

MODEL CLIENT-ATTORNEY AGREEMENT

Many attorneys now offer a standard one-page retainer agreement for their clients to sign. The principal reason for this short-form contract is the fear that a longer contract will merely intimidate a potential client. This fear, plus the fact that the primary focus of the document is often the client's agreement to pay, means these forms are incomplete, especially from the client's point of view.

This appendix includes a model client-attorney agreement based on an hourly fee. It is designed to secure the rights and stipulate the responsibilities of both the attorney and client. It is also meant to serve as a discussion document by which you can learn enough about a particular attorney's business practices to make an informed choice as a consumer of legal services.

Whether you use the following contract (or a modified version of it) is, of course, a decision to be made entirely by you and your attorney. If you plan to use it solely as a discussion document, we have check-marked the clauses we consider essential in every retainer agreement. For example, all retainer agreements should include a clause that clearly states what the hourly fee charge will be and another clause that places a cap on the amount of fees an attorney can charge the client without receiving prior written approval.

HALT also believes that all retainer agreements should include a client "Bill of Rights." Section Nine of this model agreement includes HALT's Legal Consumers Bill of Rights. Through its Legal Consumers Bill of Rights Project, HALT seeks to promote increased accountability

in the legal profession by encouraging attorneys to include the Bill of Rights as part of their client-attorney agreements.

While HALT's contract is extensive and undoubtedly includes more detail than you would normally find in a typical lawyer's retainer agreement, it does not provide for an exhaustive list of contingencies. You may find yourself, for example, being billed for e-mail communications which are not accounted for in our contract. In the end, you and your attorney will need to decide how detailed your retainer agreement needs to be.

As the saying goes, "the devil is in the details." Sophisticated corporate clients demand that their lawyers hammer out details in their attorney-client agreements. This helps to ensure that their rights are protected and the fees they'll be charged are expected. The average consumer of legal services should demand the same. HALT's research shows that most disputes between clients and attorneys could have been avoided if the nature of their relationship had been made explicit at the outset. If your attorney refuses to sign or draft an agreement that protects your rights, ask why. The answers will tell you whether or not the attorney is the sort you want to employ.

The language in this model contract is not magic. There are other ways of protecting consumers' rights in writing. However, this model will help you identify the most important protections that you should insist upon, and alert you to other possible sources of problems and frictions between lawyers and clients.

The contract printed in full below is an agreement to employ an attorney on an hourly fee basis. To create a contingency fee or a fixed-fee agreement, simply replace "Section One—Attorney's Fees" with the appropriate Section One (Contingent or Fixed) found on page 95 and 97, respectively.

CONTRACT TO EMPLOY ATTORNEY

_____ (referred to in this contract as Client) of _____
(name) (address)
 requests and authorizes _____ (referred to in this contract as Attorney)
(name)
 of _____ at _____ to represent Client as
(name of firm) (address)

(his/her) Attorney in fact and in law as related to [SPECIFIC DESCRIPTION OF NATURE AND EXTENT OF CASE] (e.g., "a divorce proceeding between X and Y for which Attorney will conduct negotiations and make court appearances which are necessary to securing separation, custody, property and dissolution agreements, including a final decree, but not including an appeal") and against all additional persons, firms, or corporations who may appear to be related to this case.

SECTION ONE Attorney's Fees

Compensation for Attorney's services shall be based on an hourly fee arrangement.

- ✓ (1) Client will pay Attorney the sum of _____ Dollars (\$_____) per hour for Attorney's time spent in research, writing, consultation, conference with opposing parties, and other matters specifically related to the case described above.
- ✓ (2) Attorney's additional charges, if any, for appearances in court are as follows:
 Routine appearances (e.g., motions for continuances) \$_____ per _____
 Simple motions (e.g., for temporary custody, discovery motions, etc.) \$_____ per _____
 Trials or hearings \$_____ per _____
- (3) If a junior partner, associate, or staff attorney within the firm performs research or other services for the Client, Client will pay for those services at the rate of _____ Dollars (\$_____) per hour. Any court appearance of a junior member will be charged to the Client at a rate of _____ percent (_____%) of the court appearance charges of attorney, as given in I(1) above.
- ✓ (4) For all services performed by paralegals for Client, Client will pay for those services at the rate of _____ Dollars (\$_____) per hour.

- ✓ (5) If Client is to be charged for secretarial services, Client will pay for those services at the rate of _____ Dollars (\$_____) per hour.
- (6) Time charges will be computed and billed to the tenth of an hour.
- (7) It is necessary to incur certain court costs in order to successfully complete this case. Client agrees to pay for all additional court costs at the following rates:
- | | |
|--|-----------------|
| <input type="checkbox"/> Filing fees | \$_____per_____ |
| <input type="checkbox"/> Deposition fees | \$_____per_____ |
| <input type="checkbox"/> Fees for court reporter | \$_____per_____ |
| <input type="checkbox"/> Charges for transcripts | \$_____per_____ |
| <input type="checkbox"/> Subpoena fees | \$_____per_____ |
| <input type="checkbox"/> Fees for expert witnesses | \$_____per_____ |
- ✓ (8) Attorney estimates that these court costs will not exceed the sum of _____ Dollars (\$_____).
- (9) Client also agrees to pay for any of the additional costs checked below at the following rates:
- | | |
|--|----------------------|
| <input type="checkbox"/> Charges for local phone calls | \$_____per_____ |
| <input type="checkbox"/> Charges for postage (e.g., registered mail) | \$_____per_____ |
| <input type="checkbox"/> Long distance phone charges | _____ % of std. rate |
| <input type="checkbox"/> Document search and file
(including computer time) | \$_____per_____ |
| <input type="checkbox"/> Special research or investigation
(e.g., a private investigator) | \$_____per_____ |
| <input type="checkbox"/> Travel | \$_____per_____ |
| <input type="checkbox"/> Other: _____ | \$_____ |
- ✓ (10) Attorney estimates additional costs listed in I(9) will not exceed the sum of _____ Dollars (\$_____).
- (11) Attorney shall pay all travel expenses incurred within the (county/city) of _____.
- (12) The total estimated number of hours required for the completion of this case are as follows: _____ hours by Attorney; _____ hours by junior members of the firm; and _____ hours by paralegals.
- ✓ (13) Attorney estimates that the total cost of fees for the services of Attorney, junior members and paralegals will not exceed the sum of _____ Dollars (\$_____).
- ✓ (14) Client will not be liable for any additional costs or fees which exceed the estimates given in I(8), I(10) and I(13) unless Attorney notifies Client of the additional expenses required and receives permission of Client *before* incurring the additional expenses.
- (15) (OPTIONAL) The total cost of completing this case shall not under any circumstances exceed the estimates given in I(8), I(10) and I(13) by a factor of _____ percent (_____%). [NOTE: For certain cases, there may be several unknown factors at the outset — e.g., whether or not the opposing party will decide to litigate or settle. Therefore, it may be necessary for Attorney and Client to set spending limits which are conditional upon certain events. For example, both "If the case is settled without litigation, the total cost..." and "If litigation is required to settle the case..." may be necessary.]

SECTION TWO Billing Agreement

- (1) Client will not be billed for Attorney's time in the preparation or discussion of this employment contract or in discussions concerning disputes over billing. Secretarial time may be charged for the preparation of the original

- document and copies, the charge to be included in the estimate of additional costs.
- (2) Client will pay a retainer of _____ Dollars (\$_____) and receive a signed receipt from Attorney for said amount.
- ✓ (3) Client will receive a statement with detailed itemization of the Attorney's, junior members' and paralegals' activities in the case; the amount of time involved, and the additional costs incurred. This statement will be sent to the Client on a monthly (or other _____) basis (and/or) per unit of expenditure (e.g., each time the bill increases by \$250, an updated statement is to be sent). If per-unit billing is adopted, that unit will be _____ Dollars (\$_____).
- (4) All costs and expenses are to be deducted, unless otherwise noted, from the retainer. The current balance of the client's retainer is to be plainly indicated in each itemized statement.
- (5) The Attorney's fees (may/may not) be deducted from the retainer.
- (6) Client is to be notified in writing prior to the depletion of the retainer.
- ✓ (7) Should the retainer exceed the total cost of completing the case, the remainder is to be returned in full to Client.
- (8) Should the cost of conducting the case exceed the retainer but not the estimate or agreed maximum, Client agrees to reimburse Attorney for the additional costs (and/but not) Attorney's fees within _____ days of receipt of an itemized statement.
- (9) If the total cost exceeds the retainer but not the agreed maximum, payment for outstanding fees and costs upon completion of the case shall be by (a lump sum payment/payment in full within thirty (30) days of submission of a properly itemized statement/monthly payments of _____ Dollars (\$_____)).
- (10) Attorney shall receive no other compensation in any manner or form than that provided for expressly by this agreement.

SECTION THREE

Client Cooperation and Attorney Withdrawal from Representation

- (1) Client agrees to disclose truthfully all relevant information to Attorney upon request.
- (2) Client will make (himself/herself) and any documents, persons or things under the Client's control available to Attorney at reasonable times and places for such conferences, inspections, discussions and legal proceedings as may be necessary from time to time.
- (3) Client will promptly notify Attorney of any change in Client's address or phone number.
- (4) Attorney will freely and frankly discuss the strategy and progress of the case with the Client upon request. Attorney must consult and seek permission of Client before taking any action which may significantly affect the outcome or cost of the proceedings.
- ✓ (5) Attorney may not under any circumstances agree to settle a case without the prior consent of Client.
- (6) Withdrawal from representation by Attorney is mandatory upon discharge by Client.
- (7) In an effort to increase client participation and to reduce costs, Client will, at the direction of the Attorney, perform these tasks: (e.g., locating evidence, contacting witnesses, filing documents with court clerk).

- (8) Failure of Client to seek counsel of Attorney before taking any action which may affect the course or resolution of the case represents sufficient grounds for Attorney withdrawal from employment.
- (9) Attorney may not withdraw from employment unless (i) the Client receives fourteen (14) days notice prior to withdrawal, (ii) trial is not scheduled within 30 days, (iii) withdrawal will not significantly affect the outcome of imminent proceedings, and (iv) competent counsel may be obtained readily elsewhere by Client.
- (10) In the event of withdrawal, Attorney will withdraw in writing and include reasons for withdrawing.
- (11) Attorney may not condition completion of representation of Client upon payment of estimated or actual fee under any terms other than those stipulated within this contract.
- (12) All documents presented by Client to Attorney remain the exclusive property of Client and must be returned upon demand. Attorney expressly relinquishes all general, possessory or retaining liens known to the common or statutory law.

SECTION FOUR Disputes

- (1) Attorney and Client recognize the benefits of maintaining a harmonious working relationship. Both agree to discuss openly any cause of dissatisfaction and to seek reconciliation. Client will not be billed for this discussion.
- (2) Should either party believe itself to be seriously wronged or believe that the terms of this contract have been substantially violated, resolution shall be sought through binding arbitration by a third party mutually agreed to by both Attorney and Client.

SECTION FIVE Power of Attorney

Client grants a power of attorney to Attorney in order that Attorney may execute all documents relevant to the handling of this case, including pleadings, verifications, dismissals, orders and all other documents that Client could otherwise properly execute.

SECTION SIX Notice

Any notice required under this agreement shall be in writing and shall be deemed to have been duly served if delivered in person, or if delivered at or sent by first class mail to the business address of the person for whom it is intended, as specified in this agreement.

SECTION SEVEN Law To Govern Contract

The laws of the State of _____ shall govern the construction and interpretation of this agreement.

SECTION EIGHT

This contract is valid only with regard to the case described above. An appeal of this case to a higher court, or retrial before a similar court will require a separate employment contract.

SECTION NINE Legal Consumers Bill of Rights

Attorney agrees to observe and respect the following Legal Consumers Bill of Rights.

I. You have the right to control your own legal affairs.

This means that your lawyers must:

- keep you fully informed with regular written monthly progress reports about the status of your matter;
- promptly answer your questions;
- promptly return your phone calls;
- promptly disclose all alternatives available to you for resolving your matter; and
- fully discuss the advantages and risks involved in each decision.

This also means that you make all the key decisions in your matter, including whether and on what terms to settle a dispute.

Finally, this means that if you are not satisfied with how your matter is being handled, you have the right to fire your lawyer and file a formal complaint with the Attorney Disciplinary Board in your state.

II. You have the right to affordable legal services.

This means that your lawyers must fully disclose:

- all alternative fee arrangements;
- total anticipated fees;
- total anticipated costs; and
- any referral fees paid to other lawyers.

This also means that your lawyers must:

- provide you with an honest appraisal of the likelihood of a successful representation;
- sign a written fee agreement that spells out the financial terms of every representation;
- agree not to exceed estimated costs and fees without your written consent;
- agree to return any unused portion of your retainer or other advanced payments;
- make full use of economical legal support services such as paralegals and legal secretaries, as well as your own personal services to reduce the total bill to you; and
- each month provide you a written itemized bill.

In addition, this means that whether you have signed an hourly contract or a contingency fee agreement, your lawyers can only charge you a reasonable fee based on the work actually performed.

III. You have the right to competent legal representation.

This means that your lawyers must:

- provide legal services that are timely, thorough and professional;
- tell you to seek other help, or arrange for co-counsel, if they do not regularly practice law in the areas involved in your matter;
- treat you courteously;
- not neglect your matter;
- respect your right to privacy and protect your secrets and confidential information;
- ensure that they have no conflicts of interest in representing you;
- maintain accurate records; and
- provide you with copies of all court documents and letters they produce or receive while representing you.

IV. You have the right to an accessible and accountable legal system.

This means that you cannot be denied representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

In addition, this means that complaints against lawyers will be considered by an impartial disciplinary board that includes nonlawyers as members.

Finally, this means that lawyers must answer legal questions and prepare documents in simple English that is understandable to non-lawyers.

This contract has been read, understood, signed and attested on this day _____, 20__, by the undersigned.

ATTORNEY(S) _____

CLIENT(S) _____

WITNESS _____
