRESENT YOU IN CONNECTION WITH THE NEGOTIATION, PREPARATION, OR EXECUTION OF THIS ENGAGEMENT LETTER.

Services. I employ the firm of MOORMAN TATE HALEY UPCHURCH & YATES, LLP (hereinafter called "Attorney"), to represent me as follows:

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Fees. In consideration of this representation, I agree to pay at the offices of MOORMAN TATE HALEY UPCHURCH & YATES, LLP, in Brenham, Texas, the hourly rates as shown in the attached schedule. Each portion of a quarter hour is billed as a full quarter hour. All work is done and all fees are payable in Brenham, Texas. I also agree to pay for all expenses as provided in the attached schedule.

I understand that the hourly rates usually increase at the beginning of each calendar year to take into account current levels of legal experience, changes in overhead costs and other factors. This increase will most likely be in the range of $10 to $15 per hour for attorneys and $5 per hour for support staff. Any increases in hourly rates will be disclosed to the client on the billing statement.

Occasionally, when a bill for a specific matter is rendered near the conclusion of the matter, posting of some time and charges (such as telephone, copying, or similar items) may be delayed, or there may be an invoice which is not delivered to the Attorney until after the legal matter has been finalized. In such cases, I agree to pay the "after closing" expenses even though I may have previously received what was designated as a "final" bill. I will be responsible for paying these "after closing" expenses.

Deposit. IT IS OUR USUAL PRACTICE TO REQUIRE PAYMENT OF A DEPOSIT BEFORE WE BEGIN WORK FOR A CLIENT. WE HAVE ASKED THAT YOU REMIT AND MAINTAIN WITH US, DURING THE ENTIRE COURSE OF OUR REPRESENTATION OF YOU IN THIS MATTER, AN INITIAL DEPOSIT IN THE SUM OF $_____ (THE "DEPOSIT"). WE WILL PLACE THE DEPOSIT INTO OUR TRUST ACCOUNT. IN OTHER WORDS, THE DEPOSIT REMAINS IN OUR TRUST ACCOUNT DURING THE TIME WE REPRESENT YOU AND WE WILL ASK YOU TO PAY OUR BILL ON A MONTHLY BASIS. THE DEPOSIT WILL BE APPLIED TO OUR FINAL BILLING STATEMENT FOR FEES AND EXPENSES, OR, IN OUR DISCRETION, TO ANY PAST DUE MONTHLY STATEMENT. UPON THE TERMINATION OF OUR SERVICES, WE WILL PROMPTLY REFUND THE DEPOSIT TO YOU, LESS ANY BALANCE FOR FEES AND EXPENSES UNPAID AS OF THE DATE OF OUR FINAL BILL.

WE RETAIN THE RIGHT AND DISCRETION TO REQUEST A SUPPLEMENTAL COST DEPOSIT, OVER AND ABOVE THE INITIAL DEPOSIT, IN THE EVENT OF AN INCREASE IN OUR ANTICIPATED FEES AND EXPENSES DURING THE COURSE OF REPRESENTING YOU. IF WE MAKE SUCH A REQUEST, YOU WILL AGREE TO PROMPTLY DELIVER THE ADDITIONAL DEPOSIT TO US.

Permission to Investigate Credit and Background. I agree that the Attorney may investigate my personal and professional background and may check my credit history in deciding whether or not to represent me.

Citizenship and Document Review. I agree to read the documents thoroughly and notify the Attorney of any misspelled names or other errors obvious to me. Unless otherwise indicated on the contract, I am a United States citizen.

Payment Terms. The fees are due and payable on the 21st day of each month. If the Attorney does not hear from me regarding the bill sent to me, the Attorney can presume I have understood and approve of the charges.

Witness. I understand that if the Attorney is called as a witness or asked to assist others acting on my or my estate's behalf in a later proceeding, I bind myself and my estate to compensate the Attorney at the Attorney's then-prevailing hourly rates.

Mediation. In the unlikely event I have a disagreement with the Attorney, before resorting to litigation or arbitration, any disputes arising out of or connected with this engagement agreement (including but not limited to the services performed by Attorney under this agreement) will be submitted to mediation in Washington County, Texas, in accordance with the rules for alternative dispute resolution set forth under Texas law. I and Attorney will mutually cooperate to select the mediator to be used. Any and all information, negotiation, and results of the mediation will remain confidential.

Confidentiality. I understand that, generally, all information I provide to the Attorney will be kept confidential and will not be disclosed to persons outside the Attorney's office without my consent. However, I authorize the Attorney to discuss my estate planning and share my confidential information: (1) with other of my professional advisors (such as CPAs, financial planners,

insurance agents, etc.); (2) with persons named as an agent, trustee or other fiduciary in estate planning documents signed by me or prepared at my request; and (3) whenever my mental capacity is in question, with my children and other immediate family members, my health care providers, and other interested persons.

Other clients. I agree that under the rules that govern the practice of law, the Attorney can continue to represent existing and new clients regarding their estate planning or other matters even if these other clients are related to me (professionally or personally). I understand that, without prior permission, the Attorney will not reveal any confidential information of mine to these other clients and the Attorney will not relate any of the confidential information of the other clients to me. Regarding other immediate family members (immediate family members means parents and children), if they call the Attorney, the Attorney will first seek my permission to represent the other immediate family members. I will let the Attorney know if there is a conflict between my desires and the desires of these other immediate family members to the extent I am aware of any conflict. I also understand that if the Attorney becomes aware of a conflict, the Attorney will withdraw from representation of the last immediate family member who has hired the Attorney and will continue to represent the other immediate family member that the Attorney represented first.

Future legal services. I understand that changes likely will occur in tax and other laws which could impact the legal work the Attorney is doing for me. The Attorney cannot economically review my file to determine the impact of changes in the law. Changes likely will occur in my own family, in marital circumstances, and in my finances, all of which could impact the legal work the Attorney is doing for me. I understand I should contact the Attorney to have the work reviewed regularly. I will be charged by the Attorney to answer questions and review the legal work on my request.

Termination. I have the right to terminate the employment of the Attorney at any time and the Attorney has the right to resign as my Attorney at any time. The Attorney's active role, as my attorney, will terminate when my documents are signed. However, no termination will waive any of the remaining provisions of this agreement, including: (1) my agreement to pay the Attorney for all work performed prior to termination, (2) my consent to complete disclosure of confidential information to me and to others (to the extent authorized above), (3) the Attorney's ethical duties to me, such as the Attorney's duty not to disclose my confidential matters to third parties (except as authorized above), and (4) the obligation of my estate to compensate the Attorney if called as a witness in a later proceeding. I understand the Attorney has the right to terminate the Attorney's representation of me if I do not pay in a timely manner, fail to cooperate with the Attorney, or under any other ethical rule regarding the Attorney's conduct.

Document Retention. I agree the Attorney is not responsible to keep copies of my documents. I agree to keep all originals and copies that I desire among my own files for future reference.

INTEREST ON PAST DUE ACCOUNTS. UNPAID FEES AND EXPENSES WILL BE CONSIDERED PAST DUE IF NOT PAID WITHIN THIRTY (30) DAYS OF THE BILLING DATE. I AGREE TO PAY INTEREST ON PAST DUE AMOUNTS AT THE RATE OF 1.5 % PER MONTH (18% ANNUAL PERCENTAGE RATE), OR THE MAXIMUM RATE ALLOWED BY LAW, UNTIL PAID. INTEREST CHARGES WILL BE CALCULATED ON ALL PAST DUE AMOUNTS AND ADDED TO THE NEXT MONTH'S BILLING STATEMENT.

Full Family and Financial Information. I have provided or have had others provide full family and financial information to the Attorney. I realize the documents prepared are based on this information I have supplied and are only as good as the information provided.

Place for Performance. I understand that the place for performance of the majority of the work covered by this Agreement is in Washington County, Texas.

Circular 230. I may ask the Attorney's advice regarding federal tax issues. The Internal Revenue Service (IRS) does not allow me to rely on informal tax advice rendered before I file my tax return to avoid tax penalties. If I want to rely on the Attorney's federal tax advice to avoid federal tax penalties, the IRS requires the Attorney to issue formal written tax opinions regarding the tax issue(s). Formal written tax opinions are not within the scope of this engagement. The IRS rules also prohibit someone else from using the advice the Attorney provides to me. All communications from the Attorney are intended for my use only and include, and are intended to reflect, in substance, the following notice:

> Treasury Circular 230 Disclosure: to the extent this communication contains any statement of tax advice, such statement is not intended or written to be used, and cannot be used, by any person for the purpose of, or as the basis for, avoiding tax penalties that may be imposed on that person. This communication is not intended to be used, and cannot be used for the purpose of promoting, marketing, or recommending to another party any matter addressed in this communication. This legend is attached pursuant to U.S. Treasury Regulations governing tax practice, to comply with requirements imposed by the Internal Revenue Service.

I will let the Attorney know if I want a formal, legal opinion regarding tax issues. I agree to sign a separate engagement letter with the Attorney to show I want such an opinion. I understand that the cost of such an opinion will be substantial given the IRS requirements.

Optional Provisions Regarding Authorized Agents. You agree that _____ is/are authorized by you to receive confidential information from us, but it is not intended by you to have that information disclosed to third persons.

You agree that _____ has/have authority to obtain legal services or act on advice rendered by us on your behalf.

ALL CLIENTS SHOULD ALSO READ THE DOCUMENT ENTITLED "WARNING TO CLIENTS REGARDING JOINT TENANTS, SURVIVORSHIP, POD AND TRUSTEE ACCOUNTS".

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I have read and understand the terms of this document.

SIGNED on _____.

_____
CLIENT

Received the sum of $_____ in the form of check / cash on _____, 200_____.

_____
ATTORNEY

Fee and Expense Schedule – 20__

Attorney 1	XXX per hour
Attorney 2	XXX per hour
Support Staff	XXX - XXX per hour
Law Clerks	XXX per hour
Clerks	XXX per hour

Expenses

Copying	15 ¢ per page in firm or actual cost of copy service
Incoming Fax	15 ¢ per page
Outgoing Fax	Long distance call expense plus ten percent
Long Distance Calls	Cost to firm plus ten percent
Other Expenses	Actual cost to firm

APPENDIX X
Fee Proposal
LAW FIRM 777
123 Anywhere Street
Anytown, Texas

Date _____

Re: **Fee Proposal for ***

Dear *:

Thank you for the opportunity to represent * ("*") in ad valorem property tax work. Our normal process is to file the lawsuit with the court, send out written discovery requests to the Defendant (i.e., ask for documents from their file, ask questions as to how they arrived at the value, etc.) because we find that the discovery process expedites settlement of the lawsuit, and then try to arrange either an informal meeting with the appraisal district or court-ordered mediation in an attempt to settle the case. (We find that if we wait until late December or January to arrange such a meeting, we are usually able to get a two-year settlement.) Typically, we are able to resolve these types of disputes by no later than January 31; however, this will be impacted to some extent by which law firm the district uses. Each law firm has its own style and peculiar way of handling these types of lawsuits, ranging from nonchalant to combative. If we are unsuccessful in getting the case settled informally, we will then proceed with preparing the case for trial by taking depositions and reviewing discovery responses.

Listed below are *three options you may choose from for the billing of our representation of * in this case. Please mark the option you prefer, sign this letter and return it to me.

____ **Option 1. Hourly Rate.**

Our initial fee, which includes preparation of the petition, letter to the clerk, filing fees, issuance of citation and service of process, is $*Beyond that point, my hourly rate for this type of work is $* per hour. We estimate the fee for preparation of discovery to be approximately $*. The normal cost for my handling of a property tax case, on an hourly basis, ranges from $* to $* when the case is resolved either at an informal settlement conference with the appraisal district or at a formal mediation. We bill for out-of-pocket expenses including airfare, hotel, rental car, postage, printer/photocopier charges at $* per page, and ingoing and outgoing telecopies at $* per page. This fee does not envision court reporter expenses attendant to the taking of depositions, nor does it envision my retaining or paying for the costs of expert witnesses, if that becomes necessary. These would be borne by you. Statements are sent monthly and are due within 30 days of invoicing.

In the event that we have to prepare this case for trial, Law Firm 777("777") has the option to require you to provide a replenishable retainer from which 777 will draw for its fees and any expenses in preparation of this matter for trial. Prior to requiring the retainer, 777 will provide you with an estimate of expenses through trial. You agree to either pay the retainer in the amount requested, allow 777 to dismiss the suit, or allow 777 to withdraw.

As is standard in the industry, should any of our fees not be paid within 30 days of invoicing, we reserve the right to withdraw from representing the taxpayer in the suit. Invoices not paid within 30 days of invoicing will accrue interest at the rate of 1½% per month or 18% per annum.

`____ **Option 2. Contingent Fee.**

We will perform all legal services necessary to handle this matter and advance all expenses including the cost of an independent appraisal if one proves necessary and the value of the case justifies the expense for 25% of all tax savings for all years if the case is settled before preparation for trial; 33-1/3% of all tax savings for all years (plus any additional monies recovered from the appraisal district, and agrees to reimburse all out-of-pocket costs) if the case is settled after preparation for trial commences and before an appeal to the Court of Appeals is commenced after trial; 40% of the total tax savings for all years if the case is appealed to the Court of Appeals; and 50% of all tax savings for all years if the case is appealed to the Texas Supreme Court. All out-of-pocket expenses (including appraisals, airfare, hotel, rental car, postage, photocopying at $* per page, and ingoing and outgoing telecopies at $* per page) advanced on your behalf will be reimbursed first from the total tax savings and then the applicable percentages will be applied. We will also receive the above-referenced contingent fee if in subsequent years the lawsuit is still ongoing and the appraisal review board

reduces the assessed value. * agrees to reimburse 777 $* for initial out-of-pocket expenses associated with the prosecution of this suit. * agrees that any refund check will include the name of Law Firm 777 as well as the property owner and that we are authorized to pick the refund check up from the taxing entity.

If the fees owed 777 are not paid within thirty (30) days of settlement or entry of judgment, interest on the amount owed to 777 will run at the rate of 1 ½ percent per month until pa*Id* Interest will begin running thirty (30) days from the date of entry of judgment or settlement.

____ **Option 3. Flat Fee.**

We will perform all legal services necessary to handle this matter at a fixed fee of $*, provided that the fixed fee is paid in full up front prior to the filing of the suit. If this flat fee is not paid within ten business days after the suit is filed, then our fee will increase to $*. If the suit should spill into another year, it will necessarily involve an increase in the fixed fee to accommodate the amendment of the lawsuit. This fee includes filing the petition, engaging in preliminary discovery, preparing for and attending settlement conference (no more than two settlement conferences) and finalizing judgment. It does not envision preparing for or taking this case to trial, attending mediation, court reporter expenses attendant to the taking of depositions, nor does it envision my retaining or paying for the costs of expert witnesses, if that becomes necessary. These would be borne by you. If this case does not settle within these parameters, then we will enter into a new fee agreement. If we cannot come to an agreement, we will dismiss the suit.

In the event the fixed fee is not paid in full prior to filing the suit, we will notify you. If you do not pay the flat fee in full at that time, we reserve the right to withdraw from representing you in this matter.

The Client understands that any refunds, if any, are made by governmental entities other than the appraisal district. It is not the responsibility of the Attorney and is not within the scope of representation as contemplated by this agreement to track, obtain or ensure the payment of any refunds by any governmental entity. In the event that the Client wishes the Attorney to do, the Client understands that this would represent a separate matter and require a separate agreement.

If we have to go to court and try the case, the Property Tax Code allows you to recover your attorney's fees at the discretion of the court. In this case, we could recover reasonable attorney's fees of the greater amount of $15,000 or 20% of the taxes in dispute. In no event will the court award more in attorney's fees than the amount of the tax reduction. The Appraisal District will not reimburse attorney's fees or costs as a part of any settlement.

This agreement encompasses representation for the tax year and property in this lawsuit only. Subsequent tax years for this property which can be added by amendment to this lawsuit are encompassed within the scope of this agreement. If you should desire us to represent other properties or this same property for subsequent years in administrative proceedings, a new and separate fee agreement will be required.

At either party's request, any and all disputes arising under or relating to this contract or the engagement and legal services to be rendered, including but not limited to fee disputes, legal malpractice claims and claims of fraud, constructive fraud, breach of fiduciary duties, breach of contract or any others, will be submitted to Judicial Arbitration and Mediation Services ("JAMS") for prompt resolution. Both attorney and client agree to be bound by this provision and the results of such arbitration. Client understands and agrees that it has the right to consult independent counsel regarding this provision and that if accepted, this provision will eliminate client's right to a jury trial in any and all disputes against attorney. Client understands and agrees that pre-arbitration discovery is generally more limited than and different from court proceedings. The arbitrator's award shall rely on evidence admissible in a district court and the substantive law of the jurisdiction. Further, any party's right to appeal the arbitrator's final ruling is strictly limited.

Please let me know which option you choose. I look forward to working with you on this case. If at any time you have any questions, please give me a call.

Very truly yours,

Joe Lawyer

AGREED:

_____

CLIENT

APPENDIX Y
Policy Statement Regarding Billing and Payment Procedures
LAW FIRM, L.L.P.
POLICY STATEMENT REGARDING
BILLING AND PAYMENT PROCEDURES

Date

1. Introduction.

It is the policy of our firm to endeavor to assure that our clients clearly understand the manner in which we bill for our legal services and for disbursements advanced by the firm on their behalf. Our experience shows that the manner in which fees and expenses are computed and charged and procedures for billing and payment vary from law firm to law fir. This statement is intended to set forth our standard policies and procedures concerning the manner in which statements for services rendered and expenses incurred by us on behalf of our clients will be prepared and pa*Id* We believe that a prior understanding of such matters is essential to a harmonious professional relationship. Consequently, we encourage our clients to pursue with us at the outset of our professional relationships any questions necessary to obtain such a full understanding which are not clearly resolved by this statement.

2. Terms of Engagements.

In consideration of the services we are to provide, unless other arrangements are made in specific instances, it is understood that clients engaging our firm to perform legal services have agreed to pay legal fees based on our standard hourly rates, as in effect from time to time during the course of the engagement, for the attorneys and para-professional personnel of this firm who perform such services.

Copies of this policy statement will be provided to existing and prospective clients of our firm. In addition, pursuant to the rules of professional conduct applicable to our firm, existing and new clients of the firm will be requested to execute engagement letters acknowledging the contents of this policy statement, setting forth the terms of our engagement in particular instances and describing the manner, if applicable, in which such terms may differ from the standard policies and procedures set forth in this statement. In any event, however, unless indicated to the contrary in writing, it will be understood that services which we are asked to perform on behalf of our clients will be rendered pursuant to the terms and conditions of this statement.

3. Performance of Services.

Most services required by our firm's clients will be performed by lawyers, legal assistants and administrative personnel who are employed by the firm on a full-time basis. The firm is currently comprised of XXX lawyers, XXX legal assistant, XXX administrative assistants and a firm administrator on a full-time basis. All individual client matters are assigned to specific firm partners who are responsible for assuring that the matters are addressed in a timely and professional manner.

The firm also has of counsel, referral and working relationships with other attorneys, briefing clerks and legal assistants who are occasionally requested to assist the firm's personnel in serving firm clients. The determination of the appropriate strategy to utilize in staffing individual situations from sources both within and outside the firm is based generally on considerations of experience, expertise, time availability and billing efficiency. The overall goal in such situations is to utilize the resources available to the firm in a manner which provides our clients with high quality, timely and cost-effective services which are commensurate with the client's objectives in particular instances.

In cases where the services obtained from such sources outside the firm are anticipated to involve significant costs or essential contributions to the particular matter in question, the client's approval will ordinarily be sought in advance. Generally, fees and expenses of such referral sources will be included in the firm's bills to its clients, but statements may be rendered directly to the clients by the individual referral sources in particular situations. Ultimately, however, our firm will be responsible for assuring that services are being performed to the client's satisfaction and for addressing any questions which may arise in that regard.

4. Methods of Computing Fees.

Our firm is subject to canons of professional conduct regarding the reasonableness of fees charged to our clients. Under these rules, the factors to be taken into account in determining the reasonableness of fees in particular instances include the following: (a) the time and labor required, the difficulty of the task and the skill requisite to perform it; (b) the likelihood that the employment in question will preclude other employment of the lawyer; (c) fees for similar services in the local area; (d) the amount of money involved in the matter and the results obtained; (e) the time limitations imposed by the client or by circumstances; (f) the nature and length of the lawyer's professional relationship with the client; (g) the experience and ability of

the lawyer; and (h) whether the fee is fixed or contingent. Our firm has assigned standard hourly rates to time-keeping personnel employed by or associated with the firm which have been determined by taking the foregoing factors into account.

Several methods are available to our clients for determining the fees to be charged for our services in particular instances. Generally, our fees will be calculated on the basis of the time expended on the client's matter in accordance with our standard hourly rates as described below. In other instances, our fees are also determined on the basis of the time expended on the client's matter, but an agreement is made in advance to employ applicable hourly rates which are higher or lower than our standard rates in order to more closely conform to the criteria described above in those particular instances. In certain hourly rate billing arrangements, agreements may be made in advance that our fees will be subject to maximum and/or minimum amounts.

5. Hourly Rate Billing Procedures.

The standard method of computing fees for legal services rendered by our firm with respect to particular client matters is to record in quarter-hour increments on a daily basis the time spent by each person performing services in connection with such matters (whether such services be telephone consultations, office consultations, research, drafting documents, travel or the like), and to total the time expended at the end of each billing month. There is then applied to the time so computed the applicable hourly rate for the respective individuals who performed service on such matters. Unless otherwise agreed in particular instances, our standard hourly rates are utilized for such purposes.

Our standard hourly rates change from time to time as warranted, but the current standard rates for the personnel employed by or associated with our firm are as set forth on the Rate Schedule attached as Attachment A to this policy statement.

We occasionally adjust our standard hourly rates for some personnel at other times to reflect particular circumstances, but our general practice is to evaluate our standard hourly rates for individual time-keeping personnel annually in January of each year to determine whether adjustments are appropriate to reflect additional knowledge and experience acquired during the preceding year or to reflect changing market conditions. Any such adjustments in our standard hourly rates are applied to services rendered during the month in which such adjustments become effective and thereafter. Unless otherwise agreed in specific instances, any such adjustments in our standard hourly rates will not be subject to prior client approval. Notice of any such adjustments in our standard hourly rates will be provided, however, to those clients with whom we have engagement relationships utilizing such rates.

Because our hourly rate fees are based on the time expended, it is beneficial for our clients to make efficient use of our time, to be conscious of the time which may be required for particular tasks we are requested to perform and to define clearly for us the scope of the work which we are to perform at the outset of each project where our clients have preconceived budgetary notions. Where no budgetary limitations are discussed and set in advance, we will use our best judgment as to what efforts are necessary to achieve the desired result.

Since for the most part we base our fees on personnel time expended, our production capacity is limited by the time available to perform legal services, so it is our practice to apply the applicable hourly rates, plus travel expenses, for any time we are required to travel out of the office. This practice is based on the assumption that most companies, firms or individuals are not compensated on an hourly basis (since they are not personal service businesses) and that it is more economical for them to attend meetings at our offices. Nevertheless, if it is desirable for us to attend meetings out of our offices, we are always willing to do so and frequently do so.

We retain detailed records of time spent on any matter or transaction, which are the basis on which our hourly rate statements are computed. If, at any time, a client has questions about the basis of compilation of any such statement, we will be happy to meet with the client to make those records available to assist the client in understanding the fee computation. We urge our clients to raise questions as statements are rendered in order for us to be able to gain a mutually satisfactory feeling for our financial relationship as well as our professional relationship.

6. Reimbursement of Expenses.

Amounts advanced or expended by us on behalf of our clients for expenditures such as long distance telephone charges, photocopying and telecopying charges, postage charges, shipping and delivery charges, courier expenses, travel expenses, printing costs, filing fees, computer research costs, court reporter fees, expert witness fees, employee overtime and expense reimbursement costs and the like are considered to be reimbursable by our clients unless otherwise agreed in particular instances and are generally included in the statement rendered to the client for the month in which such amounts are advanced or incurred. Certain costs which are incurred internally for items such as photocopying, telecopying and long distance telephone costs are billed to our clients at rates comparable to third-party charges, which do not necessarily reflect the firm's direct out-of-pocket expenses and may include amounts which represent recovery of the administrative costs and investment expenses which the firm has incurred in making such services available and accounting for such expenses.

Unless otherwise agreed in connection with specific engagements, it is understood that our firm has no obligation to advance any of the foregoing costs on behalf of our clients. We may require that the clients make arrangements in advance to fund such expenses either by means of an escrow deposit with our firm or by means of direct arrangements with third-party vendors or a combination of such arrangements.

7. Supplemental Services.

Our standard policy is that any involvements which our firm may have with regard to subsequent disputes between our clients and third parties involving matters with respect to which we have provided legal services, including our providing documents or testimony and responding to interrogatories or other discovery, are a part of the engagement, and that we are entitled to be paid for our time, services and expenses attributable to such activities. Unless otherwise specified by the terms of our original engagement in particular instances or subsequently agreed in connection with the performance of such supplemental services, it is understood that our fees for any such supplemental services will be determined on the basis of our standard hourly rates which are in effect at the time such supplemental services are rendered regardless of the billing arrangement which was applicable in connection with the original engagement.

In recent years, some litigation attorneys have employed the tactic of including in lawsuits the attorneys and law firms that represented the clients that are being sued. The intent is to either disqualify the attorney(s) or law firm from defending their clients or increasing the financial burden associated with the client's defense. If our firm or any of our lawyers are included in litigation instituted by third parties by reason of their services and activities in representing our clients, we will be entitled to be paid by our clients at the rates then applicable for the time expended by our attorneys and staff in connection with the defense of the attorney(s) or firm included in the litigation, as well as reimbursement of expenses paid or incurred by the firm with respect to such matters.

Unless otherwise agreed in specific circumstances, we do not have any obligation to inform persons for whom we have previously performed services of subsequent statutory or judicial developments which may affect the documents prepared or advice rendered pursuant to such earlier engagement. We will be pleased, of course, to make appropriate financial arrangements for providing updating services in particular instances, and we certainly endeavor to make our regular, ongoing clients aware of new developments which we perceive as having an effect on their current and prior business affairs and transactions.

8. Payment Terms.

As to the method of billing and payment, our practice is to bill monthly where our fees are based on hourly rate billing. We have found this procedure is desired by clients so that they will know on a regular monthly basis what their current total legal fees are and so that they will not receive any accumulated surprises. We normally close our books on or about the last day of each calendar month and render statements on or before the 10th day of the next calendar month. Unless other arrangements are mutually agreed upon in writing in specific instances, we request that payment of statements be made within twenty (20) days after the date the statement is received.

Although our standard practice is to bill and collect monthly, on occasion a transaction may arise in which it is agreed that it would be more appropriate to defer the billing until a later date. In such instances, we reserve the right to add interest at a rate of one percent (1%) per month (or the maximum rate permitted by applicable law, if lower), compounded monthly, to all accrued and unbilled balances, beginning the first month following the month in which such charges are actually incurred.

It is also understood that we reserve the right to add interest at the rate of one percent (1%) per month (or the maximum rate permitted by applicable law, if lower), compounded monthly, to all billed and unpaid balances beginning thirty (30) days following the date upon which such charges are actually billed.

It is also understood that this firm shall be entitled to recover reasonable attorneys' fees and expenses and court costs in connection with any efforts necessary to collect amounts due and unpaid pursuant to any engagement between a particular client and our firm.

9. Retainer Deposits.

We frequently will ask that new clients deposit a cash retainer with us in advance as security for payment of our fees and expenses. In addition, when representing new or existing clients on large projects which will require substantial personnel and equipment involvement over a long period of time, such as significant litigation, major real estate acquisitions and complex loan workout negotiations, we frequently will request a project retainer in advance. Our practice is to deposit retainers in a trust account and to transfer "progress payments" from our trust account to our operating account as segments of the work are completed or other appropriate billing stages are attained. A detailed accounting will be provided of the application of all funds so transferred. If the work for a particular client or project continues over an extended period of time, we will generally require and bill additional retainers monthly until the work is completed.

10. Termination of Engagement.

We reserve the right to suspend or terminate any work in progress, including withdrawal from pending litigation, in the event of non-payment of our statements within twenty (20) days after a statement is due. In the event that we exercise such right to suspend or terminate work in progress or withdraw from pending litigation, we will be entitled to receive from the client a written acknowledgment that we are permitted to exercise such suspension, termination or withdrawal right under the terms and conditions of our engagement with the client.

In addition to our right to withdraw from a representation engagement at any time if the payment terms described above are not satisfied, it is understood that, subject to certain exceptions with respect to contingent fee matters, our clients reserve the right to terminate their engagement of our firm at any time, upon payment in full of fees and expenses accrued up to that time.

11. Ownership of Files.

We consider the files which are generated and maintained by us in connection with services for our clients to be the property of our firm and not the property of our clients, except for documents and materials ("*Client Papers*") which fall within the following categories: (i) original documents and materials which are furnished to us by our clients; (ii) original documents and materials, such as executed contracts and corporate records, which are prepared by us for our clients; and (iii) other documents and materials which may affect our clients' rights or the exercise of such rights. We will assert and maintain a possessory retaining lien on all such Client Papers as security for the payment of our fees and expenses, except to the extent that retention of such Client Papers would prejudice the rights of our clients. In the event of a termination of our engagement, except as stated above, we will release such Client Papers and copies of the materials in our files to our clients only upon (i) written request and instructions from the client; (ii) payment in full of all of our unpaid fees and expenses; and (iii) payment in advance of all reasonable copying costs which will be incurred in making copies of the Client Papers for our permanent files and in making copies of the other materials in our files for the client.

12. Services for Related Entities.

It is contemplated that we may be requested on occasion to render services for individuals, partnerships, corporations and other entities which are affiliated with our principal client in a particular engagement. In such instances, unless otherwise agreed in advance, we will consider all participants in the transaction to be jointly and severally liable for the payment of our fees and expenses as outlined in this statement and the relevant engagement letter. Unless other arrangements are made in advance, however, we will render our statements to, and will expect full payment from, our principal client and will not be responsible for honoring any internal cost-sharing arrangements which may be in effect between the participants in the transactions.

13. Personal Guaranties.

We understand that individuals whom we consider to be our clients may sometimes request statements for our services to be rendered to entities which they control and/or through which their business activities are conducted. In order to avoid any confusion in this regard, however, and in recognition of the fact that our services will be primarily for the benefit of the individual client, we may ask that our engagement be executed by both the entity and the individual in order to acknowledge that both the individual and the entity will be responsible for payment of our fees and expenses in connection with the engagement.

14. Texas Lawyer's Creed.

We are required to advise our clients of the existence of and our obligations under the Texas Lawyer's Creed. A copy of the complete Creed is attached as Attachment B. Pursuant to the Creed, our clients are advised as follows, which advice is acknowledged by the execution of engagement letters contemplated in this policy statement:

1. Proper and expected behavior of counsel are described in the Creed.

2. Civility and courtesy are expected from lawyers and are not a sign of weakness.

3. We will not pursue conduct which is intended primarily to harass or drain the financial resources of the other party.

4. We will not pursue tactics which are intended primarily for delay.

5. We will not pursue any course of action which is without merit.

6. We reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect your lawful objectives.

7. You are advised that mediation, arbitration and other alternative methods of resolving and settling disputes are available to you to resolve disputes with opposing parties.

15. Notice to Clients.

We are required to provide our clients with a notice that the State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. This notice is required of all lawyers in Texas. A copy of the required notice is attached to this policy statement as Attachment C and is incorporated herein by reference.

16. Privacy Policies.

Our firm has adopted privacy policies in accordance with federal requirements governing providers of financial services. Our policies are described in the "Notice of Our Firm's Privacy Policies" which is attached to this Policy Statement as Attachment D.

17. Conclusion.

It is hoped that the foregoing discussion will anticipate most, if not all, of the issues which will arise in connection with billing and payment procedures of our firm. Clients having general or specific questions regarding the policies and procedures set forth above are encouraged, however, to raise those issues with the firm at an early date in order to resolve any such questions as soon as practicable.

ATTACHMENT A

LAW FIRM, L.L.P.

Hourly Rate Schedule – June 1, 2008

Personnel Category	Rate Per Hour
Partners	$XXX-XXX
Associates	$XXX-XXX
Legal Assistants	$ XX- XX
Administrative Assistants	$ XX

ATTACHMENT B

THE TEXAS LAWYER’S CREED--A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."

2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.

5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.

6 I will agree to reasonable requests for extensions of time and for waiver of procedural formalities.

ATTACHMENT C

NOTICE TO CLIENTS

The State Bar of Texas investigates and prosecutes
professional misconduct committed by Texas attorneys.

Although not every complaint against or dispute with a lawyer involves
professional misconduct, the State Bar Office of General Counsel
will provide you with information about how to file a complaint.

For more information, please call 1/800/932/1900. This is a toll free call.

ATTACHMENT D

NOTICE OF OUR FIRM'S PRIVACY POLICIES

We, as lawyers, together with all other providers of personal financial services, are now required by law to inform our clients of our policies regarding privacy of client information. For us, this is nothing new. The sanctity of the lawyer-client privilege is at the heart of our profession. The Model Rules of Professional Conduct provide that we as lawyers may not reveal information relating to our representation unless our client consents after consultation. Nevertheless, to assure compliance with both the letter and spirit of the rules and applicable federal law, we are providing this notice of our policy. We have in the past and will always continue to protect your right of privacy.

Information We Collect About You

We collect nonpublic personal information about you only in connection with providing you with the legal services that you request. The types of nonpublic personal information that we collect vary according to the services that we perform for you, and may include:

- Information that we receive from you (such as your name, address, income, assets, social security information, and other financial or household information);
- Information about your relationship and past history with us and others (such as the types of legal services we provide to you, your invoice balances and payment history);
- Information that we receive, with your authorization, from third parties such as accountants, financial advisors, insurance agents, banking institutions and others.

How We Handle Your Information

We do not disclose to anyone outside our firm any public or nonpublic personal information about you that we have collected, except as authorized by you or required by law. For example, with your consent, we may disclose personal information to a third-party contractor, such as an appraiser or accountant, who is assisting us in providing services to you. In addition, we will release information to the extent required by law or regulation.

We do not sell client information to anyone or disclose client information to marketing companies.

We may disclose information regarding the type of legal services we have provided to you, your invoice balance, and your payment history as necessary to terminate our relationship or collect unpaid sums due to us.

How We Protect Your Information

We restrict access to nonpublic personal information about you that we have collected to attorneys and staff members in our firm. All of our attorneys and employees are required to maintain the confidentiality of all nonpublic personal information about you. We maintain physical and procedural safeguards to protect the nonpublic personal information that we collect about you.

While the federal laws and regulations establish rules and disclosure requirements, they do not limit the attorney-client privilege or the confidentiality rules for information provided to attorneys. In circumstances where applicable federal laws may allow disclosure, we will continue to follow the stricter non-disclosure rules of attorney-client privilege and client confidentiality.

Please call if you have any questions, because your privacy, our professional ethics and the ability to provide you with quality legal services are very important to us.

APPENDIX Z
Billing Terms

Unless the Client has a written, fully executed Retainer Agreement to the contrary, the following terms and conditions apply to all attorney-client relationships:

ARTICLE 1
RETENTION BY THE CLIENT

Section 1.1. Retention of the Firm by the Client. The Client hereby engages and retains the Firm to provide the services represented on each monthly invoice sent to the Client. If the Client is of the opinion that the Client retained the Firm to represent the Client on matters not shown on an applicable invoice, the Client must immediately notify the Firm of such opinion.

Section 1.2. Representations and Warranties of the Client. In connection with this retention, and for any and all subsequent matters, the Client (each individually, respectively, if more than one) represents and warrants to the Firm that:

(A) the Client will accurately and completely inform the Firm of all facts related to each matter in which the Firm performs services for the Client pursuant to this Agreement; and

(B) the Client will read correspondence, any transactional documentation, and all other communications from the Firm, will ask questions when in doubt as to the meaning of any communication, document or term, and will not sign any documentation until the Client understands the documents;

(C) the Client does not purpose, intend or plan to use the services of the Firm, either directly or indirectly, to engage in or further any unlawful activity.

ARTICLE 2
REPRESENTATION BY THE FIRM

Section 2.1. Services Provided; Additional Representation. The terms of this Agreement will apply to all representation(s); provided that the Firm is not obligated to represent the Client in any other matter in addition to the initial matter for which the Client represented the Firm unless the Firm agrees to do so in writing.

Section 2.2. Limitations of Scope.

(A) The Firm's representation does not include rendering any income tax advice or the preparation of any income tax return, federal or state estate tax return, or, state franchise tax return. The Client acknowledges that the Client must seek such advice from their accountant or other financial advisor. The Firm may, however, provide information on the federal estate tax and/or state franchise tax; however, legal information is not legal advice. Only a qualified accountant or other financial professional can render legal advice regarding tax matters.

(B) The Firm's representation does not include valuation of any assets, nor does the Firm claim to have expertise in this area. The Firm will advise the Client as necessary or desirable to retain appropriate experts, such as accountants, financial advisors, or real estate or business appraisers, to assist in this regard. The Firm does not automatically search titles, determine the validity of income and expense figures supplied by others or attempt to verify other underlying data, unless that is relevant to the issues involved in the representation. If there are questions in the Client's mind concerning any of these issues, you the Client should discuss them with the Firm and authorize the Firm to retain appropriate experts to provide assistance on your behalf.

(C) The attorney(s) of the Firm are licensed to practice law in the State of Texas, and in no other state. Work involving any jurisdiction other than Texas will require at the very least a review of the documentation involving the laws of that jurisdiction by an attorney licensed in that jurisdiction. The Client further acknowledges that J. Mark McPherson is not board certified by the Texas Board of Legal Specialization.

(D) Changes likely will occur in tax, property, probate, and other laws which could impact an estate plan and/or business structure. The Firm cannot--on our own--economically review the file of each client to determine the impact of court cases, rulings, and other changes in the law. Furthermore, changes likely will occur in each client's family, in marital circumstances, and in a Client's finances, all of which could impact estate planning and/or business structuring advice. Therefore, you should contact us or other competent estate planning advisors regularly to have your plan reviewed. The Firm may frequently answer simple questions of yours for no additional fee; however, the Firm will address significant questions and review your documents or estate plan only on your request and for a reasonable fee.

Section 2.3. NO GUARANTEES OR REPRESENTATIONS AS TO RESULTS. THE CLIENT ACKNOWLEDGES THAT THE FIRM HAS MADE NO GUARANTEES OF RESULTS TO BE ACHIEVED IN ANY PHASE OF THE FIRM'S LEGAL

REPRESENTATION OF THE CLIENT; THE FIRM CANNOT GUARANTEE A SPECIFIC RESULT. All expressions relative to the Client's legal matters are only the opinion of the Firm.

Section 2.4. Contact. Client agrees to advise the Firm of all points of contact and to also advise the Firm of any changes of any points of contact on or prior to the effectiveness of the change. If the Firm is unable to reach the Client using the most current contact information provided by the Client, the Client authorizes the Firm to withdraw from representing the Client immediately with notice only to the Client's last known address.

Section 2.5. File Maintenance. Any papers, documents, instruments, records, and other writings that the Client furnishes or causes to be furnished to the Firm and/or which the Firm may prepare for the Client will remain the property of the Client and will be relinquished to the Client upon request, subject to any lien which the Firm may properly assert. If the Client does not ask the Firm to release such written materials to the Client within six (6) months after completion of the project or transaction to which they pertain or after the termination of the Firm's services for any reason, then they may be destroyed when the Firm disposes of its file regarding such. Periodically, the Firm purges its files; and it is possible for both the Client's property and the Firm's to be disposed of as waste, including (without limitation) such important documents as Wills, Powers of Attorney, Promissory Notes, Deeds, Minutes of Corporate Meetings or similar records, Shares of Stock and the like, and Business Purchase and Sale Agreements.

ARTICLE 3
MATTERS OF PROFESSIONAL ETHICS

Section 3.1. Reporting Potential Conflicts. By agreeing to retain the Firm, the Client has the affirmative duty to the Firm to report to the Firm any fact or circumstance which may affect the Firm's impartial representation of all those identified in any communication as the "client", and any fact or circumstance which indicates that the Client's interest is in conflict with another client of this Firm, to the extent known.

Section 3.2. Potential Spousal Conflicts of Interest. If the Client includes persons who are related to each other as husband and wife, the Firm is sensitive to issues which occasionally arise in joint representation of clients related by marriage. For example, husband and wife may have different views on how property could pass after the death of one or both of them. Different individuals may have different goals in planning their respective estates or different community and separate property interests. In some situations, the Firm may recommend that holdings be restructured to take advantage of available tax benefits, which may affect different spouses differently due to their community and separate property interests. To give another example, a conflict may exist or may arise in the determination of what is community property and what is separate property. That determination may be more beneficial for husband than wife, or vise versa. For example, if community property is partitioned or given to the other spouse as part of the estate plan, the possibility of a divorce, however remote, must be recognized. Consequently, the Firm's present recommendations could affect the income, property, and support provisions in any such divorce or after the death of one or both spouses. These are just a few general examples. Each couple's situation is unique. If the Firm acts in a capacity as attorney for both spouses, the Firm cannot be an advocate for either spouse against the other spouse.

In assisting with an estate plan and business structure, the Firm must necessarily obtain confidential information from the Client. During the course of representation, the Firm often meets or speaks with only one of the spouses, and this may occur in your case. When the Firm represents both of you, the Firm cannot keep information received from either of you confidential from your spouse. Confidential information will be shared with both of you, even if received by the Firm in private conference with only one of you, but such information will be kept confidential from outside parties, except with your consent. For example, pursuant to your instructions, the Firm may discuss certain aspects of your estate plan and business structure with your other advisors.

Either of you may have your own independent counsel for any part or all of the matters within the scope of the Firm's representation. If a conflict arises that makes it improper or impractical for the Firm to continue representing both of you, the Firm will withdraw from further dual representation and advise that one or both of you obtain separate independent counsel.

If the Firm represents both married spouses in a matter, then as a prerequisite to such representation each of you are representing to the Firm that: (1) you have read this Article and understand that conflicts of interest may exist or may arise between you and your spouse in the matters within the scope of the Firm's representation; (2) you each consent to have the Firm represent both of you in your estate planning until the Firm is notified otherwise in writing; (3) each of you realize that there are areas where your individual interests and objectives may differ, and areas of potential or actual conflict of interest may exist in connection with your estate planning and related matters; (4) each of you understand that either of you may retain separate, independent counsel in connection with these matters at any time. After careful consideration, each of you request the Firm to represent you jointly in connection with your estate planning, business structuring and related matters, and each of you consent to that dual representation. Each of you also understand and agree that no confidential communications are possible as between the Firm and either of you separately, because communications and information the Firm receives from either of you relating to these matters

will be shared with the other. If either of you wish to have separate counsel or desires that the Firm not be involved in any aspect of estate planning on our behalf, respectively, you each agree to notify the Firm of this change in your decision in writing.

Section 3.2. Firm Conflict of Interest; Recommended Review of this Agreement. The Firm notifies you that any question or doubt you may have about this Agreement should be resolved before you retain this Firm. This Agreement is one of the few times when the interest of the Firm may be in conflict with your own as Client. It is always a prudent practice to seek the advice and counsel of another attorney as to your rights under this Agreement. You will never offend the Firm, or jeopardize our relationship, in seeking a review of our work and a second opinion from qualified legal counsel for bona fide reasons. As a general rule, any attorney's service to a client should be structured so that the attorney has no interest, other than the client's interest, in the outcome of any procedure or recommendation. However, this Agreement is an exception to that rule. This Agreement is technical; it will govern our relationship. It is important that you resolve any question you may have before you sign this Agreement. If in doubt, the Firm recommends that you seek the opinion of a qualified attorney or other trusted advisor.

Section 3.3. Privacy Notice. Professionals who advise on personal financial matters, such as attorneys, are required by a relatively new federal law to notify their clients about their policies on privacy. The Firm understand our clients' concern for privacy. The Firm has been and will continue to be bound by professional standards of confidentiality that are even more stringent than those required by the new law. During the Firm's representation of you, the Firm may receive non-public personal information about you. The Firm does not disclose any non-public personal information about its current or former clients, except as expressly or impliedly authorized by its clients to enable us to represent them, or as required or authorized by law or other applicable rules governing the Firm's professional and ethical conduct as attorneys. Because the Firm retains records relating to the professional services provided so that the Firm is better able to assist its clients with their professional needs and to comply with professional guidelines or requirements of law, the Firm maintain physical, electronic, and procedural safeguards that comply with our professional standards in order to guard our clients' nonpublic personal information.

Section 3.4. Disciplinary Notice. Complaint brochures prepared by the State Bar of Texas are available at the Firm's place of business.

ARTICLE 4
FINANCIAL TERMS

Section 4.1. Attorneys' Fees. The Client agrees to pay to the Firm reasonable and necessary attorneys' fees incurred in the Client's various legal matters handled by the Firm. The Firm bills its time in units of one-tenth hour each, with minimum units of 1/4 hour (15 minutes), at the applicable hourly rate. Because legal matters sometime continue over a long period of time, this hourly rate may increase after the Client has retained the Firm but before the Firm's representation of the Client is completed. The Firm will provide the Client with prior written notice of any increase in any applicable hourly rate.

Section 4.2. Expenses. The Client also agrees to pay reasonable and necessary expenses incurred by the Firm in connection with the Client's various legal matters handled by the Firm. Expenses may include such items as filing and service fees, travel expenses, depositions, transcripts, delivery fees, and fees of other professionals. Expenses are in addition to attorneys' fees and will be itemized on each monthly invoice.

Section 4.3. Invoices. The Firm will send invoices for payment on a per month basis, and will send final invoices at the conclusion of representation in any matter, whether concluded by withdrawal, termination, completion of the project, or otherwise. These invoices will show the amount of time expended by an attorney, paralegal or clerk on the legal matter, the applicable billing rate, and a brief description of the services performed.

Section 4.4. Agreement to Pay Invoices. The Client agrees to pay invoices immediately upon receipt and in no event later than fifteen (15) days after the date of the invoice. If the monthly invoice is not paid within fifteen (15) days, the Client hereby agrees that the Firm may, in its sole discretion, cease performing any further work for the Client, and if the Firm does cease to perform work for the Client, the Firm will have no further obligation under this Agreement. The Client will be responsible for any fees and costs incurred prior to the Firm's withdrawal or discharge, including time and costs expended to turn over the Client's file(s) and other information to the Client or substitute counsel.

Section 4.5. Other Fees and Expenses. In the unlikely event that a member or employee of the Firm is ever called upon to defend or give testimony about any aspect of its representation of the Client in any matter other than a dispute by the Client about the Firm's fees or by the Client about the Firm's services, (such as, for example, by reason of the fact that the Firm took action in accordance with this Agreement), whether in deposition, hearing or trial, it is further agreed that the Client will pay the Firm legal fees at the Firm's then-prevailing hourly rates for the time the Firm dedicates to the preparation and participation in any such deposition, hearing or trial, and will indemnify and hold the Firm harmless from any expense (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by the Firm in connection with such action, suit or proceeding. The Client further acknowledges that if a member or employee of the Firm is called as a witness in a

later proceeding, the Client binds the Client and the Client's estate to compensate the Firm as otherwise provided in this Section, at the Firm's then-prevailing hourly rates.

Section 4.6. Interest on Non-Payment. Unless the Firm otherwise agrees in writing, unpaid fees and expenses will be considered past due if not paid within thirty (30) days of the billing date. All past due amounts shall bear interest at the rate of 1.5 % per month (18% annual Percentage rate), or the maximum rate allowed by law, until pa*Id* Interest charges will be calculated on all past due amounts and added to the next month's billing statement.

Section 4.7. Retainers. From time to time the Firm may require an initial retainer from the Client. In such circumstance, the Firm will not be obligated to take any action on behalf of the Client until the Client has deposited the required retainer with the Firm. If at any time the Client pays to the Firm a retainer, the Firm will credit the retainer against all fees and expenses expended by the Firm for the Client, including any legal services which the Firm has done for the Client prior to the deposit of the retainer. All unused amounts will be refunded to the Client upon the Firm's completion of, withdrawal from or discharge from, representation of the Client.

Section 4.8. Guaranty by Principals. All obligations, financial and otherwise, arising under this Agreement or related to this Agreement are personally guaranteed, jointly and severally, by the individual owners of any client entity/entities.

ARTICLE 5
TERMINATION

Section 5.1. Withdrawal of the Firm. The Firm reserves the right to withdraw from representation of the Client, and the Client hereby agrees to allow the Firm to withdraw from any and all representation pursuant to this Agreement, if the Client does any one of the following:

(A) the Client misrepresents or fails to accurately and fully disclose material facts; or

(B) the conduct of the Client makes continued representation unreasonable or unworkable; or

(C) the Client fails to follow advice given by the Firm; or

(D) the Client does not make payments required by this Agreement; or

(E) the Client fails to maintain current contact information pursuant to Section 2.12 of these Terms; or

(F) as otherwise allowed by the Texas Disciplinary Rules of Professional Conduct, as amended from time to time, governing the conduct of attorneys in Texas.

Section 5.2. Discharge of the Firm. The Client may discharge the Firm at any time for any reason but agrees to do so in writing. A discharge will not be effective until the Firm receives the written notice of discharge.

Section 5.3. Effect of Termination. No termination will waive any of the remaining provisions of these terms of representation, each of which will survive termination, including: (A) the Client's agreement to pay for all work performed prior to termination, (B) the Client's consent to complete disclosure of confidential information to either individual Client, and (C) the Firm's ethical duties, including but not limited to the Firm's duty not to disclose a client's confidential matters to third parties (other than the client's other professional advisors).

Section 5.4. Fees and Expenses Associated with Termination. The Client will be liable for timely payment of the following, whether invoiced before or after such termination: (1) the Firm's charges for legal services rendered to the Clients and Related Expenses incurred by the Firm incurred up to the time of such termination; plus (2) the Firm's charges and related expenses incurred after such termination which relate to the Firm's withdrawal from the representation, such as, by way of example but not limitation, withdrawal as counsel or substitution of new counsel in court proceedings, transfer of file papers to appropriate parties and related communications (oral or written) with various parties pertaining to the subject matter of this engagement.

ARTICLE 6
DISPUTE RESOLUTION

Section 6.1. Written Notice of Questions or Disputes. The Client agrees to send the Firm written notice within twenty (20) days after the Firm's invoice if the Client disagrees with the amount of the fees and expenses reflected in that invoice. The Client agrees to specify the error or overcharge in the notice. The Firm is happy to review the professional services it has performed. If no such written notice of a dispute is given within this time frame, all parties agree that the fee is reasonable and accurate and the Client waives any and all objections about the fee shown on that invoice.

Please review each invoice carefully; it is the Firm's desire to timely and satisfactorily address all reasonable concerns. The Firm strives to provide quality legal services for a fair fee and the Firm urges the Client to conduct open discussions with the Firm throughout the course of the Firm's representation pursuant to this Agreement. Many unsatisfactory and unpleasant experiences between an attorney and client are the result of poor communication and honest misunderstandings. Please help the Firm keep the lines of communication open by offering input whenever it might be helpful. Any issue of importance should be communicated immediately and in writing so as to avoid misunderstandings and to document the files of both the Client and the Firm.

Section 6.2. Mediation. Before resorting to litigation, any disputes arising out of or connected with this Agreement (including but not limited to the services performed by any attorney under this agreement) will be submitted to mediation in Dallas County, Texas, in accordance with the rules for alternative dispute resolution set forth under Texas law. The Client and the Firm will mutually cooperate to select the mediator to be used. Any and all information, negotiation, and results of the mediation will remain confidential. The expenses to retain a mediator shall be borne equally by the Client and the Firm.

ARTICLE 7
MISCELLANEOUS

Section 7.1. Supersedes Prior Agreements. This Agreement supersedes any prior Agreement(s) entered into by any of the parties hereto relating to this matter.

Section 7.2. No Oral Modification. No modification or amendment of this Agreement will be of any force or effect unless made in writing and executed by all parties to this Agreement.

Section 7.3. Paragraph Headings. The headings of the various paragraphs in this Agreement are for the convenience of the parties and will not alter or modify the terms and provisions of this Agreement.

Section 7.4. Enforceability. This Agreement shall be interpreted, construed and enforced in such a manner to be effective and valid under applicable law. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, all other clauses and provisions of this Agreement shall remain in full force and effect and the clause or provision determined to be void or illegal or unenforceable shall be so limited that it shall remain in effect to the fullest extent permitted by law without fully invalidating such clause or provision or the remaining clauses and provisions of this Agreement.

Section 7.5. CHOICE OF LAW; VENUE. THE PARTIES HERETO ACKNOWLEDGE THAT THIS AGREEMENT IS DELIVERED AND FULLY PERFORMABLE IN DALLAS COUNTY, TEXAS; ANY LAWSUIT FILED THAT CONCERNS THIS AGREEMENT SHALL BE FILED IN DALLAS COUNTY, TEXAS, AND THE PARTIES WAIVE ANY RIGHTS THEY MAY HAVE TO SUE OR BE SUED ELSEWHERE WITH RESPECT TO THIS AGREEMENT. THIS AGREEMENT SHALL BE INTERPRETED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

Section 7.6. ENTIRE FINAL AGREEMENT. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AND COMPLETE AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN, ORAL AGREEMENTS BETWEEN THE PARTIES.

APPENDIX AA
Invoice for Professional Services Rendered

Accounting Our Federal EIN: 75-2951641

Date

Client:
Name
Address
Address

Re: **Invoice for Professional Services Rendered**
through Date
Applicable Hourly Rates: J. Mark McPherson $XXX

Services Rendered	*Time*	*Value*
TOTAL:		***$***

Thank you for choosing McPherson & Associates, PC (the "Firm"), for your legal needs. The individuals and entities named on this invoice are the "Client" for purposes of the Firm's representation. All legal services provided by the Firm, including those shown on this invoice, are subject to the terms and conditions stated at www.mctexlaw.com/billingterms.asp, unless the Firm and Client have executed a written Retainer Agreement stating the different terms and conditions. Note that if the Client desires or intended to retain the Firm for matters during this billing period that are not reflected on this invoice, the Client must immediately notify the Firm.

TERMS: DUE AND PAYABLE UPON RECEIPT

Please send your payment of this invoice to the address above. If you have any questions or comments about this or any other matter, please do not hesitate to contact us. With best regards, we remain,

Very truly yours,

McPherson & Associates, P.C.

APPENDIX BB
New Engagement and Assignment Acceptance – Dispute with Co, LLP
A LAW FIRM

PRIVILEGED AND CONFIDENTIAL

Date

Client
Street
City, State Zip

Re: **New Engagement and Assignment Acceptance - Dispute with Co, LLP**

Dear Ms. Client:

This letter confirms our agreement that this Firm will represent you in connection with the possible disputes stemming from your former employment with Co, LLP ("Co"), especially insofar as your right to any additional compensation, or your right to payments are concerned.

As a preliminary matter, you understand that the Firm is representing Joe Bob and Joe Bob Company ("JCO") in various litigation stemming from the deal executed on or about June 1, 2008. As such, we are currently adverse to Co, as well as other entities and individuals. At this time, the tenor of your potential claims against Co, and the limited nature of our representation, are not perceived to be adverse in any manner to Joe Bob or JCO. To the extent adversity may develop between your interests, and those of Joe Bob and/or JCO, in any manner, but in particular, with respect to the pending litigation, you expressly agree to waive any such conflict. You further commit not to use any conflict, if any arises, as an excuse to disqualify A Law Firm from further representation of the Joe Bob, JCO or related entities. That said, if a conflict should arise, or you perceive that it is likely to do so, you clearly reserve the right at all times to terminate our representation and replace A Law Firm with counsel of your choice. Of course, if you have any questions or concerns regarding the nature of this waiver, we will be happy to address them. Otherwise, the terms and conditions of our engagement are detailed as follows.

Unless we agree otherwise, our fees for services will be based on the time spent on the matter, computed at our hourly rates for the persons performing the services. You agree to pay the reasonable fees and other charges billed by us in connection with this representation. I will have primary responsibility for the representation and my hourly rate on this file will be $450. As necessary, we will use other Firm lawyers and paralegals as we believe appropriate in the circumstances. At present, the usual rates for Houston office lawyers range from $200 to $750 per hour for partners, $300 to $395 for associates, and $150 to $225 for paralegals, clerks, and other staff personnel.

Other charges for which we will bill you are described in the enclosed schedule of charges. In addition to the charges shown on the enclosed schedule, we will also include a charge for any local value added or similar taxes (including, for example, goods and services tax, business tax or services tax) due in respect of legal services performed in certain jurisdictions. Our rates and charges are subject to change.

If you have any questions, please call me. Otherwise, please sign and return the enclosed copy of this letter. Unless we agree otherwise in writing, the terms of this letter and our Standard Terms of Engagement for Legal Services will govern this engagement and any future assignments we accept from you.

Very truly yours,

Mr. Lawyer

Agreed to on Behalf of Client

By: _____

Date: _____

Enclosures: A Law Firm Standard Terms of Engagement for Legal Services
A Law Firm Client Cost Recovery Policy

A LAW FIRM

STANDARD TERMS OF ENGAGEMENT FOR LEGAL SERVICES

Governing Terms. This statement contains the standard terms for our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of any agreement we may have with you. Please review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

Application and Interpretation. Your engagement is with A Law Firm. In accordance with the common terminology used in professional service organizations, reference in these Standard Terms, or otherwise in the course of your dealings with us, to a "partner" means a partner, or equivalent, in this or another such law firm. Similarly, references to an "office" means an office of any such law firm.

Client Service Lawyer. One lawyer will generally be assigned primary responsibility for seeing that your requests for legal services are met. Additional lawyers and paralegals from other Firm offices may assist in rendering the most appropriate and efficient legal services, and we will share confidential information with them regarding your matters for the purpose of better serving you.

Scope of Our Engagement and Fees. The scope of any engagement will be set out in a separate letter that will be sent to you each time we agree to represent you on an individual matter (Assignment Letter). Our fee arrangement will be set out in that letter.

Conflicts. We will always honor our duty of confidentiality to you and protect your information. Without detracting from our duty of confidentiality to you, this letter confirms our mutual agreement that, so long as we act in accordance with ethical requirements, we and other Firm offices may without your consent act for other persons or entities whose interests are adverse to you or your affiliates in matters not substantially related to our engagement by you. The adversity may be in litigation, legislative or regulatory matters, or in transactions or otherwise, all regardless of type, importance or severity of the matter.

We agree, however, that we will not act adversely to you in any instance where, as the result of our representation of you, we have obtained sensitive, proprietary or other confidential information of a nonpublic nature that, if known to any such other client of ours, could be used in a matter in which we are retained by our other client to your or your affiliates' material disadvantage, unless we screen our lawyers and paralegals who have such information from any involvement in the adverse representation.

You also understand that we and other Firm offices may obtain confidential information from other clients that might be of interest to you, but which we cannot share with you.

Conflicts With Affiliates. For purposes of our engagement, our client is only the entity designated in our Assignment Letter, and not its affiliates (the stockholders, parent, subsidiaries, directors, officers, or related companies of any entity, or the individual members of a trade association, or the partners of a partnership or joint venture). Accordingly, for conflict of interest purposes, we and other Firm offices may represent another client with interests adverse to your affiliates without obtaining your or their consent. We will expect you to inform us immediately if the designated client does business under any other name.

Third Parties. Our engagement for you does not create any rights in or liabilities to any third party.

Termination of Services. We are subject to the rules of professional responsibility for the jurisdictions in which we practice, which list types of conduct or circumstances that require or allow us to withdraw from representing a client. We may terminate our representation for any reason consistent with the applicable rules of professional responsibility. We try to identify in advance and discuss with out client any situation that may lead to our withdrawal, and if withdrawal ever becomes necessary, we give the client written notice of our withdrawal.

You may terminate our representation at any time by notifying us. Termination of our services will not affect your responsibility for payment for legal services rendered and additional charges incurred before termination and in connection with an orderly transition of your matters.

Our attorney-client relationship will be considered terminated upon our completion of the specific services that you have retained us to perform, or if open-ended services are agreed upon, when more than six months have elapsed from the last time you requested and we furnished any billable services to you. If you later retain us to perform further or additional services, our attorney-client relationship will be revived, subject to these and any subsequent written terms in the Assignment Letter. The fact that we may inform you from time to time of developments in the law which may be of interest to you, by newsletter or

otherwise, should not be understood as a revival of an attorney-client relationship. Moreover, we have no obligation to inform you of such developments in the law unless we are engaged in writing to do so.

Your Papers. When termination occurs, papers and property that you have provided to us will, at your request, be returned to you promptly. Copies of papers we have created for you, which you may need but no longer have, will be made available to you. Our drafts and work product will belong to us. We reserve the right, subject to any applicable laws or rules of professional responsibility to the contrary, to destroy within a reasonable time any items described in this paragraph that are retained by us.

E-Mail. Documents sent to you by e-mail (whether or not containing confidential information) will not be encrypted unless you request us, in writing, to encrypt outgoing e-mail and we are able to agree with you and implement mutually acceptable encryption standards and protocols.

We make reasonable attempts to exclude from our e-mails and any attachments any virus or other defect that might affect any computer or IT system. However, it is your responsibility to put in place measures to protect your computer or IT system against any such virus or defect, and we do not accept any liability for any loss or damage that may arise from the receipt or use of electronic communications from us.

Questions. One of our goals is to ensure that legal services are delivered effective and efficiently, and that all billings are accurate and understandable. Please direct any questions about services or billing practices to your client service lawyer.

Agreement. These Standard Terms shall be incorporated into any specific engagement and will be part of each Assignment Letter. Except for pending uncompleted assignments, these Standard Terms supersede all prior understandings or agreements between you and us and they shall prevail over any contrary or alternative terms of yours or any third party. Any change to these terms must be made or confirmed in writing in the Assignment Letter and be signed by the Managing Partner of one of our Firm offices.

A LAW FIRM

SCHEDULE OF CLIENT COSTS

It is our policy to recover only our cost of providing certain goods and services, which are auxiliary to practicing law. Following are statements of how we charge for the provision of the most frequently used goods and services:

Reprographics and Printing. We charge $0.19 per page for black and white copies and $0.75 for color copies when materials are produced in our offices. Outsourced printing, copying and assembly/finishing is charged to our clients at actual cost.

Facsimiles. We charge $1.00 per page for outgoing facsimiles, no charge is made for incoming facsimile transmissions.

Telephone. A Law Firm's discounted Service Provider actual costs are passed through to our clients on all long distance and international calls. No charge is generated to clients for local telephone calls.

Postage, Messenger and Courier Services. Costs for envelopes and packages mailed, or delivered, on a client's behalf are billed at cost. When the time sensitivity of a delivery requires, we use internal staff to insure proper handling. We charge a flat fee of $9.50 plus any additional costs incurred.

Document Production and Support Services. No charge is made for secretarial services and word processing during the regular work day. When overtime is required to complete a client project, we charge the marginal costs incurred. Other support services such as translation, notary, file retrieval and duplication are billed at cost.

Electronic databases. For electronic databases such as Lexis and Westlaw, we charge the discounted rate that we are charged by these companies.

Travel, Transportation and Meals. When a A Law Firm employee travels on behalf of a client, we charge the costs that the employee actually incurs. We strive to use discounted rates for airline travel and hotels.

APPENDIX CC

Warning to Clients Regarding Joint Tenants, Survivorship, POD, and Trustee Accounts

Holding accounts in the following account designations can ruin your estate plan.

These are:

1. Joint Tenancy With Right of Survivorship.
2. P.O.D. (Payable on Death) Account.
3. Trust Account where you hold something as "Trustee" for someone or someone holds something as "Trustee" for you.
4. Community Property With Right of Survivorship.
5. Joint Tenants.

All of these accounts, whether in a bank, brokerage firm or other financial institutions or as a designation for the ownership of stock, land, or other assets, can ruin a good estate plan. If you have provided for a trust that utilizes estate tax or Medicaid planning (a bypass trust, A/B trust, unified credit trust, applicable credit amount or special needs trust) or if you plan on giving your property in equal shares to more than one person, the survivorship account designation will cause the account to be paid directly to the survivor and not to the trust or as provided in your will. *It is important that none of your accounts (except for small amounts held in a checking account) be established in this manner.* Designations of this type do allow the account to escape probate, but they can cause big problems with estate taxes and can create gift tax liability. *These account designations prevail over the terms of a written will and any prenuptial or postnuptial agreement.*

Real property should be held in one or both spouses' names but without any designation of rights of survivorship. Deeds should be prepared to correct this error. Stock certificates and brokerage accounts should be retitled so that you are "tenants in common" rather than joint tenants with rights of survivorship.

If an account is a spouse's separate property, the account should only be in that spouse's name with the words "Separate Property" after the name.

If the asset is separate property, it should be in that spouse's name with the words "Separate Property" after the name.

The best way to have your bank accounts is in both names as "Tenants in Common", "Multiple Party Account Without Rights of Survivorship" or "Convenience Account." You will find that financial institutions will argue with you about these designations. If they do, ask them to have their attorney give you a legal opinion that the way the bank has set up the account will cause no estate tax or Medicaid qualification problems for you and that they are not survivorship or payable on death accounts. Have the attorney bind his law firm and the bank to indemnify you from any adverse liability as a result of the financial institution's account designations. No one will do this and that is because these accounts do cause problems.

I suggest that you send each financial institution or other entity a letter similar to the one below by certified mail, return receipt requested, keeping a copy of the letter and the return receipt with your important papers. Section 113.157 of the TEXAS ESTATES CODE provides that if a letter like this is signed by the party and received by the financial institution during the party's lifetime, it must be honored. Financial institutions do not understand this but their attorneys should. Get them to call their attorneys to explain it to them rather than spending your money to have me explain it to them. If I have to explain this to them, I will have to charge you for doing so.

There is an issue as to whether Section 113.157 affects stock and bond accounts. Just make sure the brokerage firm has changed the account designations.

After you change the account designations, it is important to be sure your account is still insured by the FDIC. This may require you to move your assets to other financial institutions to keep your deposit insurance.

If you want the firm to prepare the notices, we will be happy to do so. We will have to charge you for the preparation of these notices and any follow up with the financial institutions at our normal hourly rates.

LAW FIRM

By: _____
Lawyer

NOTICE PURSUANT TO SECTION 113.157 OF THE TEXAS ESTATES CODE
AND ANY OTHER APPLICABLE LAW

[to be sent by certified mail, return receipt requested]

To: [Name of Financial Institution or brokerage concern]
[P.O. Box]
[City and State]
CMRRR No.

This notice is given pursuant to Section 113.157 of the TEXAS ESTATES CODE and any other applicable law. The undersigned do not want any of their accounts in the form of joint tenancy, joint tenancy with right of survivorship, community property with right of survivorship, P.O.D. or as "Trustee" for anyone. This applies to all accounts established now and in the future. Please change all account designations, immediately, so that no accounts are joint tenants, survivorship, P.O.D. or Trustee accounts and all accounts are in the undersigned's name, only, with the words "Separate Property" after the undersigned's name.

Do not revoke the account. Please make sure that the accounts remain insured. Please advise us if there is a problem with FDIC insurance.

If you do not understand this letter, please consult your attorney regarding the legal effect of this letter.

Sincerely yours,

_____ _____
(signature of party) (signature of party)

_____ _____
(typed name of party) (typed name of party)

(**FOR SEPARATE PROPERTY)**

NOTICE PURSUANT TO SECTION 113.157 OF THE TEXAS ESTATES CODE AND ANY OTHER APPLICABLE LAW

[to be sent by certified mail, return receipt requested]

To: _____ [Name of Financial Institution or brokerage concern]
_____ [P.O. Box]
_____ [City and State]
CMRRR No. _____

This notice is given pursuant to Section 113.157 of the TEXAS ESTATES CODE and any other applicable law. The undersigned does not want any of his or her accounts in the form of joint tenancy, joint tenancy with right of survivorship, community property with right of survivorship, P.O.D. or as "Trustee" for anyone. This applies to all accounts established now and in the future. Please change all account designations, immediately, so that no accounts are joint tenants, survivorship, P.O.D. or Trustee accounts and all accounts are in the undersigned's name, only, with the words "Separate Property" after the undersigned's name.

Do not revoke the account. Please make sure that the accounts remain insured. Please advise us if there is a problem with FDIC insurance.

If you do not understand this letter, please consult your attorney regarding the legal effect of this letter.

Sincerely yours,

_____
(Signature of Party)

_____
(Typed/Printed Name of Party)

APPENDIX DD
Sample Letter Regarding Portability and Filing a Federal Estate Tax Return

Ms. Mary Doe
12 Johnson Street
Anywhere, Texas

Re: *Estate of John Doe, Deceased, No. 2011, In County Court at Law of Washington County, Texas*

Dear Mary:

As you know and we have discussed, the law regarding the federal estate tax for individuals dying after 2010 is that a single individual has a $5,340,000 ($5,430,000 in 2015 and more in 2016) exclusion from the estate tax. A married couple can exclude $10,680,000 ($10,860,000 in 2015 and more in 2016) from the estate tax even if everything is left outright to the surviving spouse. This concept is called portability.

There are some problems with portability. Portability is based on whoever was your last surviving spouse. So, for example, the husband dies in 2014 and leaves everything to his wife. She now has a $10,680,000 exclusion, $5,340,000 of hers and $5,340,000 of her husband's. She remarries someone who has used up all of his $5,340,000 tax exclusion by making gifts to his children. Her second husband dies before her. At her death, she only has a $5,340,000 exclusion because her second husband was her last deceased spouse before she died and he had used up all of his exclusion. Her first husband's exclusion does not count because she remarried and her second husband predeceased her.

The exclusion is also available for gifts made during your lifetime. Please let me know if you want to discuss this further.

There are several issues regarding portability. One is that, under current law, portability only covers whatever the estate tax exclusion is at the death of the second spouse. For example, a husband dies and leaves his wife everything. The wife has a $10,680,000 exclusion after her husband dies leaving her everything. If the government takes the estate tax exclusions back to a lower amount (say $3 million per person), however, at the wife's death, she would only have a $6 million exclusion, $3 million for her and $3 million for her husband. There are no proposals to reduce the exclusion at this point.

Another issue is inflation. Portability does not have an inflation adjustment. For the deceased spouse's portion, it will be whatever it was at the first spouse's death. Creditor protection is also an issue. If the surviving spouse owns all the assets outright, there is no creditor protection that would be available in a trust.

There is also no portability for the generation-skipping tax exemption. If the assets are in a credit trust and generation-skipping tax exemption is assigned to the trust, they can escape federal estate taxation for several generations. That is not the case when you rely strictly on portability

The way to avoid the downside of portability is by setting up what are called bypass trusts or credit trusts in a will or revocable trust. The credit trust will take maximum advantage of the tax free exclusion available at the death of the first spouse to die and will preserve it for the surviving spouse. The trust can take advantage of the generation-skipping tax exemption available to the first spouse. Also, once the assets are in a properly drafted credit trust, they escape estate taxation no matter what they are worth at the death of the surviving spouse.

Option 1. No Credit Trust

In your situation, however, John's Will had no credit trust. In order to take advantage of your deceased spouse's exclusion through portability, we have to file a federal estate tax return even though federal estate tax is not due.

Option 2. Credit Trust

John's will contained a credit trust. The portion of his estate that passed to the credit trust is fully sheltered from future estate taxation because of the credit trust. If you file a federal estate tax return, however, you can take advantage of an additional $XXXXXXX of exclusion from the estate tax from John. If you do not file the return, you cannot take advantage of this additional exclusion from the estate tax.

Based on the size of your estate now and assuming no appreciation or depreciation in value, under current law, you would have a total estate at your death of approximately $XXXXXX that would be subject to an estate tax. This is below the federal estate tax exclusion just for you of the $5,340,000 amount.

The problem is we don't know what the future holds. None of us know what the tax laws will be and whether your property will appreciate or depreciate in value. To preserve your spouse's full exclusion of approximately $5,340,000, we will have to timely file a federal estate tax return (IRS Form 706). The return is due nine months from the date of John's death. The due date can be extended an additional six months. A return that is not timely filed will not preserve portability.

The decision about whether or not to do this is, of course, up to you. There is an expense involved of preparing the estate tax return and filling it out although much of the work has been done because we have values and descriptions of the assets.

When you have a chance, please give me a call or make an appointment to come in to discuss this. Because of the deadline for filing the estate tax return is _____, I need to know something before _____, 20___.

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