



GUIDEBOOK TO PRACTICE FORMS AND LETTERS

Fee Agreements

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INTRODUCTION

It is a proven fact that attorneys who correspond with their clients regularly, and make sure their services and fees are reduced to writing have fewer complaints filed against them, fewer problems with their clients, and provide better legal services. Letters set the stage for the relationship and responsibilities between the parties. They protect both the lawyer and the client by providing a clear written description of the client's relationship with counsel. Many legal malpractice claims are successfully defended because the lawyer can produce a letter which establishes that he or she did not have responsibilities to the client. As such, it is wise to delineate these relationships in writing.

Using practice letters and letters does not have to be time consuming, difficult or offensive to the client. On the contrary, most clients welcome (and expect) a clear written description of their association with their lawyer. Providing these letters to potential clients will clarify and formalize your own relationship to the client, or potential client. This practice will also increase the likelihood that the legal matter is entered into your conflict of interest and calendaring systems.

This guidebook is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and practices. Individual cases require individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

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IMPORTANCE OF FEE AGREEMENTS

Fee agreements are essential to avoid misunderstandings between the client and the lawyer. As these questions suggest, one common mistake on fee agreements is to leave out the specifics on costs to be billed to the client. Explain in detail the nature of the fee arrangement (e.g., straight hourly fee, hybrid hourly, statutory fee). Watch out for misunderstandings when a client pays an advance fee retainer. It's easy for the client to misread the situation and to mistakenly get the impression that the retainer covered the entire fee instead of being an advance on the final bill. One of the toughest things for an unsophisticated client to understand is the contingency fee. The specifics of your contingency fee arrangement need to be very carefully spelled out in a fee agreement. Be precise about how costs and any other financial issues are to be handled along with the effects on the client's recover. For example, if costs are to be deducted before the contingency fee is calculated, that should be clearly stated.

CHECKLIST FOR FEE AGREEMENTS

When you decide to accept representation, it is essential that the scope of your representation is clear. Once you have decided that you are prepared to represent the client in a particular matter, you are ready to begin building a relationship with that client. Even if you already have a relationship with the client, but are taking on a new case, it is essential that you communicate with him or her to establish a mutual understanding of the nature and scope of the matter to be pursued. From the outset, you will need to think through the type of legal service you will provide and how you will provide it. The Checklist for Engagement/Retainer Agreement lists points which should be canvassed with the client and then confirmed in writing in an "engagement letter agreement," also known as a "retainer letter agreement."

Checklist for Engagement/Retainer Letter

- Document
 - Language of retainer must be clear and understandable.
 - Document should provide for acknowledgment and acceptance of all of the terms by the client.
 - Specify that any changes to the terms of the letter agreement must be in writing.

- Parties to be Represented
 - Identify the client – obtain proper legal names for all persons and business entities.
 - Identify all other parties in matters.
 - If there are multiple clients, explain that the effect of attorney-client privilege does not apply as between them.
 - If conflict is being waived on consent, set out terms regarding consent.

Checklist for Engagement/Retainer Letter (continued)

- Client's Objectives and Strategy**
 - Identify the client's objectives and propose strategy to meet the objectives.
 - Outline the scope of representation and identify specificity of the retainer where it is limited.
 - Identify nature and degree of factual investigation to be made.
 - Explain ambit of legal analysis to be performed.
 - Outline key steps in the representation.
 - Provide an estimated time frame for all major work and identify critical points in time.

- Client Communications**
 - Set out line of communication and need for instructions. If there are multiple clients, set out the process for instructions and disclosure or need for ILA.
 - Confirm type of reporting needed by the client.

- Responsibilities of Lawyer, Staff and Client**
 - Identify significant areas of responsibility vis-à-vis you, the law firm, the client or a third party, and include permission from the client before incurring significant expenses with third parties such as experts or other service providers.
 - Define your level of authority and identify matters which specifically require the client's consent.
 - Explain and confirm delegation within your firm.

- Safeguarding Client Property/Investment of Funds**
 - Identify property being held at your law firm, confirm arrangements for safekeeping, and maintain detailed documentation of any transfers.
 - Confirm investment of any funds being held in trust.

- Fees and Expenses**
 - Identify the basis for the fees to be charged (e.g., fixed fee, hourly rates, blended option). If charges are on an hourly rate basis, the current rate for each lawyer and other time keeper assigned to the matter should be described along with an indication of whether rates are subject to change in the future.
 - Review the nature of the out-of-pocket disbursements to be billed and distinguish between internal expenses such as photocopying and long distance charges as opposed to charges from an outside vendor such as court fees, government searches and agency fees.
 - Set out the timing of rendering of accounts and period within which accounts are to be paid.
 - Identify the need for any financial commitment in advance (referred to as a financial retainer) and terms upon which funds are to be held/invested and drawn upon and replenished in the future.
 - Describe billing format and elicit any particular billing format requirements of the client, e.g., detailed statements – identify time keeper rates, tasks undertaken.
 - Outline consequences, if any, of late payment of accounts and circumstances under which the retainer will be terminated for non-payment.

- Grounds for Termination or Withdrawal of Services**
 - Set out grounds for your termination/withdrawal (e.g., failing to receive instructions or any other grounds).

ELEMENTS OF A FEE AGREEMENT

Remember that the representation agreement is typically the first written communication between a lawyer and a client. What does the lawyer want that communication to look like? A six-page, single-spaced representation agreement that sets forth in great detail all the ways in which the lawyer will ensure that the client pays his or her fees sends a message to the client about what lawyer considers most important: money. On the other hand, a brief representation agreement might not sufficiently explain the expectations of the lawyer and the client, which could lead to misunderstandings later on. Although hourly fee agreements by their nature tend to be longer than contingent or fixed fee agreements, the lawyer should consider the message he or she may send the client between the lines of the representation agreement.

When defining the attorney-client relationship, the attorney should avoid creating unrealistic expectations or ever guaranteeing the success of a case. Before presenting the client with any opinion as to the outcome of the case, make sure all the necessary research is complete. Neither the attorney nor the client will benefit from the creation of unattainable goals or unrealistic outcome projections. In the experience of Minnesota Lawyers Mutual, numerous attorneys have been sued by clients whose expectations were unrealistically raised only to be disappointed. Taking a conservative approach to case projections benefits both attorney and client.

A good agreement should include the following:

- **Scope of Representation and Client Identification.** The agreement must clearly identify the client. For example, whether the firm represents a partnership or an individual partner. Likewise, it should clearly define the scope of the work you will do for the client. Clearly defining the scope of your representation of the client will prevent later disputes as to the representation you thought you were accepting and what the client thought you were providing.
- **Fees and Expenses.** The agreement should set forth the fee arrangement and billing procedures so there are no misunderstandings regarding the client's responsibilities, including the payment of expenses. It should also provide for withdrawal from representation upon the client's failure to pay for services rendered, if allowable by law.
- **Retainers.** Retainers should be discussed in detail. Specifically, whether the retainer is used for costs and/or fees, the retainer amount and replenishment requirements, and whether the retainer account is interest bearing or non-interest bearing.

FEE STRUCTURES

The writings on legal billing (most often alternative billing) list as many as fourteen different fee structures, but many of these are various blends of the basic fee structures. The four that are not most commonly used are: contingent, fixed, hourly, and retainer.

Fixed Fees. Fixed fee structure is where the attorney charges the client a flat rate for the work performed, regardless of the time it takes to complete the project. For example, an attorney may

charge a client \$1,000 for a divorce or \$1,000 for a business agreement. Providing a fixed price for legal work is one way of adding value to the service. Anecdotal evidence suggests that clients prefer a fixed price even if it is slightly higher than an estimated price based on an hourly rate. Another variation on the fixed fee is sometimes referred to as a “retainer” fee structure. The attorney can charge a flat fee for making him or herself available and providing legal work on demand.

Contingent Fee. A contingent fee arrangement is where the attorney represents a client in a matter and is paid only if and when the client recovers monetary damages. This fee structure is used almost exclusively in litigation and predominantly in plaintiff’s cases. The attorney pays all of the out-of-pocket expenses of the case and is paid only if the client recovers a monetary award. The contingent fee does not however have to be used only in litigation. There are many ways to use the contingent fee in transactional matters. For example, a bonus is paid if the matter is concluded by a certain prescribed date. In these instances, it is imperative to be very clear about what the contingency is and how it is triggered.

Hourly Billing. The hourly billing method is probably the oldest and most common fee structure. In this fee structure, the attorney charges the client an hourly rate for all services performed for the client.

Retainer. A retainer is a pre-paid amount paid by the client at the beginning of a matter or general representation that the attorney draws against as services are performed. The “retainer fee structure” is used to mean the fixed fee structure for recurring work. For example, an attorney performs services for a small corporation, covering preparing annual minutes and routine phone calls throughout the year. The small corporation may pay the attorney a “retainer” each month (i.e., a fixed fee) for those services. Some clients (often wealthy individuals) may pay the attorney a retainer to have the attorney available and provide services on demand.

SAMPLE FORMS & LETTERS

Following are samples of:

- Basic Hourly Letter (Form CE01)
- Potential Conflict of Interest Hourly Letter (Form CE02)
- Hourly Rate Fee Letter (Form CE-03)
- Hourly Rate Letter (Form CE04)
- Contingent Fee Letter (Form CE06)
- Limited Scope Representation Letter (Form CE07)
- Contingent Fee, Short Form (Form CE08)
- Contingent Fee, Long Form (Form CE09)

[Date]

[Name and Address of Client]

Dear [Client]:

We are pleased to have the opportunity to represent you. You have asked us to represent you.

FEES AND COSTS

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

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

It is not always possible to be immediately available to respond to your questions and concerns about your case. The nature of a litigation practice naturally involves a significant amount of time in court or in discovery depositions during which time we will be unavailable. We will do our best to respond to you as quickly as we possibly can. We will use fax and e-mail to communicate with you with your permission. These tools have potential problems for use in the workplace as most companies have e-mail and fax policies that stipulate that such communication tools are the property of the company. Therefore, you should be aware that as a result, communications using company e-mail or fax may not be protected by the attorney/client privilege.

Our performance of legal services may involve direct cost that we will incur on your behalf. These disbursements and charges include items incurred and paid by us on your behalf such as long distance telephone charges, postage, special mail or delivery charges, telex or telecopy charges, word processing, recording fees, transportation, meals, lodging and other cost necessary for out-of town travel, photocopying, and use of other service providers such as printers or experts, if needed. In litigated matters, we include payment we must make for filing fees, court cost, process servers, court reports, witness fees, and similar cost. These charges may include the actual cost plus administrative charges for the uses of computerized legal research systems, including "Lexis" and "Westlaw" that in our experience significantly reduce lawyer research time. If the time pressures of an assignment require overtime work by our nonprofessional staff that is directly attributable to that assignment, we charge the client for the

cost that we incur. We may also incur charges from local counsel from whom we seek information on your behalf. Where we pay these charges, they will be included on your invoice. However, to the extent practical we may ask you to pay charges directly to outside vendors.

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

ADDITIONAL TERMS

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

SECURITY AND INTEGRITY OF COMMUNICATIONS

During the course of our representation, each of us may have the opportunity to correspond using numerous communication mediums. In addition to traditional delivery methods, such as postal service and telephone, constantly developing technology offers further means that are generally accepted and used by individuals and businesses. For convenience and expediency, each of us may utilize these other means, which include facsimile, cellular and cordless telephones, and electronic mail. It is important to understand that these mediums are not necessarily secure from interception or alteration by others and may not receive protection under state or federal law. Transmitted information is capable of interception and immediate reproduction, alteration, and widespread distribution at relatively little cost or effort. (Name of Firm) intends to use these mediums to communicate with you and others during the course of our representation. However, we should each be aware of the security concerns and take these issues into consideration when using these means of communication.

PRIVACY POLICY

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

NONPUBLIC PERSONAL INFORMATION WE COLLECT

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

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

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

CONFIDENTIALITY AND SECURITY

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

TERMINATION OF REPRESENTATION

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

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

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

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

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

Very truly yours,

[Name]

SEEN AND AGREED TO

this _____ of _____, 20____.

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**HOURLY, POTENTIAL CONFLICT OF INTEREST
(Form CE02)**

[Date]

[Name and Address of Client]

Dear _____:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

[Name of Firm]

By _____
[Name of Attorney]

I understand and accept the terms of this Agreement.

[Name of Client]

Date of Acceptance

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

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[Date]

[Name and Address]

Dear _____:

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

SCOPE OF SERVICE AND RETAINER

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

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

CLIENT COOPERATION

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

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

GENERAL LAWSUIT INFORMATION

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

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

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

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

LEGAL FEES, EXPENSES AND BILLINGS

Fees

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

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

The above hourly rates are subject to adjustment in _____ of every calendar year without prior notice to _____. Current billing rate schedules are available upon request. Hourly billing will be to the tenth (1/10th) of an hour for time spent on _____ matter. “Time spent” includes telephone and personal conferences with both _____ and assigned firm personnel, legal

research, conferences, court appearances, discovery, preparation and review of necessary documents and correspondence.

Although our fees are primarily based upon the value of the time actually spent on your matter, the following factors are also considered when determining our fee: a) the nature of the legal problem, including its novelty, complexity and importance; b) preclusion of other employment; c) the amount or consequence at stake and the result obtained; d) time limitations imposed by the client or situation; e) the experience, reputation and ability of the attorney(s) retained; and f) the skill necessary to handle the matter correctly.

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

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

Costs and Disbursements

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

Billing

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

ASSIGNMENT OF FIRM PERSONNEL

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

WITHDRAWAL

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

BINDING AGREEMENT

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

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

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

Sincerely,

[Name]

ARBITRATION

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

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

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

[Firm Name]

By: _____

Its: _____ Date: _____

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ATTORNEY'S FEES

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

Fixed Fee of \$_____

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

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

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

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

Fee determined on all relevant factors

Minimum retainer of \$_____

Number of hours of attorney time covered by retainer is: _____

Other: _____

This office will bill you:

Monthly on the _____ of each month

Upon completion

Other arrangement: _____

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

RETAINERS

Retainer of \$_____ is to be applied

towards fee and out-of-pocket expenses.

towards fee.

towards out-of-pocket expenses.

Retainer is refundable.

Retainer is nonrefundable.

COSTS AND EXPENSES

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

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

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

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

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

Dated: _____ By: _____
Attorney at Law

The above is understood and agreed to by me.

Dated: _____ By: _____
Client

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[Date]

[Name and Address]

Dear _____:

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

SCOPE OF SERVICE

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

CLIENT COOPERATION

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

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

LEGAL FEES, COSTS AND DISBURSEMENTS

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

GENERAL LAWSUIT INFORMATION

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

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

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

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

ASSIGNMENT OF FIRM PERSONNEL

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

WITHDRAWAL

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

BINDING AGREEMENT

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

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

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

Sincerely,

[Name]

ARBITRATION

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

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

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

[Name]

Date: _____

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**LIMITED SCOPE REPRESENTATION
(Form CE07)**

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

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

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

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

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

- a. _____ Legal advice: office visits, telephone calls, fax, mail, e-mail;
- b. _____ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
- c. _____ Evaluation of Client’s self-diagnosis of the case and advising Client about legal rights and responsibilities;
- d. _____ Guidance and procedural information for filing or serving documents;
- e. _____ Review pleadings and other documents prepared by Client;
- f. _____ Suggest documents to be prepared;
- g. _____ Draft pleadings, motions and other documents;
- h. _____ Factual investigation: contacting witnesses, public record searches, in-depth interview of Client;
- i. _____ Assistance with computer support programs;

- j. _____ Legal research and analysis;
- k. _____ Evaluate settlement options;
- l. _____ Discovery: interrogatories, depositions, requests for document production;
- m. _____ Planning for negotiations, including simulated role-playing with Client;
- n. _____ Planning for court appearances, including simulated role-playing with Client;
- o. _____ Standby telephone assistance during negotiations or settlement conferences;
- p. _____ Backup and troubleshooting during the hearing or trial;
- q. _____ Referring Client to expert witnesses, special masters or other counsel;
- r. _____ Counseling Client about an appeal;
- s. _____ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
- t. _____ Provide preventive planning and/or schedule legal check-ups;
- u. _____ Other: _____

4. **Attorney’s Responsibilities:** Attorney will exercise due professional care and observe strict confidentiality in providing the services identified by the word “YES” in Paragraph 4 above. In providing those services, Attorney WILL NOT:

- a. Represent, speak for, appear for, or sign papers on the Client’s behalf;
- b. Become attorney of record on any court papers or litigate on Client’s behalf;
- c. Provide services which are not identified by the word ‘YES’ in Paragraph 4;
- d. Make decisions for Client about any aspect of the case;
- e. Protect Client’s property by means of restraining orders while discovery and/or negotiations are in progress.
- f. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement, and initialed and dated by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client’s Attorney of record for handling the entire case on the Client’s behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact, and the Attorney’s additional responsibilities in the Client’s case.
- g. **Right to Seek Advice of Other Counsel:** Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in paragraph 3, which are identified with the word ‘NO’ at any time during or following this Ongoing Consulting Agreement.

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

a. **Hourly Fee:**

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

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

b. **Payment from Deposit:**

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

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

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

c. Should it be necessary to institute any legal action for the enforcement of this agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney fees incurred in such action from the other party.

6. **Discharge of Attorney:** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided and to reimburse Attorney for all costs incurred prior to such discharge.

7. **Withdrawal of Attorney:** Attorney may withdraw at any time as permitted under the Minnesota Rules of Professional Conduct. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: a) The client consents; b) the

client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and c) the client fails to pay Attorney's fees or costs as required by his or her agreement with the Attorney.

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

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

8. Resolving Disputes Between Client and Attorney

- a. **Notice and Negotiation:** If any dispute between Client and Attorney arises under this agreement regarding the payment of fees, Attorney's professional services rendered to or for Client, and any other disagreement, regardless of the nature of the facts or legal theories involved, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Client or Attorney that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.
 - b. **Mediation:** If the dispute is not resolved through negotiation, Client and Attorney will attempt, within fifteen (15) days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within fifteen (15) days. If the Attorney and Client cannot agree on a neutral mediator, they will request that the _____ select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of the mediation, provided that the payment of costs and any attorney's fees may be mediated. Nothing in this provision shall constitute a waiver of Client's rights to State Bar fee arbitration or a trial de novo after a State Bar fee arbitration.
9. **Amendments and Additional Services:** This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and attached to this agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 4, a photocopy of Paragraph 4 which clearly denotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.
10. **Severability in Event of Partial Invalidity:** If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.
11. **Statement of Client's Understanding:** I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:
- a. _____ I have accurately described the nature of my case in paragraph 1.
 - b. _____ I will be responsible for the conduct of my case and will be in control of my case at all times as described in paragraph 2.
 - c. _____ The services Attorney has agreed to perform in my case are identified by the word 'YES' in paragraph 3. I take responsibility for all other aspects of my case.

- d. _____ I understand and agree to the limitations on the scope of Attorney's responsibilities identified in paragraph 4 and understand Attorney will not be responsible for my conduct in handling my case.
- e. _____ I will pay Attorney for services as described in paragraph 5.
- f. _____ I will resolve any disputes I may have with Attorney under this Agreement in the manner described in paragraph 8.
- g. _____ I understand that any amendments to this Agreement shall be in writing, as described in paragraph 9.
- h. _____ I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client before I sign this Agreement.

(Client)

(Attorney)

(Date)

(Date)

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**CONTINGENT FEE, SHORT FORM
(Form CE08)**

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

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

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

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

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

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

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

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

Date: _____

[Name] [On behalf of _____]

Date: _____

[Name]

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**CONTINGENT FEE, LONG FORM
(Form CE09)**

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

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

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

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

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

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

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

ALTERNATE ONE

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

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

ALTERNATE TWO

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

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

Lawyer's fee shall be calculated as follows:

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

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

7. **COSTS AND EXPENSES**

Lawyer will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs and expenses paid or owed by Client in connection with this matter, or which have been advanced by Lawyer on Client's behalf and which have not

been previously paid or reimbursed to Lawyer. Costs and expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses and consultants' fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Lawyer's cost.

In-office photocopying _____ /page

Facsimile charges _____ /page

Mileage _____ /mile

Other: _____

ALTERNATE ONE

Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. Lawyer will consult with client on the selection of any expert witnesses, consultants, etc., to be hired and their charges.

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

ALTERNATE TWO

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

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

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

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

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

- BILLING STATEMENTS.** Lawyer will send Client periodic billing statements for costs and expenses incurred in connection with this matter. Each statement is to be paid in full within _____ days of the date of such statement.

9. **DISCHARGE AND WITHDRAWAL.** Client may discharge Lawyer at any time, upon written notice to Lawyer. Lawyer may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no court action has been filed, for good cause and upon reasonable notice to Client. Good cause includes Client's breach of this Agreement, refusal to cooperate with Lawyer or to follow Lawyer's advice on a material matter or any fact or circumstance that would render Lawyer's continuing representation unlawful or unethical.

Notwithstanding Lawyer's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Lawyer for all costs incurred prior to the termination. In the event that there is any recovery obtained by Client after conclusion of Lawyer's services, Client remains obligated to pay Lawyer for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

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

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

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

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

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

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

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

DATED: _____

Client Name _____

Address _____

Phone _____

DATED: _____

LAW FIRM

By _____

[Name], Partner

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OTHER CLAUSES FOR CONSIDERATION IN FEE AGREEMENTS

1. RESOLUTION OF A FEE DISPUTE

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

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

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

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

(Client's Initials)

(Lawyer's Initials)

2. INTEREST CLAUSE

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

3. REPLENISHING DEPOSIT (ADVANCED FEE)

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

4. OTHER PAYOR CLAUSE-PERSONAL

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

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

5. “OTHER LAWYER” CLAUSE-CONTINGENCY

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

6. SUCCESSOR LAWYER CLAUSE

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

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

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