ENGAGEMENT LETTERS©

ADVANCED REAL ESTATE LAW COURSE

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CHAPTER 3
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ENGAGEMENT LETTERS©

I. INTRODUCTION

Engagement letters ordinarily are the written agreement by which attorneys and clients confirm the terms upon which the attorney will render services to the client. In most states, an engagement letter is not required by law. Since the 1980’s, however, more and more law firms have instituted a policy of obtaining an engagement letter when representation is commenced. This article will discuss some of the pitfalls that arise when lawyers do not require engagement letters, will discuss the minimum requirements that should be included in the engagement letter, and will provide a sampling of forms that have been provided to the author from time to time by various parties. The forms are not intended to be the "legal standard" for engagement letters. Hopefully, however, they will provide a starting place for establishing a form that meets the specific needs of a lawyer or law firm. Additional forms may be found in the articles, Choosing Clients Carefully: The Purpose, Propriety and Practicality of Engagement Letters in Transactional Practice (With Suggested Model Forms), presented by John M. Nolan and Edward A. Peterson at the Mortgage Lending Institute in September, 1996 and Engagement Letters (What Could Go Wrong?), presented by Diane Dillard at the Advanced Real Estate Drafting Course in February, 1999.

II. ESTABLISHING THE ATTORNEY-CLIENT RELATIONSHIP

A. Implied Relationship.

The first pitfall that confronts attorneys is the establishment of the attorney-client relationship. The attorney-client relationship comes into existence when the client consents. The emphasis on the word "client" is intentional. Lawyers generally think of the relationship beginning when the lawyer accepts. What they forget is that the relationship can be implied. When that is coupled with the natural tendency of lawyers to "share" their opinions on just about any subject with anyone who will listen, the lawyer certainly is vulnerable. One court has stated that the attorney client “relationship does not depend upon the payment of a fee, but may exist as a result of rendering services gratuitously.”

Beware of the casual conversation you have with your golfing partner about the problems he is having with the contractor that is re-modeling his kitchen!

B. Consultation.

Certain duties may attach at the consultation stage. These duties include (i) maintaining any confidences the lawyer obtains; (ii) avoiding existing and future conflicts; and (iii) advising the potential clients of any deadlines, if applicable. One Texas court has stated in dicta that “all that is required is that the parties explicitly or by their conduct manifest an intention to create the attorney-client relationship.” This may be true even in situations where the attorney declines representation after meeting with the potential client. To be on the safe side, the lawyer should always assume that most lay people believe that their representation has begun following the initial consultation.

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C. Beauty Contests.

The "beauty contest" now used by many organizations has added an additional dimension to the problems associated with the consultation. If one intends to participate in a “beauty contest,” he should confirm that all the contestants are playing by the same rules.

The prospective client may provide a "bid package" or "request for proposal" upon which the various firms are requested to submit a written response. This document usually includes information about the company requesting the bid and an overview of the type of representation being sought. In addition, it requests specific information about the firm. A sample request for proposal is attached as Exhibit A to this outline. Following receipt of the proposals, the prospective client selects those firms it desires to interview personally from the group of firms submitting the written responses. In the alternative, the prospective client may proceed directly to personal interview. Topics typically discussed at the personal interview include fee arrangements, the firm's prior experience relevant to the proposed engagement, any potential conflicts of interests, how the firm proposes to staff the engagement, the approach the firm would use if retained, and the firm's assessment of the strengths and weaknesses of the particular matter.

The lawyer(s) making the presentation must be given a certain amount of information regarding the activities of the company and/or the specific matter if the presentation is to be meaningful. The prospective client has complete control over the information provided, but disclosure of at least some confidential information often is unavoidable. However, the whole idea behind a "beauty contest" is that many will apply, but only one (or a limited few) will be selected.

What are the obligations of the lawyers that are not retained in a “beauty contest?” Does disclosure to the lawyers that are not retained destroy communications that otherwise would qualify for the privilege? The broad answer to the first question is that the lawyers who are not retained have a duty of confidentiality where a client attempts in good faith to retain a lawyer. The broad answer to the second question is that the attorney/client privilege protects "prospective clients" who communicate with a lawyer in an initial consultation but whom the lawyer does not thereafter represent, as well as persons with whom an attorney-client relationship is formed.

If the prospective client has not addressed its expectations with respect to confidential information and conflicts of interest arising out of the selection process in its request for proposal, the law firm "contestant" should address them when it submits the proposal. The prospective client may relieve the law firm of these duties's through a properly worded waiver and consent. A form of letter agreement prepared by the law firm covering the "beauty contest" is attached as Exhibit B to this outline.

III. ACCEPTING THE REPRESENTATION

An engagement letter is not just a good business practice; it is documentary evidence that the lawyer satisfied his ethical duty to communicate the basis or rate of the fee the lawyer will charge. If the fee involves a contingency of any kind, an engagement letter is mandatory.

A good engagement letter, at a minimum, should accomplish the following: (i) clearly identify "the client;" (ii) specify the method for calculating the lawyer's fee (hourly, flat fee, blended rate) and whether the expenses will be billed separately; (iii) define the scope of the engagement; (iv) confirm any consents required; (v) specify the client’s obligations; (vi) specify the method of dispute resolution.

5 Rule 1.09, Comment 4A, Texas Disciplinary Rules of Professional Conduct (“TDRPC”).
6 The Task Force on Conflicts of Interest, Conflicts of Interest Issues, 50 BUS. LAW. 1381, August, 1995, at 1397.
7 Rule 1.04, TDRPC.
8 Id.
resolution, if applicable, and (vi) specify the firm’s policy on file retention. Even if the statute of frauds issue did not exist, a lawyer would never knowingly permit his client to enter into an oral contract to purchase property. However, it is not at all unusual for that same lawyer to perform legal services based upon a single telephone call or meeting with a client. Sample engagement letters have been attached as **Exhibits F through J** to this outline. These letters present a wide range of choices - from the comprehensive and detailed letter to the more informal letter. Regardless of the format the lawyer elects to use, the lawyer may want to address one or more of the following issues in the engagement letter/fee agreement.

**A. Identify the Client.**
Transaction lawyers often have difficulty identifying their clients. This is particularly true when representing closely held corporations and partnerships. Some lawyers even have trouble remembering that they are representing a corporation when they have a long-standing personal relationship with an officer of that corporation. The Rules clearly state, however, that when a lawyer is employed or retained by an entity, the lawyer works for the entity.

It is easy in a transactional practice for the lines to blur. The lawyer frequently begins by setting up the entity for the parties. While the negotiations are taking place on the entity agreement, he prepares or reviews the purchase and sale agreement for the property or the project. If the project includes tenants, he begins negotiations on tenant leases. If it is a subdivision development, he negotiates the various contracts. It is extremely important in this type of situation, that the lawyer not only include a statement with respect to who he is representing, but also who he is **not** representing. An example of such a letter is found in **Exhibit P** to this outline.

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**B. Disclosure of Nonrepresentation.**
The Court, in *Parker v. Carnahan*, held that the duty to advise a person that he is not being represented by the lawyer arises if the attorney was aware or should have been aware that the attorney’s conduct would lead a reasonable person to believe that he/she was being represented by the attorney. **10** If the lawyer represents an individual and helps that individual sell a tract of land that is also owned by other family members, the lawyer should make clear to the other family members that he is not representing them. The same thing holds true if the lawyer has a long-standing attorney/client relationship with a partner in a partnership. It is always prudent for attorney to have the party not being represented also sign the engagement letter acknowledging that fact. In a typical 2-party transaction where both parties are obviously represented, the disclosure probably should still be made, but it may not be necessary to have the other party sign a written acknowledgment.

**C. Set out the Method for Calculation of the Fee and Condition Performance.**
The terms of the hourly fee agreement should specify the fees and expenses that will be charged, whether more than one attorney will be used and the hourly rate for each attorney, the types of expenses and the rate charged by the firm, and what the firm uses as its “minimum” time segment (1/10 hr, 1/6 hr, 1/4 hour). ABA Formal Opinion 93-379 opines on a number of billing practices. That Opinion states that the lawyer who bills on an hourly rate violates the Rules if the lawyer travels 4 hours by airplane for one client, charging that client for travel time, and works 2 hours drafting a contract for another client on the flight, billing a total of 6 hours for the 4-hour trip and (ii) prepares a brief [contract] for a client using a brief previously prepared in another case, but charges the client for the time required to prepare a new brief. It does not prohibit this type of efficiency if the client specifically agrees to such fees after being properly informed. Many firms now include the following

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9 Rule 1.12, TDRPC.

10 772 S.W.2d 151, 157 (Tex.App.--Texarkana 1989, writ denied).
language (or other similar language) in their engagement letters:

“Fees derived from these factors may be modified to take into consideration other factors, including the novelty and difficulty of the issues involved and the time limitations imposed by ____ or by the circumstances”

Charges for disbursements must be billed at the lawyer’s “cost,” and it generally is improper to bill a client for elements of general office overhead (i.e., secretarial overtime and overtime air if those costs are not incurred specifically for that client?).

D. Limit Scope of Work

To avoid future misunderstanding, the lawyer should clearly state what he has been hired to do and what he has not been hired to do. The Rules permit a lawyer to limiting the scope of his representation under certain circumstances. Many real estate lawyers draft partnership agreements but do not give securities or tax advice. Others document loans for lending institutions but do not give regulatory advice. A well-drafted engagement letter/fee agreement will eliminate any questions regarding the scope of the representation.

E. Describe Method of Dispute Resolution

Many engagement letters are now including a mandatory arbitration provision with respect to certain disputes arising during the representation. In other areas, Texas courts have held that Texas law favors mandatory arbitration and that arbitration does not deny parties their right to a jury trial, as a matter of law. Some lawyers, however, feel strongly that including an arbitration provision in an engagement letter should be unenforceable and void as a matter of public policy. One basis for this argument is that it permits lawyers to take advantage of their clients. A San Antonio court of appeals recently upheld a mandatory arbitration provision in an engagement letter. Under no circumstances, however, can the lawyer's malpractice be covered by the arbitration provision.

F. Describe the Firm's Policy on Document Retention.

The lawyer is charged with safeguarding the client's property. The Rules, however, do not tell the lawyer how long he must retain the client's files, and maintaining the files can be quite costly. If the lawyer adopts a file retention policy and clearly describes that policy in the engagement letter/fee agreement, he should be able either to return the files to the client or to destroy them after a few years. It also is good practice to make sure that all original documents are forwarded to the client.

G. Identify and Disclose all Conflicts or Potential Conflicts

Before accepting any representation, the lawyer must disclose all possible conflicts and obtain the client's consent. Every firm should have an established method of checking for conflicts. There are a number of computer software programs on the market for this purpose. As we all know, however, even computers are not foolproof. If a mistake is made while inputting information, the computer may very well miss a conflict. Most malpractice insurance carriers advise having at least 2 independent methods for checking conflicts. The Rules governing conflicts of interest include personal conflicts of an individual lawyer (spouse in opposing law firm, devout environmentalist being interviewed by a developer), conflicts with current clients, and conflicts with former clients. It is important to remember that if one lawyer in the firm is disqualified, then the entire firm is disqualified.

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11 Rule 1.02(b), TDRPC.

12 Jack B. Anglin Co., Inc., 842 S.W.2d at 268; Fridll, 908 S.W.2d at 511; D. Wilson Const. Co., Inc. v. McAllen Ind. Sch. Dist., 848 S.W.2d 226, 231 (Tex. App.--Corpus Christi 1992, writ dis'd w.o.j.)


14 Rules 1.06 and 1.07, TDRPC.
and that "Chinese walls" generally are not recognized under the Rules.\textsuperscript{15}

If a potential conflict exists and the client still wants to retain the lawyer, the engagement letter should disclose the conflict and describe the possible disadvantages to the client. Even though the general conflict of interest Rule does not require that the consent be in writing,\textsuperscript{16} it is always prudent to get written consent. If the representation involves multiple clients with potentially conflicting interests, the Rules require that the lawyer act as an intermediary and that the lawyer obtain the written consent of the clients.\textsuperscript{17}

In addition to the representation of partnerships and corporations, the real estate lawyer frequently finds himself representing one or more of the following: (i) family members,\textsuperscript{18} borrower/guarantor, buyer/seller,\textsuperscript{19} title company/buyer and/or seller. If the lawyer honestly evaluates the situation, feels that the conflict will not adversely affect the representation, and the client consents, the Rules permit all of these representations. Unfortunately, triers of fact seldom view the representation as permissible when it is being viewed with hindsight. It is imperative, therefore, that the lawyer carefully document the relationship at the beginning of the representation and that he review the representation from time to time after it has begun to make sure that his evaluation remains the same. A New York court, even in pretty egregious circumstances, found that a law firm was not liable for damages to one of the partners in a partnership based upon an engagement letter that described the exact fact situation that was the subject of the suit and that expressly stated that the law firm would do exactly what it did in that situation.\textsuperscript{20}

**H. Clearly Set Out Client’s Obligations.**

Clarifying what the client is to do has become even more important in recent years because of the bifurcation of responsibilities between the law firm and the in-house counsel or administration office of the firm. One of my colleagues has a client that orders and reviews all UCC searches prior to making the loan and files all Financing Statements following the closing. In both real estate lending and asset-based lending, the normal standard (and the one by which the attorney will be judged in any lawsuit!) is that the lawyer performs those functions. If the matter contains deadlines for delivery of certain materials (survey) and the client wants to make the request, that arrangement should be set out.

Also, most lawyers do not like to continue representing the client that does not pay for his services. If the engagement letter addresses this situation, it is possible to condition both your initial and continued work on the payment of the fee.\textsuperscript{21}

\textsuperscript{15} Petroleum Wholesale, Inc. v. Marshall, 751 S.W.2d 295 (Tex.App.--Dallas, original proceeding).

\textsuperscript{16} Rule 1.06, TDRPC.

\textsuperscript{17} Rule 1.07, TDRPC.

\textsuperscript{18} Lanier v. Sallas, 777 F.2d 321 (5th Cir. 1985); Brennan’s Inc. v. Brennan’s Restaurants, 590 F.2d 168 (5th Cir 1979); and Hoggard v. Snodgrass, 770 S.W.2d 577 (Tex. App--Dallas 1989, original proceeding);Katzur v. Kelly, 791 S.W.2nd 254 at 257 (Tex. App.--Corpus Christi 1990).


\textsuperscript{21} Rule 1.15 (b)(5), TDRPC -- "a lawyer may withdraw if the client fails to fulfill an obligation to the attorney and a reasonable warning has been given that the lawyer will withdraw unless the obligation is fulfilled.” But see, Staples v. McNight, 763 S.W.2d 914 (Tex.App.--Dallas 1988, writ denied) (court stated in dicta that by accepting employment an attorney impliedly represents that he will see the task through to conclusion).
IV. ENDING THE RELATIONSHIP

A. Declining Business.

Most lawyers make an effort to obtain an engagement letter when accepting a new representation. Those same lawyers are not nearly as conscientious about documenting the fact that they are declining the representation. The letter does not need to be long and complicated. It should, however, make it clear to the potential client that the lawyer is declining the business. If the potential client provided the lawyer with any documentation regarding the possible representation, those documents should be returned with the non-representation letter. If the lawyer decides to recommend another lawyer or law firm, he should include several names. Lawyers have been held liable for negligent referral. Finally, if the transaction contains time-sensitive matters or deadlines, the letter should advise the prospective client of those deadlines and emphasize the possible consequences of delay.

B. Terminating an Existing Relationship.

It is just as important to memorialize the end of the attorney/client relationship as it is to document the beginning. Many lawyers think that because they have an on-going relationship with a client that the relationship has not terminated. There are circumstances in on-going relationships, however, that do require documentation. Many in-house lawyers share the drafting responsibilities in larger financial institutions and in-house loan administrators review the title policy and file UCC Financing Statements after the closing. The outside lawyer's task actually terminates when the documents he prepares are forwarded to the title company. With different people responsible for different aspects of the transaction, it is not uncommon for one party to think the other was taking care of a matter. If the lawyer's role in a particular transaction ends when he sends the documents to the title company, there should be written evidence acknowledging the end of that transaction. If the lawyer is retained in what obviously will be a one-time relationship, the letter memorializing the end of the transaction should address any outstanding matters relating to the transaction that will require follow-up by the client and should address the issue of file retention.

V. CONCLUSION

The relationship between a client and attorney has changed over the years. Lawyers no longer engender respect and often are seen as a “deep pocket.” The time when the lawyer has the greatest opportunity to set the ground rules for the relationship is at the time new business is accepted (or declined). Many of the worst losses suffered by lawyers in recent years are directly attributable to the bad judgment of an individual partner in accepting a new client. The lawyer should be careful about exercising the “smell test.” If a client has a problem with the terms of the engagement letter that cannot be resolved before it is signed, the lawyer should decline the representation. The lawyer also go over the engagement letter in detail with the client, particularly is there are to be shared responsibilities.
EXHIBIT A
"REQUEST FOR PROPOSAL"--(Client)

This Preliminary Request for Proposal has been produced by the Mortgage and Real Estate Law Department (MRE Law) of [Company] for the purpose of preliminarily identifying law firms to [describe matter] on behalf of [Company]. This introductory section will provide general background information about [Company], [the matter] and the needs of MRE Law.

Background Information on [Company]

[Company] was established in [date] to [describe primary business]. Today, with over $___ billion in assets under management, [Company] is a major institutional investor. For further information regarding [Company], please visit the organization's website at www.[company].org.

The Mortgage and Real Estate Division

[Company's] Mortgage and Real Estate Division ("MRE") currently manages a general account portfolio of over $___, invested in ___ states, the District of Columbia, Canada and Western Europe. Approximately $___ is invested in over ___ commercial mortgages and about $___ in a commercial equity portfolio of ___ properties. In addition, MRE has established a $___ portfolio of commercial mortgage-backed securities, debentures and REIT preferred common stock and has made a number of fund investments.

[Company's] commercial mortgages primarily are in office buildings, regional shopping centers, industrial parks, multi-family residential apartments, hotels and retirement communities. These vary by size, type and geographic location.

For each of ____ and ___, [Company] invested approximately $___ in conventional mortgages, securitized commercial mortgage transactions and in property acquisitions. It is expected that this level of investment will continue.

Mortgage and Real Estate Law

MRE Law renders legal advice primarily to MRE on all matters relating to [Company's] real estate holdings and investments. Comprised of ___ attorneys and ___ legal assistants who hail from some of the largest and most prestigious law firms in the metropolitan _____ area, staff counsel have extensive experience in bankruptcy, tax and national and international real estate and structured finance transactions including conventional mortgage loans, securitized commercial mortgage investments and the acquisition and disposition of real property. As members of the major professional societies, such as the American College of Real Estate Lawyers, the American and ______ bar associations, staff counsel in MRE Law are leaders in their respective fields and lecture often on a myriad of topics and issues.

The New Program

The NP is the successor to ___ successful programs at [Company]: the ____ Program and the ____ Program. Loans between $___ and $___ will be processed through the NP and will be held by [Company] as whole mortgage loans with potential securitization of all or a portion of the loans at some time in the future.
[Company] has retained _____, L.P. ("Partnership") to perform business-related due diligence, analyses and related underwriting functions in connection with the proposed origination and funding of mortgage loans, including preparation of a loan application and commitment agreement (the "Application/Commitment"). After final review and approval by staff counsel, the Application/Commitment will be executed by Partnership and assigned to Company at or prior to the closing of the Loan. The form of Application/Commitment is attached as Exhibit "A".

Proposed mortgage investments will be secured by existing or to be constructed office buildings; hotels; assisted living and congregate care facilities; industrial and distribution warehouse facilities; retail and neighborhood shopping centers and multi-family residential apartment projects. The NP will offer ___ rate loans at competitive spreads over comparable maturity Treasuries for immediate and forward fundings. Ordinarily the loans will have a ___ year term and will be closed for prepayment during the first ___ years, with defeasance thereafter.

In order to enhance [Company's] ability to securitize the loans in the future, the NP will contain the following features:

• all borrowing entities will be single purpose entities and, for loans in excess of $___ million, certain bankruptcy-remote standards must be satisfied;

• during the open period of the loan, borrowers may effectuate a defeasance unless REMIC rules would be violated, in which event Lender may elect to have the loan prepaid (together with a premium based on a yield maintenance formula);

• upon the occurrence of an event of default (including borrower's failure to repay the loan balance on or prior to maturity) a lock-box arrangement will be automatically triggered; and

• if the loan balance is not repaid on or prior to maturity, [Company] may elect to extend the maturity of the loan whereupon the interest payable on the loan will increase, with the difference between the fixed interest and the increased interest rate being added to principal and bearing interest.

MRE is prepared to fund approximately $___ million under the NP during calendar year ____.

Role of Special Outside Counsel

MRE Law will engage special outside counsel, at borrower's expense, to represent [Company] in the NP. Special outside counsel will be primarily responsible for all legal aspects of the closing process and will be expected to work closely with [Partnership] to coordinate the closing. Reporting directly to staff counsel, special outside counsel will be guided by a manual to be developed by MRE Law. It is expected that special outside counsel will be sufficiently familiar with the policies and procedures promulgated for the NP so as to minimize involvement by staff counsel.

Special outside counsel's duties will include, without limitation, the following:

• drafting the documents listed on Schedule "I" on standard forms provided by MRE Law;
reviewing the survey, title commitment and underlying documents listed in the title commitment and resolving issues relating thereto;

reviewing the opinion of borrower's counsel and resolving any issues noted in the opinion;

reviewing the form lease for the property and resolving any issues relating to the form of lease;

advising [Company] with respect to all matters affecting the loan transaction and the collateral; and

closing the transaction including, if necessary, attending the closing or establishing an escrow closing;

completing all post-closing matters including [Company's] form of Closing Memorandum, assembling closing binders for [Company] and [Partnership] containing the executed and recorded documents and transmitting a floppy disk to staff counsel containing the first and final drafts of each document.

Borrowers will pay all expenses in connection with the loan, including fees and expenses of special counsel.
EXHIBIT B
"BEAUTY CONTEST" LETTER--(Firm)

(Date)

[Address]

Re: [Style]

Dear ______________________:

Thank you for asking us to discuss with you the possibility of retaining [Firm's Name] in connection with [describe matter]. We understand and agree that you are making no commitment to retain our Firm and that you are considering other lawyers, whom you remain free to hire instead of [Firm's Name].

Likewise, you understand and agree that if [Client's Name] and [Firm's Name] do not enter an attorney-client relationship with respect to this matter, we will remain free to represent any other party in connection with this or any related matter. To that end, [Client's Name] agrees that during our preliminary discussions to determine whether [Firm's Name] will be retained in this matter, any information you give us will not be confidential and that you waive any claim that our receipt of any such information from you will bar us from representing any other party in connection with this or any related matter.

If the foregoing correctly reflects our agreement, please so indicate by signing the enclosed copy of this letter in the space provided and return it to me. If you have any questions, please contact the undersigned.

Again, we appreciate you considering [Firm's Name] in connection with this matter, and we look forward to our discussions with you.

Very truly yours,

[Firm's Name]

By:______________________________

Enclosure
AGREED TO AND ACCEPTED:

[Client's Name]
EXHIBIT C
NON-REPRESENTATION LETTER

[Date]

BY MESSENGER - RECEIPT REQUESTED

Mr. Owen Owner
440 Louisiana, Suite 650
Houston, Texas 77002

Re: Potential Claim Against Prior Surveyor, Sam Sloppy

Dear Mr. Owner:

You have contacted this firm and requested that I evaluate whether this firm will represent you in a claim you believe should be filed against Sam Sloppy in connection with a survey he performed for you. I met with you yesterday and have subsequently reviewed the 1994 survey prepared by Sam Sloppy and the 1995 survey prepared by Abraham Accurate you left with me. I am returning both surveys with this letter.

I appreciate the confidence you have shown in this firm, but for various reasons this firm has decided not to represent you in this matter. However, if you have need in the future for legal assistance, I hope you will again consider our firm.

In declining to undertake this matter, this firm is not expressing an opinion as to the merits of the action or whether you will ultimately prevail if a petition is filed. You should not refrain from seeking legal assistance from another law firm because of any interpretation you may place on this firm's decision not to go forward with this matter. To the contrary, the passage of time is always important and could be critically short in your case. The passage of time could even ultimately bar any claim you might have against Sam Sloppy. Consequently, I recommend you contact another law firm immediately for assistance.

In accordance with our standard policy, we are not charging you for any legal fees or expenses. While we do charge for case evaluation, we do so only when we express an opinion on the merits. Since we have not expressed an opinion, no charge is being made.

Please call if you have any questions.

Yours truly,

Enclosures
EXHIBIT D
NON-REPRESENTATION LETTER

[Date]

BY MESSENGER - RECEIPT REQUESTED

Mr. John Buyer  
440 Louisiana, Suite 650  
Houston, Texas 77002

Re: Potential Purchase of Real Property Located in Harris County, Texas

Dear Mr. Buyer:

First, let me thank you for contacting this firm with respect to representing you in connection with your purchase of real property located in Harris County. When you first contacted me regarding this purchase, you indicated that you had already entered into a purchase and sale agreement to purchase property, but had since discovered an existing title problem with the property that you believe should be examined by an attorney prior to the closing. In our initial telephone conversation, I explained to you that I was unable to evaluate whether our firm could undertake this representation without knowing the identity of the parties involved. You then forwarded to me copies of the purchase and sale agreement and title insurance commitment.

Following my review of these documents and our subsequent discussion about this matter, I have concluded that we are not the appropriate firm to handle this matter for you. As I explained to you on the phone, this firm has a possible conflict of interest because of a prior relationship with the general partner of one of the interested parties. Consequently, I can not represent anyone involved in this transaction. Enclosed are the documents you previously forwarded to me in connection with this matter. In declining this representation, please understand that I am not expressing any opinion with respect to your legal remedies in this situation, nor am I suggesting that a solution is or is not available by structuring your proposed transaction in an alternative manner.

I strongly recommend that you contact another attorney regarding this matter who is familiar with real estate transactions. Because your purchase and sale agreement allows you to terminate the contract and recover your earnest money if you send the appropriate written termination notice on or before February 1, 1996 you should make every effort to retain legal counsel immediately so that your attorney will have time to properly evaluate the circumstances and advise you well in advance of this February 1, 1996 deadline. Failure to terminate the purchase and sale agreement on or before February 1, 1996 may cause you to lose your earnest money if you subsequently decide not to close this transaction.

As I told you on the phone, I will be glad to recommend several attorneys that practice in this area or you can contact the Houston Bar Association Lawyer Referral Service at 237-9429.

Again, I appreciate the confidence you have expressed in our firm and I hope that you are able to resolve this matter in a manner that is satisfactory to you.

Sincerely,
Enclosures

Lawyer Jones
EXHIBIT E
NON-REPRESENTATION LETTER

__(Date)__

[ADDRESS]

Re: [STYLE]

Dear __________:

This will confirm that [Firm's Name] is unable to represent [Company's Name or you] in connection with [describe matter]. Consequently, you should understand that we will not be monitoring any changes in the law or [company's or your] circumstances as they might affect the strength of your position in this matter or performing any other services for [Company's Name or you] in connection with this matter.

[It is our understanding that we do not currently represent [Company's Name or you] in any other matter.]

No attorney-client relationship has been created between [Firm's Name] and [Company's Name or you] in connection with this matter and nothing in this letter constitutes legal advice to [Company's Name or you].

[If present or prospective litigation is involved: You should not construe our declining to represent you in this matter to mean that your legal position is without merit. We have rendered no opinion as to whether the proposed litigation is meritorious or non-meritorious. If [Company's Name or you] wish to retain other counsel to represent you in this matter, you will need to act promptly. There may be several deadlines involved, which include [Describe]. If [Company's Name or you] fail to file a suit or take other appropriate action timely, [Company's Name or you] may lose permanently some, if not all, of [Company's Name or your] rights.]

[We are returning to you any papers and other information that you delivered to us in connection with this matter. As we indicated to you, there is no charge for our examining the possibility of representing [Company's Name or you].] [We did, however, incur some costs on your behalf in obtaining necessary information. Pursuant to your agreement to pay those costs, we enclose a statement itemizing them.]

[If appropriate, consider adding the following: Except for specific information relating to ____, we do not believe that we have obtained any information either from or about [Company's Name or you] or _______ that must be considered confidential. If you disagree in any respect with this evaluation, please advise the undersigned as soon as possible.]
We thank you, again, for presenting us with the opportunity to represent [Company's Name or you] in this matter, and we trust that you understand why we are unable to do so. [To acknowledge your receipt of the enclosed papers and other information, please sign the enclosed copy of this letter and return it to the undersigned.] Thank you very much.

Very truly yours,

[Firm's Name]

By: ________________________________

Enclosures

RECEIPT ACKNOWLEDGED:

__________________________________
[Client's Name]
EXHIBIT F
FEE AGREEMENT

(Date)

Ms. Jackson
President
Corporation X

Re: Proposed Merger Between Corporation X and Corporation Y

Dear Ms. Jackson:

On behalf of the entire firm of A, B & C, I would like to express our appreciation for your request that our firm represent Corporation X in connection with the proposed merger with Corporation Y. I am confident that our firm will be able to provide quality services in an efficient manner.

We believe that, prior to agreeing to serve as your counsel, it is important to Corporation X and our firm to ensure we have a clear understanding on several points. This includes the scope of the representation, potential ethical issues and our fees and expenses.

Therefore, set forth below is an engagement agreement which discusses the major aspects of our retention. If you feel it should be expanded or refined, please forward me your suggestions. If the agreement is satisfactory, please confirm this in the space provided below.

Scope

As Chairperson of the Board of Corporation X, you have requested that A, B & C represent Corporation X in what you believe will be a friendly merger with Corporation Y. Corporation X is to be the surviving entity. You have already analyzed the economics of the merger and have requested that we provide services in the securities and tax areas. This includes an analysis of whether the merger should occur this year or next year, as well as what disclosures are needed to minimize the chance of securities litigation. As you know, there is always some risk that a dissatisfied shareholder will file suit even if there is no merit.

Our sole client will be Corporation X. You have agreed to seek independent counsel to advise you regarding your 5 percent ownership of stock in both corporations. You have also informed me that Corporation Y will be represented by its outside general counsel, D, E & F.

As we discussed yesterday, our firm has represented Corporation Y in a few matters. At the present time, there is no active representation of Corporation Y.

The prior referrals came from D, E & F. In theory, this raises two issues which you have a right to be aware of and comment on. If for any reason you are uncomfortable about the prior referrals from general counsel to Corporation Y, we will of course understand.

First, you need to be aware that our firm has and continues to enjoy a good relationship with D, E & F. This will not prevent A, B & C from vigorously representing the interests of Corporation X. Nonetheless, this relationship is a matter you deserve to be aware of prior to retaining our firm. Despite this disclosure, we believe our relationship with D, E & F will in fact be an asset in the merger.
Second, because Corporation X and Corporation Y will be legally adverse, despite the anticipation of a friendly merger, we feel it is prudent to receive permission from Corporation Y to represent Corporation X in this transaction. As a former client, it might contend we had confidences or secrets which could be used adversely. Therefore, I enclose a copy of a letter which we propose to send to D, E & F. Assuming you approve this letter, we will forward it to D, E & F and expect a positive response.

Legal Fees and Expenses

You have already met my partner, Mr. G, who will handle the tax aspects of this transaction. His current hourly rate is $___. You have also met Ms. H, who is a senior associate in the corporate-securities department. Her rate is $___ per hour. One or more additional associates may also provide assistance. The rates for our associates currently range between $___ and $___ per hour. Finally, paralegal assistance will be utilized in order to avoid unnecessary legal fees. Their rates are currently between $___ and $___ per hour. As we discussed, my rate is $___ per hour.

All of our rates are subject to change once a year. This usually is considered in December. When increases are made, they range from ___ to ___ percent.

The hourly rates are a starting point for our statements for fees. Time is occasionally written off before a statement is sent because we feel there has been some degree of inefficiency caused by staffing decisions as opposed to client decisions. For example, an associate doing research on a matter might be required to assist in a trial which lasted longer than predicted. Another associate might have to finish the project, and the total time for the research might be higher than if the original associate had completed the project.

On the other hand, the total fees are sometimes raised from what the hourly rates would generate, based on the complexity and size of the transaction, as well as the attainment of superior results. We discuss all such increases with our clients, and are confident you will find them appropriate should we conclude such an increase is fair.

We will forward our statements on a monthly basis. They will contain a description of our services, including the date, the person rendering the service, the amount of time involved and a brief description of what was accomplished. There is also a summary for each attorney and paralegal which reflects the rates per hour for each person, the total time each one expended and the total fees attributable to their efforts.

Expenses are also detailed. Major items, such as airplane tickets, hotel and food charges, are individually itemized. Other expenses, such as copying, fax and telephone charges, are usually billed after being totaled in each category. Our rates for copying are $___ per page. Our rates for faxes are $___ per page.

Because we have worked together on other matters for Corporation X, its sound financial condition and your assurance that our statements will be paid within ten days of receipt, we have requested an initial refundable retainer in the amount of $____ which will only cover expenses. If the expenses are less, the difference will be refunded. In the interim, the funds will be placed in our trust account.

As we discussed, our current fee estimate for this engagement is $___. We will advise periodically if it appears the fees will be significantly higher. At such time, you may decide to restrict the scope of our efforts. If so, we will provide you with our best assessment of what risks will be incurred by Corporation
X if we are not permitted, because of economics, to take all steps which we feel are prudent on behalf of Corporation X.

Because our statements for fees and expenses are detailed, and sent monthly, our clients usually do not have any questions about them. However, as is always true, if you do have a question, please call me promptly so that we can discuss any concern you may have and respond appropriately. We are interested in continuing our long-term relationships. This is of course more likely to occur if we are receptive and responsive to questions regarding fees and expenses.

Finally, as is particularly true in securities matters, the law imposes certain obligations on attorneys. We are required to assist you in making full disclosure of all material benefits and risks involved in the merger. I am confident you will provide us with access to all relevant documents and that all knowledgeable personnel will be available to discuss the merger.

If at any time this does not occur, I know you want to be promptly informed. In such instances, your remedial action should avoid any need for our firm to discuss with you the possibility of withdrawing from the matter.

I look forward to receiving your confirmation that this engagement agreement is satisfactory or, in the alternative, your suggestions for expansion or refinement.

Sincerely,

________________________
Mr. D

I have read the above letter and request that A, B & C represent Corporation X pursuant to the terms stated herein and specifically waive the conflicts disclosed herein.

CORPORATION X

By:___________________________
Name:_________________________
Title:_________________________
EXHIBIT G
FEE AGREEMENT

[ADDRESS]

Re: [STYLE]

Dear ______________:

We appreciate being asked to represent [client's name or you] in connection with [describe matter]. Our experience has been that clients sometimes find it helpful for us to set forth, at the outset of our representation, the role and responsibilities of both our law firm and the client, and that is the purpose of this letter.

Scope of Engagement

As counsel for [client's name or you] we will [provide a description of the engagement, with a final sentence or clause to the effect "and such other legal services as may be requested."] [If you determine to engage the Firm on additional legal matters, this engagement letter will apply to those matters as well.]

[If there are specific matters we are not to undertake on behalf of the client or limitations on what we should do, they should be set out.]

[Include a time estimate for completing the work, if requested by the client and if appropriate (emphasizing that it is our best effort to comply with the client's request, but only an estimate).]

Cooperation

In order to enable us to render effectively the legal services contemplated, [client's name or you] [has or have] agreed to disclose fully and accurately all facts and keep us informed of all developments relating to this matter. We necessarily must rely on the accuracy and completeness of the facts and information you and your agents provide to us. To the extent it is necessary for [client's or your] representatives to attend meetings in connection with this matter, we will attempt to schedule them so that the convenience of those representatives can be served.

Fees

Our fees are based on the time spent by the lawyers and paralegal personnel who work on the matter. We will charge for all time spent in representing [client's or your] interests, including by way of illustration, telephone and office conferences with [client's representatives or you and your representatives], consultants (if any), opposing counsel, and others; conferences among our legal and paralegal personnel; factual investigation; legal research; responding to your requests for us to provide information to your auditors in connection with review or audits of financial statements; drafting letters and other documents; and travel.
Billing rates for our attorneys vary according to the experience of the individuals. Our current billing rates for those attorneys expected to work on your matter range from $____ an hour for the most junior associate to $____ an hour for the most senior partner. In an effort to reduce overall legal costs, we utilize paralegal personnel whenever appropriate. Time devoted by such paralegal personnel to client matters is currently charged at billing rates generally ranging from $____ to $_____ per hour. Billing rates for both attorneys and paralegal personnel are, from time to time, reviewed and adjusted on a firm-wide basis. [If agreed to by client: the fees ultimately charged may be increased based upon a number of factors, such as the value of the services we render, the degree of experience we have in performing our services, our efficiency in handling your matter, the size of the matter, and the results we achieve.]

[If appropriate: This will acknowledge receipt of a check for $____ as an advance payment for the fees and other charges which will accrue in connection with our representation. The advance payment will be applied first to payment of charges for such items as photocopying, messengers, travel, etc., as more fully described below, and then to fees for services. The advance will be deposited in our general trust account and we will charge such other charges and our fees against the advance and credit them on our billing statements. In the event such other charges and our fees for services exceed the advance deposited with us, we will bill you for the excess monthly or may request additional advances. Any unused portion of amounts advanced will be refundable at the conclusion of our representation. [Client's name or you] agree[s] that we will have the right to request additional advances from time to time based on our estimates of future work to be undertaken.]

[Alternative, if appropriate, for two preceding paragraphs]

[Our fees for services to be rendered in this matter will be $______.]

Other Charges

In addition to our fees, there will be other charges for items incident to the performance of our legal services, such as photocopying, messengers, travel expenses, long-distance telephone calls, facsimile transmissions, postage, overtime for secretaries and other non-legal staff, specialized computer applications such as computerized legal research, and filing fees. Unless special arrangements are otherwise made, fees and expenses of others (such as experts, investigators and consultants) will be the responsibility of, and billed directly to [client or you.] Further, all invoices in excess of $500 will be forwarded to [client or you] for direct payment.

Billing Cycle

Our billing rates are based on the assumption of prompt payment. Consequently, unless other arrangements are made, fees for services and other charges will be billed monthly and are payable within thirty days of receipt.

Cost Estimates

Although we may from time to time, at the client's request, furnish estimates of legal fees and other charges that we anticipate will be incurred, these estimates are by their nature inexact (due to unforeseeable circumstances) and, therefore, the actual fees and charges ultimately billed may vary from such estimates.
Our representation of [client or you] in this matter includes commitments by the Firm not to take a position adverse to [client or you] in certain matters where we might otherwise represent another existing or potential client and not to misuse any confidential information you may furnish us. Because of the broad base of clients which the Firm represents on a variety of legal matters, it is possible that [client or you] may find [itself or yourself] in a position adverse to another Firm client in litigation, legislative or regulatory proceedings, business negotiations or some other legal matter unrelated to our representation of [client's or your] interests in the current matter. Given that possibility, we wish to be fair not only to [client's or your] interests, but to those of our other clients as well. Consequently, this letter sets forth our commitment to [client or you] not to take a position adverse to [client or you] with respect to certain matters and [client's or your] agreement with respect to the areas in which the Firm is free to take such an adverse position.

In representing [client or you], we recognize that we will be disqualified from representing any other client in any matter which is substantially related to our representation of [client or you]. Likewise, we will be disqualified with respect to any matter where there is a reasonable probability that confidential information you furnish to us could be used to your disadvantage. [Client or you] agree[s] that, except as set forth in the preceding sentences, the Firm shall be entitled to represent the interests of any other client against those of [client or you] in litigation, legislative or regulatory proceedings, business negotiations or other legal matters.

[NOTE OF EXPLANATION. The preceding paragraphs are intended to deal with conflicts which might arise in the future and not any existing conflict. In the latter case, such conflict can be resolved (if at all) only after full disclosure of all the facts and issues and the informed consent of all parties affected.]

Withdrawal or Termination

Our relationship may be terminated by either of us at any time by written notice to the other party.

We reserve the right to withdraw from our representation if, among other things, [client or you] should fail to honor the terms of this engagement letter or fail to cooperate or follow our advice on a material matter, or if any fact or circumstance would, in our view, render our continuing representation unlawful, unethical, or ineffective. [If appropriate: In that connection, the Firm is, with [client's or your] consent, also representing __________ in connection with the matter described herein.] If we elect to withdraw for any reason, [client or you] will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and other charges accrued on [client's or your] behalf to the date of withdrawal.

Client Documents

We will maintain any documents [client's name or you] furnish(es) us in our client file (or files) for this matter. At the conclusion of the matter (or earlier, if appropriate), it is [client's or 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 a certain period of time and ultimately destroy them in accordance with our record retention program schedule then in effect.
Other

[Describe any limitations on the Firm's conduct such as a limitation on the number of lawyers permitted to participate at conferences or hearings, and prohibiting certain types of travel or accommodations.]

If the foregoing correctly reflects your understanding of the terms and conditions of our representation, please so indicate by executing the enclosed copy of this letter in the space provided below and return it to the undersigned.

Please contact me if you have any questions. We are pleased to have this opportunity to be of service and to work with you.

Very truly yours,

[Firm's Name]

By:_________________________

Enclosure

AGREED TO AND ACCEPTED:

____________________________________
[Client's Name]
[By:]
EXHIBIT H
FEE AGREEMENT

(Date)

PRIVILEGED--ATTORNEY-CLIENT COMMUNICATION

(Client Name) 
(Client Address) 
(City)

Re: (Style of matter)

Dear ____________________:

Please read this letter carefully. It describes the terms and conditions under which we will undertake to represent [list all clients] in connection with the above-described matter. Our firm policy requires that each client sign a copy of this letter, agreeing to the terms and conditions described below. Indeed, we require that the letter be signed 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 published hourly rates in effect for each lawyer and legal assistant in our firm at the time the services are rendered. Our current hourly rates are attached. We review these hourly rates annually and adjust them on January 1 if appropriate. [To be inserted where the client is a plaintiff or potential plaintiff:] In the event your claims are asserted in a lawsuit and the case goes to trial, and in the event that _____ percent (____%) of the gross sum recovered for you by settlement or judgment up to $_____ plus _____ percent (____%) of the gross sum recovered for you by settlement or judgment over $_____, exceeds the total amount you have paid us for legal fees to that time, you will pay this law firm the difference. The "gross sum recovered" means all money recovered by you, including any attorneys' fees awarded by the court.]

2. It is our firm policy to bill clients monthly for fees and out-of-pocket expenses. Each lawyer and legal assistant contemporaneously records the time required to perform services, and these time records are put into a computer that generates a monthly bill which we try to send out around the 15th of the following month. This monthly bill, a sample of which is attached, describes services performed and the expenses incurred.

3. Our hourly rates do not include any interest factor for slow payment. Because of this and the additional fact that we do not include a service charge for late payments, we must insist that our clients pay their bills promptly. It is our usual practice to send to our clients for direct payment by them invoices we receive from third parties such as court reporters, expert witnesses, and reproduction services. You will be expected to pay such invoices promptly upon receipt.

4. If in the course of our representation we anticipate a significant increase in the level of our activity on your behalf, e.g., the commencement of trial preparation or trial, we may bill you on a basis more frequent than monthly. We will expect that such statements will also be paid promptly.
5. It is our usual practice to require a cost deposit before we commence work for a client. We have asked that you remit to and maintain with us, during the entire course of our representation of you, a cost deposit in the amount of at least $_____________. We will place these funds [in an interest-bearing trust account] [or] [in a State Bar of Texas Interest on Lawyers Trust Account, the interest on which inures to the benefit of the Texas Equal Access to Justice Foundation.] The cost deposit will be applied to our final statement for fees and expenses, or, in our discretion, to any past due monthly statement. Upon the termination of our services, we will promptly refund the cost deposit to you, less any balance for 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 upon your execution of this engagement letter, but payment of the requested cost deposit.

7. This firm retains the discretion to request a supplemental cost deposit, over and above the cost deposit required prior to our commencement of the engagement, in the event of an increase in our anticipated fees and expenses during the course of litigation.

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 monthly statement for fees and expenses (including bills for expenses received from third parties), or for supplemental cost deposits, within fifteen (15) days of receipt of such statements, normally by the first of the month following receipt. In such event, you agree that we may move to withdraw as your counsel in any case where we have made an appearance on your behalf, and that you will promptly execute any withdrawal motions required to accomplish this.

9. By your signature on this engagement agreement, you also understand that under Texas law we have a right to assert a lien against your files to secure payment of any unpaid amounts you owe us.

10. During the course of our discussion with you about handling this matter, we may have provided you with certain estimates of the magnitude of the fees and expenses that will be required at certain stages of this litigation. It is our firm policy to advise all our clients that such estimates are just that, and that the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which the opposition files pretrial motions and engages in its own discovery. The reason why we submit our clients bills on a monthly basis shortly after the services are rendered is so you will have a ready means of monitoring and controlling the expenses you are incurring. 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 in the future. When we do not hear from you, we assume that you approve of the overall level of activity on our part in this case on your behalf.

11. Any disputes arising under this engagement agreement will be submitted to arbitration by the _______________ and by your signature on a copy of this letter, you agree that the arbitrator's decision shall be binding, conclusive and non-appealable.

We discuss the terms and conditions of our engagement so candidly because we believe that you are entitled to know our policies, and that this type of frank discussion will avoid any misunderstandings later.
Please sign a copy of this letter in the space provided below, indicating your agreement to the terms and conditions set forth above. Upon your signature of this letter, and payment of the required cost deposit, we will commence our representation in the above-described matter.

Sincerely,
[Firm Name]

By:________________________
_________________, Partner

Attachments: Sample Monthly Statement
Current Hourly Rates

ACCEPTED:

[Name(s) of client(s)]

By:________________________
Date:________________________
Social Security or EIN
Number:________________________
(Please provide this number for bank use in establishing trust account)
EXHIBIT I
FEE AGREEMENT

[Date]

Mr. John Smith  
Development Director  
National Development Co.  
Chicago, Illinois 00000

Re: $100,000,000 Loan by New York Bank to National Development Co.

Dear John:

I am pleased that National Development Co. has hired me to act as local counsel for the above referenced loan. Prior to accepting this representation, however, I would like to clarify the terms and conditions of our engagement agreement.

First, 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.

Second, I want to address the billing arrangements in connection with the above-referenced purchase. Our firm charges on an hourly basis and current hourly rates for our attorneys and legal assistants are listed on the enclosed 1996 Schedule of Rates. We customarily bill on a monthly basis and our statement will include our out-of-pocket expenses. In this way, you will know on a monthly basis what charges have accrued. We request that payment be made within fifteen (15) days of the receipt of our statement. In the event that you have any questions or concerns regarding any of our statements, please do not be embarrassed to contact me.

Because the attorney-client relationship is a very personal one, we want you to understand that you have the right at any time, as do we, to terminate this engagement. In the event of termination before this matter is concluded, we will make every reasonable effort to effect an orderly transfer of the file to whomever you may designate, provided, however, that all of our fees and out-of-pocket expenses are fully paid. In the event that you do not pay our statements on a timely basis, you agree that our firm may cease all further work on any matter which we are handling for National Development Co. until the past due amounts are paid.

I would appreciate it if you would sign one of the enclosed copies of this letter and return it to my attention. That way we will have a written record of National Development Co.'s consent to our representation, and we will both have a record of the fee arrangements for this matter.

Thank you for engaging our firm to represent National Development Co. on this matter. Please call me if you have any questions or comments. I look forward to working with you.
Sincerely,

DOE & DOE

By:  
Name: John Doe  
Title: Partner

National Development Co. requests Doe & Doe to represent it in connection with the above described matter. I have read the foregoing letter and I approve the terms of this agreement including the fee arrangement set out herein.

NATIONAL DEVELOPMENT CO.

By: 
Name: John Smith  
Title: Development Director

Enclosures
[Date]

[Address letter to all investors]

Re: Consent to Multiple Representation in Organizing Corporation and Acting as Its General Counsel

Gentlemen:

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 Rule of Professional Conduct ("TDRPC"), as adopted by the Supreme Court of Texas and State Bar of Texas.

A lawyer has the duty to exercise independent professional judgment on behalf of each client. When a lawyer is requested to represent multiple clients in the same matter, he can do so if he concludes that he can fulfill this duty with regard to each of the clients on an impartial basis and obtains the consent of each client after an explanation of the possible risks involved in the multiple representation situation. 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 the clients impartially, then the lawyer must at that time withdraw from representing all of the clients.

At the time of 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 on an impartial basis. 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 in connection with 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 by us 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 any of you with regard to the major issues involved in organizing the Corporation. However, it may turn out, upon further consultation, that one or more of you may have varying opinions with respect to the Corporation's capitalization and other organizational matters. Issues about which investors may disagree include the amount and type of stock, terms of any loans or leases of property to the Corporation by the investors, debt-equity ratio, election of Subchapter S corporation status, salaries and fringe benefits, stock options, management responsibilities, restraints on the sale or other transfer of the Corporation's stock, circumstances under which the shares of the Corporation may or must be purchased by the Corporation or other shareholders, and selection of the Corporation's fiscal year. It is our duty to explore each of these issues with you. Should we determine that there are material differences between you on one or more of these issues that you cannot resolve on an amicable basis 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 our accrued legal fees and any outstanding expenses we have advanced on your behalf. If we have to withdraw, there would most likely be an added expense caused by the representation by a new law firm.

Third, as you know, I have represented [name] in other legal matters. I do not feel that this prior representation will in any material manner affect my ability to represent each of you on an impartial basis. Nonetheless, you must understand that this prior representation may unconsciously bias me in favor of [name] in the event of any disagreement between 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 shall 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 this subject, we will discuss with you whether we can ethically draft it. If not, we will recommend independent counsel for you. However, we cannot provide advice to any of you in connection with any claim you may possess or desire to assert against the other for indemnity or reimbursement of fees and disbursements billed by us in connection with this representation.

We anticipate that the organization of the Corporation will involve the following legal fees and costs. [Insert fee information] Our statements for fees and expenses will be sent to you each month. They are detailed, but please call me if you have any questions.

We will forward our statements each month and, based on our agreement, [name] will promptly pay them. Of course, if he, or any of you, have questions concerning the description of our services, please call me so we can discuss it. Once the Corporation is formed and operating, we will bill the Corporation directly. Let me reiterate that we will at that time represent the corporate entity and not any of you individually.

As is true with all legal services, we can not and do not guarantee the results of our representation. We can not and do not make any warranties express or implied with regard to our representation.
If you are willing to consent to our joint representation based on the disclosures and conditions listed above, please so indicate in the space provided below and return one copy of this letter to us.

Yours truly,

[NAME OF FIRM]

By: ________________________________

[Name of Attorney]

We consent to your joint representation of us on the conditions set forth in this letter.

Date: ________________________________

[Name of Client]

[Repeat Signature Block As Needed]
EXHIBIT K
WAIVER OF CONFLICT OF INTEREST
Example 1: Letter to New Client
Example 2: Letter to Existing Client

(Date)

DELIVERED BY MESSENGER

[New Client]

________________________
________________________

Re: Waiver of Conflict of Interest

Dear ____________:

Your company has asked our firm to represent the company in connection with the review and negotiation of a proposed lease in ____________ ("Building") owned by ____________("Landlord"). Prior to acceptance of this representation, we have advised you that our firm currently represents Landlord with regard to litigation matters unrelated to lease negotiations, the Building or the proposed lease.

Our firm does not believe that this concurrent representation of Landlord will have a detrimental effect on our ability to represent you. You should be aware, however, that if you subsequently choose to sue Landlord in connection with the lease, our firm would not be able to represent the company in that litigation. Nor would we represent Landlord in such a suit.

Please give careful thought to the matters we have discussed and, if you so choose, please indicate below that you are waiving any conflict of interest that may result from the proposed representation.

Sincerely,

[New Client] hereby waives any conflict of interest in connection with the matters described above.

________________________

By: _________________________
Name: _________________________
Title: _________________________
(Date)

DELIVERED BY MESSENGER

[Existing Client]

____________________
____________________

Re: Waiver of Conflict of Interest

Dear ___________: 

It is our understanding that your company ("Landlord") is the owner of __________________("Building") and that Landlord is currently negotiating a lease for office space in the Building with ____________("Tenant"). Tenant has asked our firm to represent Tenant in connection with the review and negotiation of the proposed lease.

Prior to acceptance of this representation, we have advised Tenant that our firm currently represents Landlord with regard to litigation matters unrelated to lease negotiations, the Building or the proposed lease.

Our firm does not believe that this concurrent representation of Landlord will have a detrimental effect on our ability to represent Tenant in the lease negotiations or our ability to continue to represent Landlord in connection with the litigation matters for which we are currently engaged. You should be aware, however, that if you subsequently choose to sue Tenant in connection with the lease, our firm would not be able to represent Landlord in that litigation. Nor would we represent Tenant in such a suit.

Please give careful thought to the matters we have discussed and, if you so choose, please indicate below that you are waiving any conflict of interest that may result from the proposed representation of Tenant.

Sincerely,

__________________________

[Existing Client] hereby waives any conflict of interest in connection with the matters described above.
[Date]

Mr. Sam Client
440 Louisiana, Suite 650
Houston, Texas  77002

Re: Termination of the Relationship Between Smith & Jones and Mr. Sam Client

Dear Mr. Client:

During the past eighteen months, it has been our pleasure to serve you as counsel in the continual work-out negotiations between you and Big Bad Bank. In the course of that representation, you have paid us $5,500 in legal fees and expenses. Unfortunately, contrary to our Engagement Agreement, you have not paid our statements in a timely manner for the past few months.

At this time, the outstanding and overdue fees and expenses total approximately $4,500. Our firm desires to continue our relationship, but does not have the ability to finance your legal representation. Moreover, you expressly agreed that the hourly fees and expenses in this matter would be kept current.

We have continued to represent you for the past five months, even though each month the outstanding fees and expenses increased. We did so because we value our relationship with you and would like to continue representing you.

We are now at a stage in the work-out negotiations that will provide you the opportunity to retain other counsel without jeopardizing your negotiating position. However, if we wait several more months, it is possible that circumstances will change and this opportunity will be lost. Consequently, as of January 31, 1996 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 which will be incurred. In addition, it will be necessary to agree on a plan to gradually reduce the outstanding fees and expenses.

We also have work product which has been generated during the past five months. We are willing to share it with your new counsel to the extent our legal obligations require us to do so in the absence of full payment of our fees and expenses.

If you wish us to continue representing you, we would be pleased to do so if satisfactory arrangements are made to take care of the outstanding and overdue fees and expenses, as well as to take care of the future fees and expenses.
I look forward to hearing from you, and remain hopeful our representation can continue.

Sincerely,

Lawyer Smith
SMITH & JONES
EXHIBIT M
DISENGAGEMENT LETTER

[Date]

(NAME AND ADDRESS)

Re: [STYLE]

Dear ____________:

We are writing to confirm that [Firm's Name]'s representation of [client's name or you] in connection with [describe matter] has been terminated and that we have no further obligation to advise or perform other services for [client's name or you] in connection with this matter. If [client's name or you] wish to have any documents from our files delivered to you, please so advise us and identify such documents. As to any remaining documents, we will retain our files for a certain period of time and ultimately destroy them in accordance with our record retention program schedule then in effect.

[If appropriate, set forth the basis or reason for termination of the Firm's representation.]

[You should be mindful of deadlines that already apply to this matter, which include .......]

Our [final] statement for services rendered and other charges is enclosed. If you have any questions regarding our statement, please call the undersigned.

Very truly yours,

[Firm's Name]

By: ______________________________
EXHIBIT N
DISENGAGEMENT LETTER

(Date)

[NAME AND ADDRESS]

Re: [STYLE]

Dear ____________:

Our purpose in writing is to memorialize our recent discussions and agreement to terminate [Firm’s Name]'s representation and relationship as your counsel in connection with [describe matter]. Our Firm has to date received payment for our services and other charges in the amount of $____________. Pursuant to the terms of our initial engagement letter dated __________, we are enclosing herewith our statement for services and other charges accrued through the termination date.

You [have engaged] [stated that you wish to engage] new counsel to pursue this matter on your behalf and, therefore, we have no further obligation to advise or perform other services for you in this matter. However, in order to transfer papers and documents pertaining to this matter to your new counsel, we will need to obtain from you a letter of authorization to do so. If you wish, we will gladly meet with your new counsel to provide whatever information your new counsel may request to facilitate the transition. For time spent with your new counsel [we will not charge for up to ___ hours] [we will charge for the time spent at ___% of the billing rates presently in effect]. We will also need to obtain, at the time of delivery, a letter from your new counsel (i) acknowledging receipt and (ii) agreeing to retain such papers and documents and make them available to us for examination (at reasonable times and upon sufficient advance notice) should we become involved in any litigation or proceeding involving our prior representation.

[You should be mindful of deadlines that already apply to this matter, which include the following ........]

[If appropriate, set forth the basis or reason for termination of the Firm’s representation.]

We regret that our relationship had to be terminated with respect to this matter, an event that was not anticipated by either you or us when we began the representation.
[If appropriate: We thank you for the opportunity to work with [client's name or you] and will look forward to your calling on us in the future.]. Please call the undersigned if any questions remain.

Very truly yours,

[Firm's Name]

By:_______________________________
[NAME AND ADDRESS]

Re: [STYLE]

Dear ____________:

We are writing to confirm that our representation in connection with ______________ matter has been concluded. Because the attorney-client relationship between us has ceased, we will have no further obligation to advise you in connection with this matter or as to future legal developments that may have a bearing on the matter. However, unless we hear from you to the contrary, we intend to keep you on our mailing list that we use to provide friends of the firm with information s to various legal developments that may be of interest.

Our final statement for services rendered and disbursements and other charges is enclosed. If you have questions regarding our statement, please call me. If you wish to have any of the documents that you supplied to us returned to you, please so advise us.

We are pleased to have had the opportunity to be of service to you, and we thank you for asking us to do so. Should there be matters in the future where we might be of assistance again, we hope you will call upon us, and we shall be pleased to consider possible retention with respect to those matters.

Sincerely yours,

[FIRM NAME]

By___________________________  
[Firm Lawyer]
EXHIBIT P

“I AM NOT YOUR LAWYER” LETTER

(Date)

(NAME AND ADDRESS)

Re: [STYLE]

Dear ____________:

It was a please to meet you last week. I would like to confirm what I told you about the relationship between you, our client, ________, and our law firm concerning the ______ project.

As I mention to you, our only client in this matter will be ____________. We anticipate that our firm will be doing a good deal of work in connection with this venture, including drafting of documents necessary to effectuate the various aspects of the development. We will, of course, provide you, (either directly or, if you should decide to retain counsel, through that counsel) with draft copies of those documents to allow you to comment on their terms, suggest changes, and to generally protect your interests. In preparing document, or doing other work on the project, however, we will be representing only _______ and protecting only his interests. If either of you wishes to have legal representation in this matter, you must obtain it from another lawyer or law firm.

I know that both of you have a good relationship with __. However, in a venture such as the ________ project, matters may arise where ______’s interests differ from yours. In such circumstances, we will be representing only ________’s interests. You have acknowledge that you understand that to be the case.

[Let me assure you that I have not sent this letter because I anticipate any hostility between you and ______ during this venture. I expect that you will all enjoy working together on this project. It is best, however, to make sure there is no misunderstanding about relationships between our firm and those when we have dealings on a project.]

We look forward to working with you on this project.
Sincerely,

[FIRM NAME]

By:_________________________
[Firm Lawyer]

cc [Name of Client]

AGREED AND ACCEPTED:

[Non-Client(s)]