

ENGAGEMENT AGREEMENTS:

**The Top 20 Country Countdown with
Tips for Ethical Compliance**

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Profile

Diane Dillard is a Board Certified Commercial Real Estate Attorney who practiced law in Houston, Texas for 23 years prior to moving to Brownsville, Texas when her husband, Andrew Hanen, was appointed as a Federal District Judge for the Southern District of Texas, Brownsville Division. Ms. Dillard has been an Adjunct Professor at South Texas College of Law (Real Estate Development and Texas Land Titles) and an Adjunct Professor at the University of Texas at Brownsville (Business Law). She frequently speaks and writes on real estate law topics for the State Bar of Texas, various Texas law schools, the American Bar Association, and the American College of Real Estate Attorneys.

Experience

The Dillard Law Firm — 1998 - Present

Ms. Dillard practiced as a solo practitioner in Houston, and later in Brownsville. She has continued to represent clients on commercial real estate matters.

Dillard & Ray, Houston, Texas — 1987 - 1998

Founded law firm catering to clients in the real estate industry. Ms. Dillard's clients included national, regional and local developers who followed her to the new firm. She was involved with the purchase, leasing, and sale of real property from raw land to high-rise office buildings. She also represented new clients, including developers of condominium high rises, regional malls, apartment complexes, office buildings, apartment buildings, and retail centers. (The law firm name changed over the years to include additional new partners, with its last variation being Dillard, LeBarron & Brasier.)

Vinson & Elkins, Houston, Texas — 1979 -1987

As an Associate in the Real Estate Section of Vinson & Elkins, Ms. Dillard was trained by well-recognized real estate attorneys on a variety of significant transactions. She became the lead lawyer for numerous clients and directed younger associates in connection with both projects and transactions.

Education

Baylor University School of Law - JD, Cum Laude - 1979

Baylor University - BA, Magnum Cum Laude - 1976

Memberships

American College of Real Estate Attorneys (Elected 1993)

State Bar of Texas and The Real Estate Probate Trust Law Section (Chair of this 5,000 member section in 2000 - 2001)

Baylor University Alumni Association (President 1998-1999)

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ENGAGEMENT AGREEMENTS: The Top 20 Country Countdown with Tips for Ethical Compliance

It is easy to postpone your own legal needs when demanding clients (and hopefully paying clients) are fighting for your attention. Procrastination, I believe, is the main reason lawyers sometimes fail to use their skills to draft an effective Engagement Agreement for their own use. For the next few minutes, I am asking that you focus your attention on your own legal needs.

So, what does an Engagement Agreement need to be effective? Obviously, the agreement must be tailor-made for the circumstances. However, it is extremely helpful to have a basic form agreement that:

- Clearly explains the terms and conditions of your relationship with your client;
- Complies with the Texas Disciplinary Rules of Professional Conduct (“Texas Rules”);
- Increases the likelihood that you will be paid for your legal services; and
- Protects you from lawsuits to the extent that it is legal, ethical and appropriate.

There are several resources that will help you in this task.

First, I highly recommend the Texas Real Estate Forms Manual (“Forms Manual”) that is written and updated by the Texas Real Estate Forms Committee (“Committee”). Chapter 1 of the Forms Manual is dedicated to practical ethics and contains well thought out forms that are the product of some amazing brainpower. With the gracious permission of Texas State Bar Books and the Committee, I have included many of these forms as exhibits to this paper for your use.

Second, the Real Estate Probate and Trust Law Section of the Texas State Bar (“REPTL”) provides to its members a free on-line CLE Library that can be searched by topic, course or author. The REPTL website address is www.reptl.org.

Third, the Texas Center for Legal Ethics (“Center”) provides on its website the text of all opinions of the Supreme Court Professionalism Committee. These Texas Ethics Opinions may be searched by opinion number or by keywords. The website address for the Center is www.legalethictexas.com. Licensed attorneys may also call the Center at 877-953-5535 for access to opinions.

The advice and forms¹ contained in this article are arranged chronologically from the initial potential client interview to the termination of the attorney client –relationship. Although chronological, I have used a 20 numbered countdown similar to the familiar countdown used to present the top 20 most popular songs of the week. Why fuse practical legal ethics with Country Music? This speech is scheduled at 3:00 pm on Friday, as the last speech of the last day of the 2013 Real Estate Drafting Course. Need I say more?

20. *Should Have Said No* Taylor Swift²

Screen and evaluate all potential clients. Before you even consider an engagement agreement, determine if you will represent the client in the proposed matter. A lawyer is not required to represent everyone who seeks his advice. In addition, a lawyer should not accept representation in a matter unless he/she can perform competently,

¹ In the spirit in which this paper is presented, the author disclaims everything in it. No warranties express or implied are made. I do not purport to give legal advice nor am I attempting an in-depth discussion of all the precautions an attorney should consider. None of the attached forms and sample letters will completely exonerate the attorney using them in any given situation. Nevertheless one can hope that thoughtful use of the information presented here will memorialize the attorney’s good faith attempt to comply with all applicable rules of professional conduct.

² *Should Have Said No* was written and performed by Taylor Swift.

promptly and without a conflict of interest. See generally Texas Disciplinary Rules of Professional Conduct (“Texas Rules”) 1.01, 1.06, 1.07, 1.08, 1.09, and 1.15.

If your instincts tell you a prospective client or prospective business may cause you trouble, follow your instincts. What characteristics of a potential client or potential business may cause a red flag?

- The client who is always in a hurry.
- The client who makes unreasonable demands.
- The client who does not have the financial ability to pay you.
- The client who is not willing to pay you without a battle.
- The client who dislikes lawyers.
- The client who has been unsatisfied with several attorneys.
- The client with a matter outside your expertise.
- The client with a matter that is too big or too small.
- The client who is so unsophisticated that he may have trouble understanding the transaction, his options and the ramifications of his decisions.
- The client who suffers from mental deficiencies to the degree that he cannot make informed decisions or remember decisions he has made.
- The client you don’t like.

Obviously, you cannot turn down all prospective clients, but being choosy is important. Properly screening and evaluating potential business and clients may be the single most important task of a lawyer seeking to minimize malpractice exposure.

19.
Here’s a Quarter
(Call Someone Who Cares)
Travis Tritt³

Make it clear that you are not their attorney. When discussing the possibility of representing a potential client, you should clearly tell them that you are not their attorney unless and until you both sign an engagement agreement and the potential client pays the requested deposit (if applicable). In some instances, you may want to put this in writing. In addition if you decide to turn down the business, you should clearly communicate this to the potential client and consider sending a letter that specifically states that you have not agreed to represent the potential client. Why is this advisable?

The attorney-client relationship is one of agent and principal. Fiduciary obligations and responsibilities are imposed on the attorney. *Duval County Ranch Co. v. Alamo Lumber Co.*, 663 S.W. 2nd 627, 633 (Tex. App.—Amarillo 1983, writ ref’d n.r.e.). It is a contractual relationship whereby an attorney agrees to render professional services for a client. *Mellon Serv. Co. v. Touche Ross & Co.*, 17 S.W.3rd 432, 437 (Tex.App. -Houston [1st Dist.] 2000, no pet.). The relationship may be expressly created by contract, or it may be implied from the actions of the parties. *Sutton v. Estate of McCormick*, 47 S.W.3rd 179, 182 (Tex. App.-Corpus Christi 2001, no pet.); *Vinson & Elkins v. Moran*, 946 S.W.2nd 381, 405 (Tex. App.-Houston [14th Dist.] 1997, writ dism’d by agr.). For example, an attorney-client relationship can be implied from the party’s conduct and from the attorney’s gratuitous legal services. *Sotelo v. Stewart*, 281 S.W. 3rd 76 (Tex. App.—El Paso 2008, pet. den.).

A question of fact exists when the evidence does not conclusively establish the existence of an attorney-client relationship. *Sutton v. Estate of McCormick*, 47 S.W.3^d 179, 182; *Kanow v. Brownshadel*, 691 S.W.2nd 804,805-06 (Tex. App.-Houston [1st Dist.] 1985, no writ). In *Nolan v. Foreman*, 665 F.2nd 738, 739 n.3 (5th Cir.1982), Percy Foreman argued that there was no attorney-client relationship prior to reaching a fee agreement. The Court, however, held that the attorney’s fiduciary duties attached when Forman entered into discussion of the client’s legal problems with a view toward undertaking representation. In *Tanox v. Akin, Gump, Strauss, Hauer & Feld, L.L.P.*,

³ *Here’s a Quarter (Call Someone Who Cares)* was written and performed by Travis Tritt.

105 S.W.3rd 244 (Tex. App. –Houston[14th Dist.] pet. den.), the Court held that the existence of the attorney-client relationship before an engagement agreement is signed is a question of fact. The Court’s opinion on page 254 contains an excellent discussion of the factors that establish an attorney-client relationship. *Id.* at 254

Many attorneys include a provision in their engagement agreements similar to the following:

Our policy requires that before we can represent you as a client, you must sign a copy of this Engagement Agreement agreeing to the terms and conditions set out herein and pay the requested deposit.

While this is helpful, it is probably not conclusive proof that no attorney-client relationship begins until the engagement agreement is signed and the deposit is paid. Reliance on this language alone is risky when the attorney is currently representing the client on another matter or when the client is unsophisticated.

The better practice is to clarify in writing that you do not represent a party. An **Example Non-Representation Letter** is located in the Texas Real Estate Forms Manual (“Forms Manual”) as Form 1-1 and attached hereto as **Exhibit A**. Remember that this is only an example. You will need to tailor your own letter for each situation, paying attention to the facts of the situation (Have you previously represented them in another matter? Are they sophisticated business people who are familiar with engaging attorneys for legal representation? Are they relatively unsophisticated and unfamiliar with hiring attorneys to represent them?)

18.

Doesn’t Anybody Know My Name Waylon Jennings⁴

Identify your client. The first step when accepting business is to determine who is the client in this particular transaction. Although such a determination may appear obvious, in many real estate transactions this determination is very difficult. Remember, you cannot represent “the deal.” This step is critical when you run your conflicts check and draft your engagement agreement.

17.

Have You Forgotten Darryl Worley⁵

Check conflicts. Do not simply rely on your memory. It is advisable to have a standard procedure for identifying conflicts. This identification can be particularly difficult when representing real estate clients. Ideally, the conflict check should include not only the name of the client, but also the principals and the property. Do not overlook personal conflicts.

16.

Whose Bed Have Your Boots Been Under? Shania Twain⁶

Disclose conflicts of interest. An attorney must disclose all possible conflicts prior to accepting employment and those that arise during the course of employment. See generally Texas Rule 1.06. This disclosure requirement includes all personal conflicts, conflicts with current clients and any conflict with a past client. Texas Rule 1.09

⁴ *Doesn’t Anybody Know My Name?* was written by Rod McKuen and performed by Waylon Jennings.

⁵ *Have You Forgotten?* was co-written by Wynn Varble and Darryl Worley; and performed by Darryl Worley.

⁶ *Whose Bed Have Your Boots Been Under?* was co-written by Mutt Lange and Shania Twain; and performed by Shania Twain.

specifically applies to former clients. It is a good idea to disclose conflicts in your engagement agreement or in a separate letter to be signed by the client. It is also advisable to get a written waiver from your former client or the current client that is not represented in the transaction.

According to Texas Rule 1.06(c), once a lawyer reasonably believes that representation of each client will not be materially affected, he /she must obtain the consent of each potentially affected client: “...after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.”

Comment 8 to Texas Rule 1.06 provides in part that:

Disclosure and consent are not formalities. Disclosure sufficient for sophisticated clients may not be sufficient to permit less sophisticated clients to provide fully informed consent. While it is not required that the consent be in writing, it would be prudent for the lawyer to provide potential dual clients with at least a written summary of the considerations disclosed.

Thus, it is clear that disclosures need to be tailor-made not only for the situation, but also for the specific client. It may be appropriate to advise an unsophisticated client to consult an attorney before executing the consent. The Forms Manual provides several helpful examples that can be utilized as a place to start when drafting the specific consent that your situation and client require. An Example Disclosure and Consent Letter to a Potential Client is located in the Forms Manual as Form 1-2 and attached hereto as Exhibit B, An Example Disclosure and Waiver Letter to a Former Client is located in the Forms Manual as Form 1-4 and attached hereto as Exhibit C.

15. *It's a Cheating Situation* Moe Bandy⁷

Be aware of situations in which real estate attorneys face conflicts. While a thorough discussion of conflicts of interest is outside the scope of this paper, it is helpful to note some of the frequent situations in which real estate attorneys face conflicts, such as:

- Corporation/Officers
- Corporation/Affiliated Company (e.g. parent, subsidiary or sister company)
- Attorneys as Directors
- Partnership/Partners
- Limited Partnership/General Partner/Limited Partners
- Entity to be created/principals of entity
- Borrower/Guarantor
- Members of same family
- Attorney as intermediary/Texas Rule 1.07

Texas Rule 1.12 (a) 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.

In addition, Texas Rule 1.12(e) provides as follows:

In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the

⁷ *It's a Cheating Situation* was co-written by Curly Putman and Sonny Throckmorton; and performed by Moe Bandy.

organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when the explanation appears reasonably necessary to avoid a misunderstanding on their part.

An **Example Letter of Explanation and Consent for an Existing Entity** is located in the Forms Manual as Form 1-5 and attached hereto as **Exhibit D**.

Texas Rule 1.07 is the rule that applies when multiple clients ask a lawyer to represent all of their interests in a specific matter. Prior to accepting this type of representation, please carefully read Texas Rule 1.07 that requires client consent. An **Example Consent to Intermediary Representation** is located in the Forms Manual as Form 1-7 and attached hereto as **Exhibit E**.

14.

Holding Her and Loving You Earle Thomas Conley⁸

Is it permissible to represent a client whose fees are being paid by a third party? Texas Rule 1.08(e) basically allows an attorney to accept compensation from a third-party for representing a client if the client consents and the arrangement does not interfere with the lawyer's independent judgment or with the client-lawyer relationship. This is always a conflict that should be carefully explained. Some arrangements are fairly straightforward. However, some situations are convoluted. For example, if you have been hired to create an entity that you will represent, but your fees will be paid by the principals of the soon to be created entity, you need to document this. In addition to the requirements of Texas Rule 1.08(e), you will need to address practical issues. To whom will you send the bill? Is the bill to be allocated among the principals? Are all the principals jointly and severally liable for the full payment of your fees and expenses? If your initial engagement agreement is with the principals directing you to form the entity and providing for payment of your fees, you may wish to replace the engagement letter once the entity is formed. The new engagement agreement should be executed by the new entity. It should identify the entity as your client and disclose that you do not represent the principals, even if they continue to pay or guarantee payment of your fees.

The Forms Manual contains an **Example Letter of Consent to Multiple-Representation in Organizing Corporation and Acting as its General Counsel** as its Form 1-6. This form is attached as **Exhibit F**.

Similar considerations are needed when a client's fees are being guaranteed by a third-party. **Exhibit G** is a **Sample Guaranty Provision** that may be added to your Engagement Agreement. This Sample Guaranty Provision, with minor revisions, comes from R. Hal Moorman's *Rules of Engagement: Applying the Disciplinary Rules to Your Probate and Estate Planning Practice*, State Bar of Texas, 35th Annual Advanced Estate Planning and Probate Course, 2011, pp 21-22.

13.

Welcome to the Fishbowl Kenny Chesney⁹

Is there confidentiality among constituents in Multiple-Representations and Intermediary situations? One of the difficult problems in Multiple-Representation and Intermediary situations is attorney-client privilege. This is an issue that needs to be addressed in your consent letter and/or your Engagement Agreement. The attorney needs to clearly explain that all information disclosed to the attorney by one of the constituents will be disclosed by the attorney to all of the constituents. Each constituent must understand that if he/she does not want the other constituents to be aware of certain information, then the constituent should not provide the information to the attorney. Sample language is contained in Paragraph 3 of **Exhibit E** and in Paragraph 4 of **Exhibit F**.

⁸ *Holding Her and Loving You* was co-written by Walt Aldridge and Tom Brasfield; and performed by Earle Thomas Conley.

⁹ *Welcome to the Fishbowl* was written and performed by Kenny Chesney.

12. *Mind Your Own Business* Hank Williams¹⁰

Should you do business with a client? Business attorneys are frequently sued in situations where the attorney represents a client in a business transaction in which the attorney is personally involved. Texas Rule 1.08(a) provides:

A lawyer shall not enter into a business transaction with a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client; (2) the client is given reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.

It should be noted, however, that the Comment to Rule 1.08 indicates that Rule 1.08(a) does not apply to standard commercial transactions between the lawyer and the client for products or services the client generally markets to others, since the lawyer has no advantage in dealing with the client.

If Rule 1.08(a) is not enough to dissuade you from doing business with a client, ask yourself the following questions:

- Do you want to owe the person on the other side of a business deal the burdens of a fiduciary relationship?
- Do you have enough proof to overcome the presumption that a transaction in violation of this rule is presumed to be fraudulent?
- Does your malpractice insurance policy exclude business transactions with clients?

If you are determined to do business with your client, remember that Texas Rule 1.08(a) requires written consent. The Forms Manual contains an **Example Consent to do Business with a Client** as its Form 1-11. This form is attached hereto as **Exhibit H**.

11. *Write This Down* George Strait¹¹

Putting your fee arrangement in writing is always advisable. Even though a written agreement is not required for engagement of legal services (except in contingency fee matters), it is always advisable. Texas Rule 1.04(c) says:

When the lawyer has not regularly represented the client, the basis of rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. (emphasis added).

What should an engagement agreement address?

- Conflicts should be disclosed and consent obtained (unless you have already done this by separate letter).
- The identity of your client.

¹⁰*Mind Your Own Business* was written and performed by Hank Williams.

¹¹ *Write This Down* was co-written by Dana Hunt and Kent Robbins; and performed by George Strait.

- Consider stating that the attorney-client relationship does not begin unless and until both of you sign the Engagement Agreement and the deposit (if applicable) is paid.
- Explain the methodology for calculating your fee.
- Indicate the type of expenses that may be incurred and your expectation that the client will pay them.
- Identify how often you will bill the client.
- Identify the timetable for payment.
- Identify the deposit (retainer) that is required (if any) and explain whether the deposit is refundable.
- Identify whether the client may be required to make additional payments to the deposit.
- Consider charging overdue payments to the client's credit card.
- Describe what you will do if the client fails to pay.
- Limit the scope of your work and specifically exclude matters that will not be part of your representation.
- Consider limiting certain types of remedies and/or including alternative dispute provisions.
- Indicate what will be done with the client's file once the matter is concluded.
- Address termination of the attorney-client relationship.

It is helpful to have a standard form engagement agreement that can be customized to each situation. Three example Engagement Agreements are located in the Forms Manual as Form 1-8, Form 1-9, and Form 1-10, respectively. Each **Example Engagement Agreement** is attached hereto as **Exhibit I**, **Exhibit J**, and **Exhibit K**, respectively. Please note that some example engagement agreements include a copy of the Texas Lawyer's Creed. In addition, some include the Complaint Notice mandated by Section 81.079(b) of the Government Code, although this notice can be displayed elsewhere as provided in that section.

The engagement agreement should be signed by the client and by the attorney and placed in the client file. Why place it in the client file? It will be evidence to all working on the file that the engagement agreement has been signed and it will provide a convenient reference as to the terms of the engagement.

10. *If You Got the Money Honey, I've Got the Time* Willie Nelson¹²

Clearly explain the methodology for calculating your fee and the expenses that may be incurred. Texas Rule 1.04(a) prohibits a lawyer from charging an “unconscionable” fee. Comment 1 to this Texas Rule indicates that: “A lawyer in good conscience should not charge or collect more than a reasonable fee, although he may charge less or no fee at all.” Rule 1.04(b) addresses the factors that may be considered in determining reasonableness of a fee, but not in exclusion of other “relevant factors”. The list of factors includes:

- (1) **The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
- (2) **The likelihood, if apparent to the client, that 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 the legal services have been rendered.**

The most important thing to remember is that you need to thoroughly explain what is involved in your methodology for calculating your fee. Explain what expenses are charged to the client and what expenses are likely to be

¹² *If You Got the Money Honey, I've Got the Time* was co-written by Lefty Frizzell and Jim Beck; performed by Lefty Frizzell and later Willie Nelson.

incurred. Anticipate issues that may arise and address them head on. For example, address what will be charged while an attorney is traveling on behalf of the client. Address the frequency of the billing cycle and the client's obligation to pay timely. If the client is unsophisticated, the explanations may need to be more detailed. You may wish to consider providing language such as:

By your signature below, you acknowledge that, in addition to your having read this engagement agreement in its entirety, I have answered any questions that you may have concerning this engagement agreement, and that you understand this engagement agreement and consider it to be fair and reasonable. By your signature below, 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 engagement agreement. By signing below, you are additionally agreeing to the terms and conditions contained in this engagement agreement.

9.

If the Devil Danced in Empty Pockets He'd Have a Ball in Mine Joe Diffie¹³

Condition your performance on the payment of your fee. You deserve to be paid for your legal services. Texas Rule 1.15(b)(5) provides that a lawyer may withdraw his/her representation of a client if the client fails to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee and the lawyer provides a reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. See Paragraph 8 of **Exhibit I**, Paragraph 8 of **Exhibit J** and Paragraph 5 of **Exhibit K**. If the representation involves litigation, the court must approve the withdrawal.

8.

I Got Ocean Front Property in Arizona George Strait¹⁴

Identify the deposit (retainer) that is required (if any) and explain whether the deposit is refundable. It is important to explicitly explain whether a deposit will be required, whether or not it is refundable, and what the purpose of the deposit will be. Professional Ethics Committee Opinion 611 (September 2011) examined the issue of whether the Texas Rules permit a lawyer to include in an engagement agreement a requirement for the client to pay a "non-refundable retainer".

A legal fee relating to future services is a non-refundable retainer at the time received only if the fee in its entirety is a reasonable fee to secure the availability of a lawyer's future services and compensate the lawyer for the preclusion of other employment that results from the acceptance of employment for the client. A non-refundable retainer meeting this standard and agreed to by the client is earned at the time it is received and may be deposited in the lawyer's operating account..... A lawyer is not permitted to enter into an agreement with a client for a payment that is denominated a "non-refundable retainer" but that includes payment for the provision of future legal services rather than solely for the availability of future services. Such a fee arrangement would not be reasonable under Rule 1.04(a) and (b), and placing the entire payment, which has not been fully earned, in a lawyer's operating account would violate the requirements of Rule 1.14 to keep funds in a separate trust or escrow account when funds have been received from a client but have not yet been earned. Id. at 3.

¹³ *If the Devil Danced in Empty Pockets, He'd Have a Ball in Mine* was co-written by Ken Spooner and Kim Williams; and performed by Joe Diffie.

¹⁴ *Ocean Front Property* was written by Hank Cochran, Dean Dillon and Royce Porter; and performed by George Strait.

Thus, a non-refundable deposit (retainer) is not a payment for legal services. It can only be paid to compensate a lawyer for the loss of opportunity for other employment. See also *Cluck v. Commission for Lawyer Discipline*, 214 S.W.3d 736 (Tex. App.—Austin 2007, no pet.).

I believe that this concept is difficult to fully explain to a client and therefore it is difficult to obtain from your client an effective consent to a non-refundable-retainer. The safer practice is to collect a deposit for payment of future legal services that is refundable. This amount should be deposited in the lawyer's trust account until the services are rendered, billed and accepted by the client. See Paragraph 5 of Exhibit I, Paragraph 5 of Exhibit J, and Paragraph 4 of Exhibit K.

7.

I Don't Do Windows

Jamey Johnson with Asleep at the Wheel¹⁵

Limit the scope of your representation. To avoid future misunderstandings, make it clear what you have been hired to do and what you have not been hired to do. Limiting the scope of your representation is permissible under Texas Rule 1.02(b). If it is not your practice to enter into a specific fee agreement for each matter handled for a client with whom you have an on-going relationship, consider documenting your engagement for each particular matter so that there is a clear meeting of the minds with regard to the scope of the work to be performed.

For example, if you represent a client in a transaction involving the sale of real property, but do not intend to provide the client with advice regarding the tax ramifications of the transaction, inform the client of this in your Engagement Agreement and advise him to seek tax advice from his regular tax advisor.

Another example is the situation where you represent a lender as local counsel hired to provide a legal opinion with regard to the enforceability of choice of law provisions contained within the deeds of trust securing property located in Texas. It is a good practice to include within the engagement agreement language that describes your limited role. One suggestion is as follows:

It is my understanding that our firm is being hired for the limited purpose of rendering a legal opinion as to Texas law concerning the enforceability of the choice of law provisions contained within the deeds of trust securing properties located in Texas. If at any time the scope of our representation is to be broadened, you agree that we will memorialize that change in writing.

6.

(Hey Won't You Play) Another Somebody Done Somebody Wrong Song

B. J. Thomas¹⁶

Don't overreach by prospectively limiting malpractice liability. Some lawyers include provisions in their engagement agreements that attempt to limit their liability. Texas Rule 1.08(g) 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, or settle a claim for such liability with an unrepresented client or former client with out first advising that person in writing that independent representation is appropriate in connection therewith.

¹⁵ *I Don't Do Windows* was written and performed by Hank Cochran; and later performed by Jamey Johnson with Asleep at the Wheel.

¹⁶ *Another Somebody Done Somebody Wrong Song* was co-written by Larry Butler and Chips Moman; and performed by B.J. Thomas.

Even if your client consents in writing, I believe that it may be hard to prove that you have not breached the fiduciary duty owed to your client unless the client is sophisticated and is actually represented by independent counsel.

Lucky for business lawyers, Comment 6 of Texas Rule 1.08 explains that the rule “**is not intended to apply to customary qualifications and limitations in legal opinions and memoranda.**”

5.

I Just Bought A Car From A Guy That Stole My Girl, But The Car Don't Run, So I Figure We Got An Even Deal¹⁷

Explain any alternative dispute resolution that is required. Some attorneys include a mandatory arbitration provision in their Engagement Agreement. While arbitration is outside the scope of this paper, if you are inclined to include a mandatory arbitration provision in your Engagement Agreement, please check with your malpractice insurance carrier. The inclusion of an arbitration clause may void your malpractice coverage.

The dispute resolution alternative I prefer is mediation because the case can only be resolved if both sides agree. The following is an example of mediation language that can be used to mandate this alternative dispute resolution method:

In the event that any dispute arises out of or is connected with this Engagement Agreement (including but not limited to the services performed by any attorney under this Engagement Agreement), we agree that we will meet to discuss the problem. If the problem cannot be resolved, we agree that we will mediate the matter in _____, County, Texas in accordance with applicable Texas rules for alternative dispute resolution. We agree that we will mutually cooperate to select the mediator to be used. We also agree that any and all information disclosed in the negotiations and results of the mediation will remain confidential.

4.

(Burn, Burn, Burn, Baby, Burn) Just Another Picture to Burn **Taylor Swift**¹⁸

Explain what will become of the client's file upon the conclusion of the matter. The Texas Rules do not clearly address an attorney's obligation regarding the retention and destruction of client files. While Texas Rule 1.14 generally requires a lawyer to safeguard a client's property and the client's interest, this rule appears to focus on client funds as opposed to client files. In addition, Texas Rule 1.14 does not provide a specific time period for retention of client property, although it does require an attorney to keep complete records of client account funds and other property for a period of five years after termination of the representation. Several Texas firms have adopted a five-year retention policy for client files.

For practical reasons, document retention and destruction should be addressed in the Engagement Agreement. Consider adding a provision in your Engagement Agreement such as:

We will maintain any documents you furnish us in our client file for this matter. At the conclusion of this matter (or earlier, if appropriate), it is your obligation to advise us as to which, if any of the documents in our files you wish us to turn over to you. We will retain any remaining documents in our files for _____ and ultimately destroy them in accordance with our record retention program schedule then in effect.

¹⁷ *I Just Bought A Car From A Guy That Stole My Girl, But The Car Don't Run, So I Figure We Got An Even Deal* is listed on the Internet as an “Actual Country-Western Song Title”, but I have my doubts.

¹⁸ *Picture to Burn* was written and performed by Taylor Swift.

This issue is addressed in the Engagement Agreements attached hereto as **Exhibit I**, **Exhibit J** and **Exhibit K**.

3.

If the Phone Doesn't Ring (You'll Know That It's Me) **Jimmy Buffet**¹⁹

Address obligations regarding confidentiality. A lawyer cannot reveal information relating to representation of a client unless the client consents after consultation or except as impliedly authorized by the client in order to carry out the representation. See Texas Rule 1.05(b). Exceptions are stated in Texas Rule 1.05(e) and (f). Rule 1.05 (a) of the Texas Rules defines “confidential information” as both “privileged information” (information protected by the Attorney-Client privilege) and “unprivileged client information” (all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by the reason of the representation of the client).

When is a lawyer impliedly authorized by the client to reveal confidential information in order to carry out the representation? Ethics Opinion 572 (June 2006), concludes that:

Under the Texas Disciplinary Rules of Professional Conduct, unless the client has instructed otherwise, a lawyer may deliver materials containing privileged information to an independent contractor, such as a copy service, hired by the lawyer in the furtherance of the lawyer's representation of the client if the lawyer reasonably expects that the confidential character of the information will be respected by the independent contractor.

Compliance with the Gramm-Leach-Bliley Act is outside the scope of this paper; however, please note that disclosure language is included in Paragraph 15 of **Exhibit I**, Paragraph 15 of **Exhibit J** and Paragraph 11 of **Exhibit K**.

2.

Who's Cheatin' Who **Alan Jackson**²⁰

Do not abuse the fee arrangement or charge more than it allows. Comment 6 to Texas Rule 1.04 regarding fees, provides as follows:

Once a fee agreement is agreed to, a lawyer should not handle the matter so as to further the lawyer's financial interests to the detriment of the client. For example, a lawyer should not abuse a fee arrangement based primarily on hourly charges by using wasteful procedures.

Another potential problem occurs when the attorney charges an hourly fee that is higher than initially agreed to in the engagement agreement. Although many firms periodically adjust hourly rates based on a lawyer's years of experience, this practice should be addressed in the engagement agreement. Simply notifying the client of fee increases may be problematic once the attorney-client relationship is established. See *Garcia v. Robinson* 804 S.W.2d 238(Tex. App.—Corpus Christi, 1991) writ den'd 817 S.W. 2d 59 (Tex. 1991)

¹⁹ *If the Phone Doesn't Ring* was written by Jimmy Buffet, Will Jennings and Michael Utley; and performed by Jimmy Buffet.

²⁰ *Who's Cheatin' Who* was written by Jerry Hayes and performed by Alan Jackson.

1.
Tie
Happy Trails (to You)
Dale Evans & Roy Rogers²¹
&
Thank God and Greyhound She's Gone
Roy Clark²²

Address termination of the attorney-client relationship. What happens when the matter you are working on is concluded? Generally, the attorney-client relationship disappears, although the attorney continues to have certain obligations to past clients. See Texas Rule 1.09. It is a good practice to send a friendly termination letter to your client on the conclusion of the matter. Form 1-14 of the Forms Manual is an **Example Termination Letter on Conclusion of Matter** attached hereto as **Exhibit L**.

In addition to conditioning your performance on payment by the client (See 9 above), the Engagement Agreement should indicate that either party may terminate the relationship. If you are terminating your attorney-client relationship it is a good practice to send a letter indicating that the relationship is terminated and spelling out what obligations the client still owes. **Form 1-13** of the Forms Manual is an **Example Termination Letter for Failure to Pay**. It is attached hereto as **Exhibit M**.

²¹ *Happy Trails* was written by Dale Evans and performed by Dale Evans and Roy Rogers.

²² *Thank God and Greyhound She's Gone* was co-written by Larry Kingston and Ed Nix; and performed by Roy Clark.

Exhibit A

Example Non-Representation Letter [Form 1-1 of Forms Manual]

[Date]

[Name and address of potential client]

Re: [state nature of representation]

[Salutation]

First, let me thank you for contacting this firm about representing you in [state nature of representation].

After reviewing the documents I have concluded that we are not the appropriate firm to handle this matter. Please understand that in declining this representation I am not expressing any opinion about your legal remedies in this situation, nor am I suggesting that a solution is or is not available.

I strongly recommend that you contact another attorney who is familiar with real estate transactions.

Again, I appreciate the confidence you have expressed in our firm, and I hope that you are able to resolve this matter in a satisfactory manner. [Include if applicable: I am returning [describe documents] with this letter.]

Please sign and return the enclosed copy of this letter to confirm that you have received the enclosures.

Sincerely yours,

[Name of attorney]

Enc.

Exhibit B
Example Disclosure and Consent Letter
To Potential Client
[Form 1-2 of Forms Manual]

[Date]

[Name and address of prospective client]

Re: [describe transaction]

[Salutation]

I would like to express my appreciation for the opportunity to represent [name of corporation] in connection with [describe transaction]. However, before I can serve as your counsel, it is important that you have a clear understanding of a potential ethical conflict that could exist in this matter. If you have any questions about any matter in this letter, please give me a call.

[Describe potential conflict, e.g., Our firm has decided not to represent any clients with an adverse position to First Local Bank or a related party because we represent First Local Bank. We do not believe a borrower from First Local Bank is in an adverse position, and I assure you that we will represent your interests to the very best of our abilities. But if you should decide to sue the bank, our firm would not be able to represent you. Of course, we would not represent the bank in any matter adverse to you.]

Please give careful thought to the matter discussed in this letter and respond in the space below.

Sincerely yours,

[Name of attorney]

- I consent to the representation subject to the foregoing limitation.
- I do not consent to the representation.

[Name of prospective client]

Date:

Exhibit C
Example Disclosure and Waiver Letter
To Former Client
[Form 1-4 of Forms Manual]

[Date]

[Name and address of former client]

Re: [describe transaction]

[Salutation]

As you are aware, this firm previously represented you in connection with [describe transaction]. This firm has recently been asked to represent [name of prospective client] in a claim against you.

Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct prohibits us from representing [name of prospective client] without your written consent. Before asking for your consent, we advise you that the claim against you [describe adverse claim and the specific prohibition of rule 1.09(a)(1)–(3)].

As this is a very serious matter and you may be compromising certain rights that you have under the Texas Disciplinary Rules of Professional Conduct, I suggest that you seek independent counsel in this matter before consenting to our representation of [name of prospective client]. Please give careful thought to the matters discussed in this letter and respond in the space below.

Sincerely yours,

[Name of attorney]

- I consent to the representation [include if applicable: subject to the following limitation: [describe any limitation on representation to be imposed]].
- I do not consent to the representation.

[Name of former client]

Date:

Exhibit D
Example Letter of Explanation and Consent
For Existing Entity
[Form 1-5 of Forms Manual]

[Date]

[Names and addresses of all partners]

Re: Proposed representation of [name of partnership] (the partnership)

[Salutation]

In connection with your request that this law firm represent your partnership, I want to make the following disclosures regarding potential ethical conflicts of interest involving our proposed representation.

Our representation of clients is governed by the Texas Disciplinary Rules of Professional Conduct. A lawyer has the duty to exercise independent professional judgment on behalf of each client. If a lawyer is requested to represent multiple clients in the same matter, two requirements must be met: The lawyer must be able to fulfill this duty for each client on an impartial basis, and the lawyer must obtain the consent of each client after explaining the possible risks involved in the multiple representation.

Concerning the representation of an entity, such as a corporation, partnership, 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. . . .

Thus, as legal counsel to the entity, we will respond to the instructions of the representative authorized to act on behalf of the entity. For example, the managing partner of the partnership has the authority and power to deal with this law firm. Further, this law firm has no responsibility to verify the representative's authority and will not bear any responsibility for discovering whether the representative has committed acts of fraud, defalcation, or forgery or other criminal or civil liability actions.

If matters arise that cause any one partner to have a claim against another partner, this law firm could not represent either 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, this law firm retains the right to require the partnership to engage other legal counsel to represent it in that claim.

Before consenting to our representation of the partnership, please be aware of the following:

1. This law firm has represented one or more of the partners in matters unrelated to the partnership. These partners, for whom unrelated legal counsel has been furnished, include [name[s] of partner[s]]. Each of these partners is requested to execute a form consenting to this law firm's serving as counsel to the partnership, because of potential conflicts of interest. At this time, we do not believe that

our prior representation of individual partners will impair our independent professional judgment on behalf of the partnership. However, if we determine that, because of differences between the partnership and the partners, we can no longer represent the partnership impartially or if a conflict arises during our representation of the partnership, we will inform you of such conflict, and we must then withdraw from representation. If this occurs, we will no longer be able to represent any party to the conflict. Should we determine that this law firm must withdraw from the representation, we will, if you wish, assist the partnership in obtaining new counsel. The partnership would, of course, be responsible for payment of all accrued legal fees and any outstanding expenses. Likewise, we would return any unused portion of any advances that had been made. The need to obtain substitute counsel may involve additional legal fees and expenses.

2. Representation of any entity automatically involves potential conflicts, because entities are nothing more than the joining of individuals or other entities with differing needs for what is initially perceived to be a common objective. Each individual should understand that when there is such diversity of interests, the lawyer for the organization cannot provide legal representation for constituent individuals and that discussions between the lawyer for the organization and an individual may not be privileged insofar as that individual is concerned.

3. Before agreeing to the contents of this letter, you are advised to obtain separate legal counsel for these matters. If you consent to this law firm's representation of the partnership as contemplated by this letter, please sign in the spaces below and return one copy of this letter to me.

Sincerely yours,

[Name of attorney]

We consent to your representation of the partnership under the terms and conditions outlined above.

[Name of partner]

Date:

Exhibit E

Example Consent to Intermediary Representation [Form 1-7 of Forms Manual]

[Date]

[Names and addresses]

Re: [describe transaction]

[Salutation]

You have inquired about hiring me to [describe transaction]. As you will recall, we have thoroughly discussed the risks and advantages involved in dual representation. Nevertheless, I believe that we should set out a few matters in more detail. Also, the Texas Disciplinary Rules of Professional Conduct require me to get your consent to this arrangement in writing.

As we discussed, since I will be acting as an intermediary, I will not be an advocate for either side. This role is different from the traditional one of an attorney in American society; I must remain impartial. The risks we discussed were [list risks].

Another matter we discussed involved the attorney-client privilege. Although the law is not settled, we believe that any information disclosed by you to us during this representation will not be protected by the privilege in a subsequent legal proceeding asserted by or against one of you involving the other. Moreover, I believe I cannot effectively represent both of you if information disclosed to me by one of you must be preserved in confidence. If I am to represent you, it will only be with the express understanding that each of you has waived the attorney-client privilege to the extent, but only to the extent, that the privilege might otherwise require me to withhold from one of you information disclosed by the other.

Because I am and will continue to be neutral, you, as clients, will assume greater responsibility for this transaction than you might ordinarily if you were each represented by counsel. For example, I am being hired solely to document the agreement between you. I am not responsible for and will not advise either of you of the risks or benefits of the transaction, nor am I giving either of you any kind of tax advice with respect to this transaction. I am not giving any other legal advice or opinions such as [include additional disclaimers appropriate to the facts]. Each of you must be sure that the transaction is one in which you want to participate and that it is structured the way you want it.

If I determine that intermediation is no longer appropriate I will so inform you, and I must then withdraw from representation. If this occurs, I will no longer be able to represent any party to the conflict. Should I determine that this law firm must withdraw from the representation, I will, if you wish, assist each of you in obtaining new counsel. You would, of course, be responsible for payment of all accrued legal fees and any outstanding expenses. Likewise, I would return any unused portion of any advances that had been made. The need to obtain substitute counsel may involve additional legal fees and expenses.

As we have discussed, our fees are charged on an hourly basis plus expenses. My fees are \$[amount] per hour. The billing rate for my associate, [name], is \$[amount] per hour. It is my understanding, and by your signature below you are confirming, that our fees are to be divided equally between you and paid at the closing. I, of course, do not guarantee or promise that any certain result will be obtained. I make no express warranties concerning this transaction, and I disclaim any implied

warranties concerning it.

If you are willing to engage me for this joint representation under the terms outlined above, please return a signed copy of this letter for our files.

Sincerely yours,

[Name of attorney]

We consent to your joint representation of us under the terms and conditions outlined above.

[Name of client]

Date:

[Name of client]

Date:

Exhibit F
Example Letter of Consent to Multiple-Representation
In Organizing Corporation and Acting as General Counsel
[Form 1-6 of Forms Manual]

[Date]

[Names and addresses of all shareholders]

Re: Consent to multiple representation in organizing corporation and acting as its general counsel

[Salutation]

You have requested that this law firm represent all of you as initial investors in organizing [name of corporation] (the corporation). You have also requested that this firm serve as general counsel to the corporation following the incorporation.

Our representation of clients is governed by the Texas Disciplinary Rules of Professional Conduct. A lawyer has the duty to exercise independent professional judgment on behalf of each client. If a lawyer is requested to represent multiple clients in the same matter, two requirements must be met: The lawyer must be able to fulfill this duty for each client on an impartial basis, and the lawyer must obtain the consent of each client after explaining the possible risks involved in the multiple representation. Further, if at any time during the representation it is determined that because of differences between the joint clients a lawyer can no longer represent each of them impartially, then the lawyer must withdraw from representing all the clients.

At our initial conference, I advised each of you of your right to obtain separate legal counsel to represent you in all matters relating to the organization of the corporation. I am still recommending that course of action to you. Each of you indicated that you understood this but nevertheless wanted this firm to represent all of you. Based on the information you have provided, we have concluded that we can represent each of you impartially. In determining whether you should consent to this joint representation, however, you should carefully consider the following matters.

The first matter involves the attorney-client privilege. Although the law is not settled, we believe that any information disclosed by you to us during this representation will not be protected by the privilege in a subsequent legal proceeding asserted by or against one of you involving another of you. Moreover, we believe we cannot effectively represent each of you if information disclosed to us by one of you must be preserved in confidence. If we are to represent you, it will only be with the express understanding that each of you has waived the attorney-client privilege to the extent, but only to the extent, that the privilege might otherwise require us to withhold from your fellow shareholders information disclosed by one of you.

Second, at this time there does not appear to be any difference of opinion among you about the major issues involved in organizing the corporation. However, it may turn out that on further consultation you may have varying opinions about the corporation's capitalization or other organizational matters. There are many issues about which investors may disagree that we must explore with you. Should we determine that there are material differences on one or more of these issues that you cannot resolve amicably or that we conclude cannot be resolved on terms compatible with the best interests of each party involved, then we must at that time withdraw from the representation. If this occurs, we will, if you wish, assist each of you in obtaining new counsel. You would, of course, be responsible for payment of all

accrued legal fees and any outstanding expenses. Likewise, we would return any unused portion of any advances that had been made. The need to obtain substitute counsel may involve additional legal fees and expenses.

Third, as you know, I have represented [name] in other legal matters. I do not believe that this prior representation will affect in any material manner my ability to represent each of you impartially. Nonetheless, you must understand that this prior representation may unconsciously bias me in favor of [name] in the event of any disagreement among you. Should I at any time determine that such a bias exists, then I must withdraw from the representation.

The fourth matter is that of ultimately allocating our fees and disbursements. Unless we receive joint instructions to the contrary, we will send our entire bill for fees and disbursements for organizing the corporation to [name]. You should enter into a written agreement for reimbursement of [name].

When you have reached an agreement on the subject of fee payment, we will discuss with you whether we can ethically draft the agreement concerning fee payment. If not, we will recommend independent counsel for you. However, we cannot provide advice to any of you for any claim you may have or desire to assert against another for indemnity or reimbursement of fees and disbursements billed by us for this representation.

If you are willing to consent to our joint representation based on the disclosures and conditions listed above, please sign in the spaces below and return one copy of this letter to us.

Sincerely yours,

[Name of attorney]

We consent to your joint representation of us under the terms and conditions outlined above.

[Name of shareholder]

Date:

Exhibit G

Sample Guaranty of Fees Provision

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 way. I have no right to information regarding this matter. Conferences between the attorney and client are confidential and privileged from disclosure to others. 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 receipt of my withdrawal of this guaranty, 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 my guarantee, the attorney will withdraw legal representation from the client.

[Note: In the event the matter includes litigation, the previous sentence should be replaced with the following: 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.]

Guarantor

Name:

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 fees in this matter. I further understand that nonpayment of any of the fees by the Guarantor or the withdrawal of the guarantee of the agreement by the Guarantor will cause the attorney to withdraw attorney's legal representation of me in this matter.

[Note: In the event the matter includes litigation, the previous sentence should be replaced with the following: I further understand that nonpayment of any of the fees 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 from the court is granted.]

Client

Name:

Exhibit H

Example Consent to Do Business With a Client [Form 1-11 of Forms Manual]

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

You have inquired about my interest in investing in the above-referenced venture in addition to my performing the legal work for you on this project. I have given this matter considerable thought and will continue to do so. I will let you know my decision by [date].

Nevertheless, I think it is important that you consider the advisability of having me, your lawyer, as a business partner. Under rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct, a lawyer cannot enter into a business venture with a client unless (1) the transaction and terms on which the lawyer acquires an interest are fair and reasonable to the client, (2) these terms are fully disclosed to the client, (3) the client is given a reasonable opportunity to seek independent counsel, and (4) the client agrees in writing to the relationship. This rule protects the client from possible conflicts of interest that may occur if counsel is involved in the venture.

In this case the terms and conditions of the venture are well known to you because you were the one who suggested them. However, for purposes of clarity I will repeat them here. The terms are [list terms].

Although not required by our State Bar's rules of ethics, I must insist that you seek independent counsel before our entry into this venture.

Once you consult with an attorney, please put his or her name in the space I have provided and then sign and return the copy of this letter to signify your consent for me to have an interest in the venture.

Sincerely yours,

[Name of attorney]

I have consulted with _____ and have availed myself of that attorney's advice. I knowingly agree to your participation in the venture described on the terms outlined in this letter, which I believe are fair and reasonable. I am also requesting you to act as legal counsel in this transaction, with the terms of the engagement to be outlined in a separate letter agreement.

ACCEPTED:

[Name of client]

Date:

Exhibit I

Example Engagement Agreement [Form 1-8 of Forms Manual]

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

Please read this letter carefully. It describes the terms and conditions under which we will represent you concerning the above-referenced matter. Our policy requires that each client sign a copy of this letter agreeing to the terms and conditions described below before we can engage in representation. The terms and conditions of our engagement are as follows:

1. Our fees for legal services are based primarily on the hourly rates for each lawyer and legal assistant at the time the services are rendered. Our current rates are \$[amount] per hour for [name], \$[amount] per hour for [name], and \$[amount] per hour for legal assistants. We review these hourly rates periodically and may adjust them. If such changes are necessary, you will be notified in writing [number] days before the change.

2. It is our policy to bill clients periodically for fees and out-of-pocket expenses. Each lawyer and legal assistant records the time required to perform services, and these time records are the basis for the bills. These bills will generally describe services performed and the expenses incurred. For large expenses, we may request the supplier to bill you directly.

3. Because of the detailed nature of our statements, our clients do not usually have any questions about them. However, if any question should arise, please call us promptly so we can discuss the matter. Our hourly rates do not include any interest for slow payment. Because of this and the fact that we do not include a service charge for late payments, we must insist that our clients pay their bills promptly.

4. If during our representation we anticipate a significant increase in the level of our activity on your behalf—for example, trial preparation or trial—we may bill you more frequently. We will expect that such statements also will be paid promptly.

5. We require a deposit before we commence work for you. We have asked that you remit to and maintain with us during our representation a deposit of at least \$[amount]. Unless deposits are large enough or will be held long enough to earn interest in excess of the cost of an individual account, we will place these funds in a State Bar of Texas Interest on Lawyers' Trust Account, the interest on which benefits the Texas Equal Access to Justice Foundation. The deposit will be applied to our final statement for fees and expenses or, at our discretion, to any past-due amounts. On the termination of our services, we will promptly refund the deposit, less any fees and expenses unpaid as of the date of our final bill.

6. Our agreement to provide legal representation in the above-referenced matter is conditioned not only on your execution of this engagement letter but also on payment of the requested deposit.

7. We retain the right to request a supplemental deposit, over and above the original deposit, in the event of an increase in our anticipated fees and expenses during our representation.

8. By your execution of this engagement letter, you agree that we are relieved from the responsibility of performing any further work should you fail to pay any statement for fees and expenses (including bills for expenses received from third parties) or for supplemental deposits within fifteen days of their receipt. In that event, you agree that we may move to withdraw as your counsel and that you will promptly execute any withdrawal motions to accomplish this.

9. By signing this engagement agreement, you are agreeing that this firm may retain papers relating to this matter to secure payment of any amount you owe us, to the extent permitted by law, but only if such retention will not prejudice your interests in the subject matter of the representation.

10. During our discussion about handling this matter, we may have provided you with certain estimates of the fees and expenses that will be required at certain stages of our representation. Such estimates are just that, and 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 other parties require our involvement on your behalf. The reason we submit our clients' bills shortly after the services are rendered is so they will have a means of monitoring and controlling their expenses. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed. If we do not hear from you, we assume that you approve of the overall level of activity in this matter.

11. In representing you, we recognize that we may be disqualified from representing any client in any matter related to our representation of you. We also recognize that we may be disqualified from representing any client in any matter in which confidential information concerning you and made available to us during our representation of you becomes material or relevant to another matter or in which use or knowledge of such information could be adverse to your interest.

You agree that, except as stated above, the firm will be entitled to represent the interests of any other client against you in business negotiations or other legal matters.

12. The Supreme Court of Texas has adopted and promulgated the Texas Lawyer's Creed. Although compliance with the Creed is voluntary, we have decided to adhere to its provisions. Please review the attached Texas Lawyer's Creed, and if you have any questions, we will be glad to discuss them with you.

13. You may discharge us from this representation at any time. We will be free to withdraw at any time and without cause, subject to reasonable notice under the circumstances and to approval by any court in which your matter may be pending. We will be entitled to receive compensation from you for all services rendered and all disbursements made, under the provisions of this agreement, up to the time of withdrawal. Circumstances may arise that will require us to withdraw from representation under the Texas Disciplinary Rules of Professional Conduct or other applicable professional standards. In such circumstances, as well as in the instances referred to above, we will cooperate in the transfer of the matter to other counsel of your choice.

14. As is true with all legal services, we cannot and do not guarantee the results of our representation. We make no express warranties concerning this transaction, and disclaim any implied warranties concerning it.

15. Attorneys, like other professionals who advise on personal financial matters, are required by a federal law (the Gramm-Leach-Bliley Act) to inform their clients of their policies regarding privacy of client information. Because attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law, we have always protected our clients' right to privacy. In the course of representing our clients, we receive all manner of significant personal financial information from them. As a client of the firm, you are advised that all information we receive from you will be held in confidence and not released to outside persons, except as agreed to by you or as required under applicable law. We retain records relating to professional services we provide to assist our clients with their professional needs and, in some cases, to comply with professional guidelines. To guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

At the end of our representation, please let us know if you need any documents from our files. We will retain documents for five years and then destroy them in accordance with our record-retention policy then in effect.

We discuss the terms and conditions of our engagement so candidly because you are entitled to know and we believe a candid discussion now should avoid any misunderstandings later. Please sign a copy of this letter in the space below, expressing your agreement to the terms and conditions set forth above. After we receive your signed copy of this letter and the required deposit, we will commence our representation in the matter.

Sincerely yours,

[Name of attorney]

Enc.

ACCEPTED AND AGREED TO ON _____.

[Name of client]

Date:

Notice to Clients

Texas law requires that all attorneys provide their clients with the following notice about the existence of the attorney grievance process: "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 of Chief Disciplinary Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information."

The Texas Lawyer's Creed

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.

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.

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.

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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.

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.

Exhibit J

Example Engagement Agreement [Form 1-9 of Forms Manual]

[Date]

[Name and address of client]

Re: [Attorney engagement]

[Salutation]

Please read this letter carefully. It describes the terms and conditions under which we will represent you on an ongoing basis. Our policy requires that each client sign a copy of this letter agreeing to the terms and conditions described below before we can engage in representation. The terms and conditions of our engagement are as follows:

1. Our fees for legal services are based primarily on the hourly rates for each lawyer and legal assistant at the time the services are rendered. Our current rates are \$[amount] per hour for [name], \$[amount] per hour for [name], and \$[amount] per hour for legal assistants. We review these hourly rates periodically and may adjust them. If such changes are necessary, you will be notified in writing [number] days before the change.

2. It is our policy to bill clients periodically for fees and out-of-pocket expenses. Each lawyer and legal assistant records the time required to perform services, and these time records are the basis for the bills. These bills will generally describe services performed and the expenses incurred. For large expenses, we may request the supplier to bill you directly.

3. Because of the detailed nature of our statements, our clients do not usually have any questions about them. However, if any question should arise, please call us promptly so we can discuss the matter. Our hourly rates do not include any interest for slow payment. Because of this and the fact that we do not include a service charge for late payments, we must insist that our clients pay their bills promptly.

4. If during our representation we anticipate a significant increase in the level of our activity on your behalf—for example, trial preparation or trial—we may bill you more frequently. We will expect that such statements also will be paid promptly.

5. We require a deposit before we commence work for you. We have asked that you remit to and maintain with us during our representation a deposit of at least \$[amount]. Unless deposits are large enough or will be held long enough to earn interest in excess of the cost of an individual account, we will place these funds in a State Bar of Texas Interest on Lawyers' Trust Account, the interest on which benefits the Texas Equal Access to Justice Foundation. The deposit will be applied to our final statement for fees and expenses or, at our discretion, to any past-due amounts. On the termination of our services, we will promptly refund the deposit, less any fees and expenses unpaid as of the date of our final bill.

6. Our agreement to provide legal representation is conditioned not only on your execution of this engagement letter but also on payment of the requested deposit.

7. We retain the right to request a supplemental deposit, over and above the original deposit, during our representation.

8. By your execution of this engagement letter, you agree that we are relieved from the responsibility of performing any further work should you fail to pay any statement for fees and expenses (including bills for expenses received from third parties) or for supplemental deposits within fifteen days of their receipt. In that event, you agree that we may move to withdraw as your counsel and that you will promptly execute any withdrawal motions to accomplish this.

9. By signing this engagement agreement, you are agreeing that this firm may retain papers relating to this matter to secure payment of any amount you owe us, to the extent permitted by law, but only if such retention will not prejudice your interests in the subject matter of the representation.

10. During our discussion about representing you, we may have provided you with certain estimates of the fees and expenses that will be required at certain stages of our representation. Such estimates are just that, and 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 other parties require our involvement on your behalf. The reason we submit our clients' bills shortly after the services are rendered is so they will have a means of monitoring and controlling their expenses. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed. If we do not hear from you, we assume that you approve of the overall level of activity in this matter.

11. In representing you, we recognize that we may be disqualified from representing any client in any matter related to our representation of you. We also recognize that we may be disqualified from representing any client in any matter in which confidential information concerning you and made available to us during our representation of you becomes material or relevant to another matter or in which use or knowledge of such information could be adverse to your interest.

You agree that, except as stated above, after our representation of you has terminated, the firm will be entitled to represent the interests of any other client against you in business negotiations or other legal matters.

12. The Supreme Court of Texas has adopted and promulgated the Texas Lawyer's Creed. Although compliance with the Creed is voluntary, we have decided to adhere to its provisions. Please review the attached Texas Lawyer's Creed, and if you have any questions, we will be glad to discuss them with you.

13. You may discharge us from this representation at any time. We will be free to withdraw at any time and without cause, subject to reasonable notice under the circumstances and to approval by any court in which we are your attorney of record. We will be entitled to receive compensation from you for all services rendered and all disbursements made, under the provisions of this agreement, up to the time of withdrawal. Circumstances may arise that will require us to withdraw from representation under the Texas Disciplinary Rules of Professional Conduct or other applicable professional standards. In such circumstances, as well as in the instances referred to above, we will cooperate in the transfer of the matter to other counsel of your choice.

14. As is true with all legal services, we cannot and do not guarantee the results of our representation. We make no express warranties concerning any matter in which we represent you, and disclaim any implied warranties.

15. Attorneys, like other professionals who advise on personal financial matters, are required by a federal law (the Gramm-Leach-Bliley Act) to inform their clients of their policies regarding privacy of client information. Because attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law, we have always protected our clients' right to privacy. In the course of representing our clients, we receive all manner of significant personal financial information from them. As a client of the firm, you are advised that all information we receive from you will be held in confidence and not released to outside persons, except as agreed to by you or as required under applicable law. We retain records relating to professional services we provide to assist our clients with their professional needs and, in some cases, to comply with professional guidelines. To guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

At the end of our representation, please let us know if you need any documents from our files. We will retain documents for five years and then destroy them in accordance with our record-retention policy then in effect.

We discuss the terms and conditions of our engagement so candidly because you are entitled to know and we believe a candid discussion now should avoid any misunderstandings later. Please sign a copy of this letter in the space below, expressing your agreement to the terms and conditions set forth above. After we receive your signed copy of this letter and the required deposit, we will commence our representation of you.

Sincerely yours,

[Name of attorney]

Enc.

ACCEPTED AND AGREED TO ON _____.

[Name of client]

Date:

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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.

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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.

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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.

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1. I will be courteous, civil, and prompt in oral and written communications.
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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.

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.

Exhibit K

Example Engagement Agreement

[Form 1-10 of Forms Manual]

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

Thank you for asking me to represent you in the above-referenced matter. I consider it a privilege to do so. Please excuse the overly formal and detailed nature of this letter—it is intended to ensure that you know and understand the terms and conditions under which this firm will represent you.

1. Our fees for legal services are based primarily on the hourly rates for each lawyer and legal assistant at the time the services are rendered. Our current rates are \$[amount] per hour for [name], \$[amount] per hour for associates or contract lawyers, and \$[amount] per hour for legal assistants.

2. It is our policy to bill clients periodically for fees and out-of-pocket expenses. These bills will generally describe services performed and the expenses incurred. If we are confronted with unanticipated expenses, we may request the supplier to bill you directly for any third-party expenses.

3. Our statements are reasonably detailed, and consequently our clients do not usually have any questions about them. However, if you should ever have any question or comment, please do not hesitate to call us so that we can discuss the matter. Our hourly rates do not include any interest for slow payment. Because of this and the fact that we do not include a service charge for late payments, we must insist that our clients pay their bills promptly.

4. We require a [non-refundable] retainer [when accepting work from new clients/before beginning work on a new matter]. Accordingly, we ask that you remit to [us/and maintain with us during our representation] a retainer of \$[amount]. [**Include as applicable:** We will place these funds in our trust account./The retainer will be applied to our final statement for fees and expenses or, at our discretion, to any past-due amounts./On the termination of our services, we will promptly refund the retainer, less any fees and expenses unpaid as of the date of our final bill.]

5. You agree that we are relieved from the responsibility of performing any further work should you fail to pay any statement for fees and expenses (including bills for expenses received from third parties) or for supplemental retainers within fifteen days of their receipt. In that event, you agree that we may move to withdraw as your counsel and that you will promptly execute any withdrawal motions to accomplish this.

6. You agree that this firm may retain papers relating to this matter to secure payment of any amount you owe us, to the extent permitted by law, but only if such retention will not prejudice your interests in the subject matter of the representation.

7. During our discussions about handling this matter, we may have provided you with certain estimates of the fees and expenses that will be required at certain stages of our representation. Such estimates are just that, and the fees and expenses required are ultimately a function of many conditions

over which we have little or no control, particularly the difficulties we encounter during negotiations with other parties. The reason we submit our clients' bills shortly after the services are rendered is so they will have a means of monitoring and controlling their expenses. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed. If we do not hear from you, we assume that you approve of the overall level of activity in this matter.

8. The Supreme Court of Texas has adopted and promulgated the Texas Lawyer's Creed. Although compliance with the Creed is voluntary, we have decided to adhere to its provisions. Please review the attached Texas Lawyer's Creed, and if you have any questions, we will be glad to discuss them with you.

9. You may discharge us from this representation at any time. We will be free to withdraw at any time, with or without cause, subject to reasonable notice under the circumstances and to approval by any court that may become involved in your matter. We will be entitled to receive compensation from you for all services rendered and all disbursements made, under the provisions of this agreement, up to the time of withdrawal. Circumstances may arise that will require us to withdraw from representation under the Texas Disciplinary Rules of Professional Conduct or other applicable professional standards. In such circumstances, as well as in the instances referred to above, we will cooperate in the transfer of the matter to other counsel of your choice.

10. As is true with all legal services, we cannot and do not guarantee the results of our representation. We make no express warranties concerning this transaction, and disclaim any implied warranties concerning it.

11. Attorneys, like other professionals who advise on personal financial matters, are required by a federal law (the Gramm-Leach-Bliley Act) to inform their clients of their policies regarding privacy of client information. Because attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this new law, we have always protected our clients' right to privacy. In the course of representing our clients, we receive all manner of significant personal financial information from them. As a client of the firm, you are advised that all information we receive from you will be held in confidence and not released to outside persons, except as agreed to by you or as required under applicable law. We retain records relating to professional services we provide to assist our clients with their professional needs and, in some cases, to comply with professional guidelines. To guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

At the end of our representation, please let us know if you need any documents from our files. We will retain documents for [five years/a limited time] and then destroy them in accordance with our record-retention policy then in effect.

We believe this candid discussion should prevent any misunderstandings later. Please sign a copy of this letter in the space below, expressing your agreement to the terms and conditions set forth above.

Sincerely yours,

[Name of attorney]

Enc.

ACCEPTED AND AGREED TO ON _____.

[Name of client]

Date:

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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.
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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.

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.

Exhibit L
Example Termination Letter on Conclusion of Matter
[Form 1-14 of Forms Manual]

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

It has been our pleasure to serve you as counsel in [describe transaction]. According to our records, we have completed this matter, and we are closing this file.

You should already have a complete set of the relevant closing documents in your possession. If not, please let us know and we will be glad to send them to you.

Please let us know if you need any other documents from our files. We will retain documents for five years and then destroy them in accordance with our record-retention policy then in effect.

I look forward to the opportunity to represent you on other matters in the future.

Sincerely yours,

[Name of attorney]

Exhibit M

Example Termination Letter for Failure to Pay [Form 1-13 of Forms Manual]

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

During the past [time period], it has been our pleasure to serve you as counsel in [describe transaction]. During that representation, you have paid substantial legal fees and related expenses. Unfortunately, contrary to our engagement agreement, you have not paid our statements in a timely manner for the past few months.

At this time, the outstanding and overdue fees and expenses total approximately \$[amount]. Our firm desires to continue our relationship but does not have the ability to finance your legal representation. Moreover, you expressly agreed that payment of the hourly fees and expenses in this matter would be kept current.

We now provide you the opportunity to retain other counsel without jeopardizing your position. However, if we wait several more months, it is possible that circumstances will change and this opportunity will be lost. Consequently, as of [date], we will cease to represent you.

Your new counsel may wish to discuss this file with us. That would be to your advantage both substantively and economically. We are willing to do so as long as satisfactory arrangements are made to compensate us for the additional time and expense incurred. Also, it will be necessary to agree on a plan to pay the outstanding fees and expenses.

During our representation we have generated work that we are willing to share with your new counsel to the extent our legal obligations require us to do so in the absence of full payment of our fees and expenses.

If you wish us to continue representing you, satisfactory arrangements must be made to take care of the overdue fees and expenses, as well as the future fees and expenses.

I look forward to hearing from you and remain hopeful our representation can continue.

Sincerely yours,

[Name of attorney]

