CONFLICTS OF INTEREST

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CONFLICTS OF INTEREST

I. INTRODUCTION

In recent years, the importance of attorney-client conflicts cannot be overstated. It is very likely that a conflict of interest is the ethical issue that a business lawyer confronts most often in his day to day practice. There is a significant connection between malpractice claims and conflicts of interest. Sometimes the motivating reason for the lawsuit is not the attorney’s error, but instead, the fact that the underlying business has failed. Business lawyers are often sued almost as insurers of the financial success of their client’s business transactions. The client—who has taken some business risk and lost—seeks to recoup his financial loss by demonstrating that the loss could have been avoided if the lawyer had provided different advice.

A key component of many of these malpractice claims is an allegation that the lawyer had a conflict of interest that impaired his ability to render objective advice. If proved, that allegation at once supplies the trier of fact with an explanation and motive for the lawyer's failure to give legal advice that would have avoided the client's problem. It also satisfies the breach of duty element of the malpractice claim. The client's business loss then becomes the lawyer's responsibility.

It is important to understand that business lawyers frequently invite these claims by failing to recognize the existence of conflicts of interest early on and by failing to apply the rules governing conflicts of interest. For more on this topic, see Harry H. Schneider, Jr., An Invitation to Malpractice: Ignoring Conflict of Interest Rules Open Pandora's Box, 78 A.B.A.J. 104 (November 1992).

II. SCOPE OF ARTICLE

It is not my aim to discuss ad nauseam the Texas Disciplinary Rules of Professional Conduct (the “Rules”) associated with conflicts of interest. Nor is it my desire to dissect the latest case law in this area. While both are academically interesting, an esoteric paper is not particularly helpful when your client is in a rush and needs an immediate response from you. I will not be addressing issue conflicts or economic conflicts because my time is short and I want to carefully cover the types of conflicts that are most likely to cause problems for the everyday practitioner.

My goal is to help the business attorney identify potential conflicts of interest that are likely in his practice and to provide a brief and practical guide to applying the Rules to the problem. In this regard, I am attaching forms that I hope will stir the reader to think about these issues in advance of a problem and will encourage the reader to generate his own customized forms.

III. IF THERE IS A CONFLICT, WHAT DO I DO?

A. Why are the Rules so hard to understand and apply?

Despite the frequency in which the average business lawyer is confronted with ethical issues involving conflicts of interest, the Rules fail to give the practitioner clear practical guidelines to follow. It has been suggested by some that the Rules are inadequate in this regard because the Rules were drafted by litigators and academics with little to no thought as to how the Rules would apply to business lawyers. Whatever the reason, it is indeed unfortunate that the Rules are so wholly lacking in an area that must be addressed on a day to day basis by thousands of business and transaction lawyers in Texas.

B. Practical Advice

The Rules may be confusing, but there are practical steps to help you practice law. The key is to address these issues before they are a problem and before there are time pressures that do not permit you to think through the issues thoroughly.

- Adopt policies and procedures to be uniformly followed
- Run conflicts checks
- Require written disclosures of conflicts
- Require written consent to waiver of conflicts
- Require written fee agreements

These practical steps will be discussed further in the following sections of this paper. In addition, the forms attached will hopefully provide ideas for customized forms that can be adapted to your practice and situation.

IV. IF IT IS A CONFLICT, WHAT KIND IS IT?

A. Categories of Conflicts

In order to help wade through the confusion created by the Rules, I have separated different types of conflicts into several categories:

- Conflict with former client
- Conflict with current client (“Concurrent Representation”)
- Conflict inherent in taking on the representation of multiple clients as an intermediary (“Multiple Representation”)
- Business interest with client
- Personal conflict

I will address each of these conflicts later in the paper. As a note of explanation, however, I have divided multiple party representations into two categories. The
first is called "Concurrent Representation". Typically this occurs where one or more lawyers from a firm by coincidence currently represent clients with directly adverse interests. The second, called "Multiple Representation" is created when multiple parties ask a lawyer to represent all of their interests in a specific matter. The attorney's role is then transformed into an “intermediary”. An example would be where investors request an attorney to form a new corporation on their behalf and to represent the new corporation.

B. Conflict with Former Client
1. Rule 1.09
   Rule 1.09 specifically addresses conflicts of interest with former clients. Section (a) of the Rule states:

   (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

   (1) in which such other person questions the validity of the lawyer’s services or work product for the former client;
   (2) if the representation in reasonable probability will involve a violation of Rule 1.05 (Confidentiality of Information); or
   (3) if it is the same or a substantially related matter.

2. Consent Required
   Unless the former client consents, an attorney cannot represent someone materially adverse to a former client if it is in the same matter or in a substantially related matter as the work performed for the former client. This applies to all partners and associates of the firm in which the disqualified attorney is practicing. See Comment 5 of Rule 1.09. See also, Kline "Motions to Disqualify Based upon Conflicts of Interest -- Identifying the Rules of the Game" 25 St. Mary's L.J. 739 (1994).

3. "Chinese Walls"
   Some firms erect a “Chinese Wall”1 around the attorneys who represented the former client, thus isolating them from any communications regarding the current client that is adverse to the former client. Chinese Walls, however, are not universally recognized as a method for curing an existing conflict. In Texas if one lawyer is tainted the entire firm is tainted. National Medical v. Godbey, 924 S.W.2d 123 (Tex. 1996), Henderson v. Floyd, 891 S.W.2d 252 (Tex. 1995) and Petroleum Wholesale, Inc. v. Marshall, 751 S.W.2d 295 (Tex. App.--Dallas original proceeding).

4. Waiver of Conflict of Interest
   The whole area of conflicts of interest can be particularly confusing when applied to a business practice. The safest course is to fully disclose any potential conflict in writing and to obtain written consent from the new client and the former client. See Exhibit A for two example letters one might send to obtain written waivers of the conflict. The first letter is drafted to the new client. The second letter is drafted to the former client.

C. Concurrent Representation
1. What is Concurrent Representation?
   I coined the term “concurrent representation” to describe the classic conflict of interest. A lawyer is asked to represent Client A in a transaction with Client B and by coincidence the lawyer, or another member of his firm, currently represents Client B in other matters. Thus, both Client A and Client B would be represented concurrently, but in different matters.

2. Rule 1.06 - Conflict of Interest: General Rule
   The concurrent representation of clients is governed by Rule 1.06.

Rule 1.06 Conflict of Interest: General Rule

(a) A lawyer shall not represent opposing parties to the same litigation.
(b) In other situations and except to the extent permitted by paragraph (e), a lawyer shall not represent a person if the representation of that person:

   (1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or
   (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another

1 The term “Chinese Walls” is a reference to the Great Wall of China, one of the wonders of the world. The Great Wall is over 4,163 miles long and was built more than 2,000 years ago. It was an impenetrable wall built for protection. I mention this, because when giving an ethics speech in California a few years ago, I was told that my reference to “Chinese Walls” was a racial slur. It is not a racial slur. It is a reference to a great accomplishment by the Chinese people.
client or to a third person or by the lawyer's or law firm's own interests.

(c) A lawyer may represent a client in the circumstances described in (b) if:

(1) the lawyer reasonably believes the representation of each client will not be materially affected; and

(2) each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

(d) A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.

(e) If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

(f) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct.

3. What Test is used to determine if Concurrent Representation of Clients is permitted?

a. Rule 1.06(b)

Rule 1.06(b) prohibits an attorney from representing a client if he must answer "yes" to any of the following questions.

- Is the representation substantially related and materially and directly adverse to the interest of another client?
- Is the representation of the client adversely limited by the attorney's responsibilities to other clients or third persons?
- Is the representation of the client adversely limited by the attorney's own interests or the interests of his firm?

It is important to note that if the attorney honestly gives a negative response to these questions, the Rules do not require the lawyer to obtain consent from his clients.

Compliance with the Rules, however, does not insure the lawyer against a subsequent lawsuit by a disgruntled client. An angry client could sue after the fact and claim that his interests and the interests of the other client were in fact "materially and directly adverse".

b. Exception Provided in Rule 1.06(c)

Notwithstanding the prohibition of Rule 1.06(b), an attorney can represent clients concurrently in certain instances because of an exception set forth in Rule 1.06(c). This exception allows the attorney to represent the client if the attorney:

- Reasonably believes the representation of each client will not be materially affected
- Each affected or potentially affected client consents to such representation after full disclosure

c. Disclosure and Consent Required

Rule 1.06 requires disclosure and consent; however, it does not require the disclosure and consent to be in writing. Nonetheless, it is a good practice to make the disclosure in writing and to obtain a written consent. For example, see the consent letter to the new client and the consent letter to the existing client in Exhibit B. These forms are substantially similar to the letters in Exhibit A; however, they specifically deal with the conflicts between two current clients as opposed to the conflict between a new client and a former client.

d. Chinese Walls

Some firms apparently utilize the exception in Rule 1.06(c) to accommodate the practice whereby both parties to a transaction are represented by different lawyers in the same firm. Each client is represented zealously by the individual lawyer hired and a "Chinese Wall" is erected around them to protect confidentiality. While this is an ongoing practice in some firms, its permissibility under the Rules is questionable. See Rule 1.06(f).

D. Multiple Representation

1. What is Multiple Representation?

I have used the term “multiple representation” in this paper. In doing so, I am referring to the representation of multiple clients by one attorney in the same matter. Multiple representation is usually initiated at the request of the clients and it places the attorney in the role of intermediary.

Although multiple representation is a frequent situation in the average business and transaction
lawyer's practice, many attorneys fail to recognize it as such. A few examples follow:

- Forming a corporation upon request of the shareholders
- Conflicts between potential corporate interests and those of individual officers or members of the board of directors
- Drafting a partnership agreement upon request of the partners
- Drafting a limited partnership agreement upon request of the general partner
- Conflicts between potential partnership interests and those of individual partners
- Drafting a co-tenancy agreement upon request of the joint owners of property
- Representing members of the same family in connection with a business or the ownership and disposition of property
- Representing a borrower and guarantor in connection with a loan

2. Rule 1.07 - Intermediary
   The ethics rule in Texas that applies in Multiple Representations is Rule 1.07. This Rule is stated below.

   **Rule 1.07. Conflict of Interest: Intermediary**

   (a) A lawyer shall not act as intermediary between clients unless:

   1. the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation;
   2. the lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the clients' best interest, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and
   3. the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

   (b) While acting as intermediary, the lawyer shall consult with each client concerning the decision to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

   (c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

   (d) Within the meaning of this Rule, a lawyer acts as intermediary if the lawyer represents two or more parties with potentially conflicting interests.

   (e) If a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member of or associated with that lawyer's firm may engage in that conduct.

3. What is an Intermediary?
   a. Representing all of the parties.
      The lawyer represents all of the parties. He must present the various alternatives to the clients in a neutral manner for their ultimate selection. Loyalty is thus shifted from one client to the mutually established goals of the parties. The attorney is not an adversary for any one party; instead, he is guided by what he believes to be fair to all parties. See Roland Paul, A New Role for Lawyers in Contract Negotiations, 62 ABA J. 93 (1976) and James C. Hagy, Concurrent Representation: Transaction Resolution in the Adversary System, 28 Case Western L. Rev. 86 (1977).

   b. Rule 1.07 applies
      Rule 1.07 is a special application of Rule 1.02(b) which permits a lawyer to "limit the objectives and general methods of the representation if the client consents after consultation."

   c. Attorney’s Role Distinguished
      A lawyer acting as an intermediary should not be confused with a lawyer-mediator or arbitrator utilized in alternative dispute resolutions. Although the lawyer-mediator and the arbitrator are required to act impartially, neither have an attorney-client relationship with the parties involved in the dispute. See Comment 3 to Rule 1.07.

      A lawyer acting as an intermediary should not be confused with a lawyer concurrently representing
clients with conflicting interests as contemplated by Rule 1.06. Under Rule 1.06, the lawyer has a duty to zealously represent each of his client's individual best interests. Under Rule 1.07, the clients have agreed that the attorney's role will be that of an intermediary.

4. Written Consent Required
Prior to accepting multiple representation under Rule 1.07, the attorney must:

- Reasonably believe that the matter can be resolved without contested litigation
- Reasonably believe that each client will be able to make adequately informed decisions in the matter
- Reasonably believe that there is little risk to any of the clients if the contemplated resolution is unsuccessful
- Reasonably believe that he can perform his duties impartially
- Explain the implications of common representation: (1) the advantages and risks involved, and (2) the effect on the attorney-client privileges
- Obtain written consent from each client

Any representation of multiple clients under Rule 1.07 will require a tailor-made consent agreement. Exhibit C is attached for illustrative purposes. It is an example of a letter one might use when forming a corporation. In the letter, the attorney should: (i) outline his fee arrangement, (ii) disclose potential risks involved in multiple representation of shareholders in connection with the formation of a corporation and (iii) request consent to the intermediary representation.

5. Additional Considerations
a. Confidential Information
Comment 6 to Rule 1.07 indicates that an attorney acting as an intermediary must maintain a delicate balance between his duty to keep each of his clients adequately informed and his duty to maintain confidentiality of information relating to the representation, except as to such clients. It further states:

With regard to the attorney-client privilege, the general rule is that as between commonly represented clients the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

b. Withdrawal
In addition, each client should be warned that: (i) the attorney must withdraw if requested by any of the clients or if circumstances later make it apparent that the attorney can no longer continue to adequately represent the parties because of conflicts of interest; (ii) the parties may incur additional costs and attorney fees if the attorney withdraws; and (iii) if the attorney withdraws, he cannot continue to represent any of the parties in the particular matter. Rule 1.07(c)

c. Division of Legal Fees
An additional problem that may arise is the division of the legal bill between multiple clients. Absent an agreement to the contrary, the attorney is under an obligation to allocate the bill on the basis of the work performed for each party. See ABA Comm. on Professional Ethics and Grievances Formal Op. 60 (1931) and ABA Comm. on Professional Ethics, Informal Op. 973 (1967). It is a good practice to address this issue in the fee agreement. It is not unreasonable to make each client jointly and severally liable for the entire amount.

d. Division of Consideration Received
Further, if multiple parties are to receive cash or some other consideration, the attorney is required to make sure all parties represented concur in the way the consideration is to be divided. See Rule 1.08(f) and Quintero v. Jim Walter Homes, Inc., 709 S.W.2d 225 (Tex. App.--Corpus Christi 1985 writ ref'd n.r.e.) which involve litigation but which can easily be analogized to any kind of business arrangement.

E. Business Interests with Clients
Business attorneys are frequently sued in situations where the attorney represents a client in a business transaction in which the attorney is personally involved.

1. Rule 1.08(a) Prohibition
Rule 1.08(a) provides:

A lawyer shall not enter into a business transaction with a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client;
(2) the client is given reasonable opportunity to seek the advice of independent counsel in the transaction; and
(3) the client consents in writing thereto.
2. **Exception to Prohibition.**
   It should be noted, however, that the Comment to Rule 1.08 indicates that Rule 1.08(a) does not apply to standard commercial transactions between the lawyer and the client for products or services the client generally markets to others, since the lawyer has no advantage in dealing with the client.

3. **Additional Considerations.**
   If Rule 1.08(a) is not enough to dissuade you from doing business with a client, reflect on the following:
   
   a. Do you want to owe the person on the other side of a business deal the burdens of a fiduciary relationship? Martin and Martin, "When Doing Deals is Risky -- Don't Get Involved in a Client's Business Unless You're Prepared to Cover Losses," ABA Journal p. 80 (July 1996).
   
   b. A transaction in violation of this rule may be presumed to be fraudulent. Johnson v. Stickney, 152 S.W.2d 921 (Tex. Civ. App.--San Antonio 1941, no writ).
   
   c. Malpractice insurance claims will probably be denied because most policies exclude business transactions with clients. See, Hanen & Hanna "Legal Malpractice Insurance: Exclusions, Selected Coverage and Consumer Issues," 33 S. TEX. REV. 74 (1992).

4. **Recognizing the Conflict.**
   Problem areas include:
   
   - Attorney acting as officer or director of company he represents
   - Attorney investing in client's securities
   - Attorney in business transaction with client
   - Attorney receiving stock in lieu of cash fee
   - Attorney receiving contingent fees in business deal
   - Attorney soliciting investments or giving investment advice
   - Law firms with consulting subsidiaries
   - Law firms which charge interest on loans to client or whose lawyers own an interest in another entity which provides services to the client. State Bar Ethics Opinion 483 (1994).

5. **Written Consent.**
   If you are determined to do business with your client, remember that you need written consent.

6. **Example Letter.**
   Attached as **Exhibit D** is an example that may provide you with ideas that could be incorporated into your tailor made consent agreement.

7. **Stock as Payment for Fees**
   The ABA has issued Formal Opinion 99-004 that allows the acceptance of stock in lieu of cash for payment of fees under specific circumstances. It apparently is permissible as long as:
   
   - the transaction is fair
   - the terms for such payment are in writing
   - disclosure of possible effects on future legal advice is in writing
   - the client reasonably understands the terms and the disclosure
   - the client has an opportunity for independent advice and consents in writing

   Whether this would be acceptable in Texas is not clear. Also, it would appear that it will not shield an attorney from malpractice claims. See e.g. Banc One Capital Partners Corporation v. Kneipper, 67 F3d 1187 (5th Cir. 1995) and “Risks of Attorneys Investing in Clients”, TLIE Advisory, Vol. 2 (2000).

F. **Personal Conflicts**
   Comment 4 to Rule 1.06 indicates that loyalty to a client is impaired in any situation when a lawyer may not be able to consider, recommend or carry out an appropriate course of action for one client because of the lawyer’s own interests or responsibilities to others. It does not preclude representation if the conflict is not material and if it does not adversely affect the lawyer’s independent professional judgment in providing legal advice and services to the client. Examples might include:
   
   - relative of attorney works for opposing counsel
   - relative of attorney works for opposing party
   - close personal or professional relationship with opposing counsel or opposing party
   - attorney has unrelated business interests that might be impacted by the outcome of the matter

   Your conflicts check should be broad enough to encompass all of these. For example, is anyone in your firm related to lawyers in the opposing firm? It will probably not be of concern to your client, but it should be disclosed and a written waiver of the conflict would be prudent. See **Exhibit E** as an example which discloses that the opposing attorneys have previously referred legal matters to the attorney being hired.
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Remember that something insignificant now may be used later as an excuse to sue.

V. DISCLOSE CONFLICTS AND OBTAIN CONSENTS

A. Disclosure of Conflicts Required
An attorney must disclose conflicts prior to accepting representation and those that arise during the course of employment. Rule 1.06 To do this, you should consider establishing and following procedures within your office that will identify conflicts. For example, conflict checks should be required before opening a new client file. Evidence of the conflicts check should be filed in the file. Why? It verifies to you and everyone else who works on the file that the check has been completed.

B. Consent to Conflict.
While the disclosure and consent can be made in a separate instrument, they can also be included in your engagement agreement. See the waiver language in sample waiver letters at Exhibit A for former clients and at Exhibit B for current clients. A potential consent letter for a situation where one is doing business with their client is attached as Exhibit D. Also see example waiver language in engagement agreements in Exhibit E with regard to a conflict with a former client and a personal conflict with the opposing counsel. Exhibit F includes language regarding potential future conflicts.

VI. ENGAGEMENT AGREEMENTS

A. Fee Agreement Required - Texas Rule 1.04(c)
An important requirement imposed by the Texas Rules is set out in Rule 1.04(c):

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

B. Written Engagement Agreement Advisable
Even though a large percentage of grievances involve fee disputes, many attorneys fail to require a written fee agreement. It is simply a situation where the shoemaker's children have no shoes. It is strongly recommended that a written fee agreement be obtained for all matters. To effectively do this, you will need to create basic forms to utilize when a new client needs you to do legal work immediately. We all know that you are less likely to require a fee agreement if you have to stop and create an engagement agreement from whole cloth. Having a form will lessen the temptation to skip this task “just this once”.

1. Firm Policy Should Require a Signed Engagement Agreement
A firm’s policy should require that a signed engagement agreement be obtained before starting work. The signed engagement agreement should be placed in the client file. Why put it in the client file? It will be evidence to all working on the file that the engagement agreement has been signed. It will also give you a convenient reference as to the terms of the engagement.

2. What should Engagement Agreements include?
If conflicts need to be disclosed, they can be disclosed in the engagement agreement. Engagement agreement, among other matters, should also include:

- identify the client
- identify the scope of work to be performed
- state the methodology for calculating your fee
- state the frequency of billing
- identify the time table for payment
- identify the retainer that is required (if any) and the terms of the retainer
- provide an escape hatch for you if the client fails to pay
- indicate what will be done with the file once the matter is concluded

3. Estimating Fees
If you have been asked to estimate your attorney fees, you should do so carefully. If this estimate is provided orally, write it down and file it with the engagement letter so that you will remember your estimate.

4. Examples of Engagement Agreements
Examples of engagement agreements are attached as Exhibit C, Exhibit E, Exhibit F and Exhibit G. The contrast between these examples is fairly significant. The point to be made is that an engagement agreement must be tailor made to fit the circumstances and parties involved.

All of these forms are helpful.

- **Exhibit C** - This engagement agreement is for the situation whereby an attorney is being hired as an intermediary in connection with the formation of a corporation and the subsequent representation of that corporation. Its provisions are modeled after the requirements of Rule 1.07.
- **Exhibit E** - This engagement agreement is for the situation whereby an attorney is representing one corporation in a corporate merger. It discloses that the firm has
previously performed work for an opposing client. It discloses that the firm has a relationship with the opposing firm that includes referring business to each other. It requests that the client waive the conflicts disclosed.

- **Exhibit F** – This is a form engagement agreement that is used by a large firm here in Texas. It is well thought out and should be a good reference for attorneys who are drafting their own form engagement agreements. It includes an interesting provision regarding potential future conflicts.

- **Exhibit G** – This form is being shared with the permission of Cary Barton of Barton, Schneider, Russell & East, and L.L.P. It is a form engagement agreement with an attached policy statement regarding billing and payment procedures. It is extremely well done and will be an invaluable tool for lawyers who are drafting their own forms or who are updating them. I particularly like the fact that the nitty gritty of the billing and payment procedures are in a separate attachment. I want to thank Cary Barton for his generosity in sharing this form with all of us.

**VII. CONCLUSION**

If you forget everything that has been presented today, it is my hope that you will adopt at least one simple measure. In any given client relationship, ask yourself “Who is my client?” By remembering to ask yourself that question, you will undoubtedly start the thought process that will help you avoid inadvertent ethical violations and possible malpractice traps.
EXHIBIT A

WAIVER OF CONFLICT OF INTEREST
Example 1: Letter to New 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 formerly represented Landlord with regard to litigation matters unrelated to lease negotiations, the Building or the proposed lease.

Our firm does not believe that this former 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: ___________________
EXHIBIT A

WAIVER OF CONFLICT OF INTEREST
Example 2: Letter to Former Client

(Date)

DELIVERED BY MESSENGER

[Former 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 represented Landlord in the past with regard to litigation matters unrelated to lease negotiations, the Building or the proposed lease.

Our firm does not believe that this former representation of Landlord will have a detrimental effect on our ability to represent Tenant in the lease negotiations. You should be aware, however, that if there is subsequent litigation between you and Tenant in connection with the lease, our firm would not represent either party in such 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,

_____________________

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

By: __________________

Name: _______________

Title: _______________
EXHIBIT B

WAIVER OF CONFLICT OF INTEREST
Example 1: Letter to New Client

(Date)

DEVELOPED 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 you 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: _________________
EXHIBIT B

WAIVER OF CONFLICT OF INTEREST
Example 2: Letter to Existing Client

(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 represent either party in such 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.

By: __________________
Name: __________________
Title: __________________
Exhibit C
FEE AGREEMENT AND
CONSENT TO MULTIPLE REPRESENTATION (INTERMEDIARY)

[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, has 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:
Title:

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

Date: __________________

[Name of Client]

By:
Name:
Title:

[Repeat Signature Block As Needed]
Exhibit D
CONSENT TO DO BUSINESS WITH A CLIENT

[Date]

[Client Name and address]

Re: Acquisition of _________________

Dear ____________:

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

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

In the instant case the terms and conditions are well known to you because you were the one that suggested them. However, for purposes of clarity I have listed them below. The terms are: [list terms].

Although not required by our State Bar's rules of ethics, I must insist that you seek independent counsel prior to our entry into this venture. I will be glad to provide the names of several capable attorneys who are knowledgeable in this area. Or, you may get a referral from the Houston Bar Association Lawyer Referral Service.

If, after consulting an attorney, you decide to go forward with the proposed acquisition by me, please put your attorney’s name in the blank below and then sign and return a copy of this letter to me. This will signify your consent for me to have an interest in the above-described acquisition.

Sincerely,

_____________________________

[Name of Attorney seeking consent]

I have consulted with ___ [Name of attorney being consulted] ________________________ on this matter. Having received his [her] legal advice, I knowingly agree to the acquisition of an interest in ______________________ by ___ [Name of attorney seeking consent] ________________________ on the terms outlined in this letter, which I believe to be fair and reasonable. I am also requesting that ___ [Name of attorney seeking consent] ________________________ act as legal counsel in this transaction, with the terms of the engagement to be outlined in a separate letter agreement.

_____________________________

[Client]
Exhibit E
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.

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. You should also know that the legal work we performed for Corporation Y was the result of referrals from D, E & F. In theory, this raises two issues which you have a right to be aware of and comment on.

First, you need to be aware that our firm has and continues to enjoy a good relationship with D, E & F. Both firms have referred business to each other in the past. 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 believe 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 that could be used adversely. Therefore, enclosed is a proposed letter that we plan to send to D, E & F, as the attorneys for Corporation Y. Assuming you approve this letter, we will forward it to D, E & F and expect a positive response from Corporation Y.
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 current 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 $_____. This is only an estimate, however, and not a guaranteed cap. 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 believe 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 have a question, please call me promptly so that we can discuss any concern you may have.

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,

A B C Law Firm

By:
Name:
Title:

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 F
FEE AGREEMENT
[From large firm]

[Date]

[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.]
Conflicts of Interest

Chapter 15

[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.

Conflicts

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 Name]

By:
Name:
Title:

Enclosure

AGREEND AND ACCEPTED:

[Client Name]

By:
Name:
Title:
Mr. ________________          Via email ____________
____________________________________
____________________________________
____________________________________

Re:  Terms of Engagement for Legal Services

Dear Mr. __________:

We are most pleased that ________________________________ (the "Company") is considering engaging our firm to assist the Company in connection with the proposed acquisition of various tracts of real property in _____________ County, Texas and related matters.

The purpose of this letter is to evidence the terms under which our firm proposes to render legal services on behalf of the Company in this matter and in other instances in which our assistance may be requested in the future if the Company chooses to engage us for such purposes.

Unless otherwise specified herein or by supplemental agreement in the future, it is understood and agreed that all such legal services rendered by us on behalf of the Company and its affiliates would be billed at our standard hourly rates in effect from time to time pursuant to our Policy Statement Regarding Billing and Payment Procedures dated December 1, 2004 (the "Policy Statement"), a copy of which is attached hereto and is incorporated herein by reference for all purposes. In particular, the services which I personally perform on your behalf would be billed initially at a rate of $xxx per billable hour, subject to adjustment pursuant to the Policy Statement.

If you are in agreement with the foregoing description of our understandings, and elect to engage our firm on these terms and conditions, please date and sign a copy of this engagement letter as indicated and return it to us.
Also enclosed for your information is a copy of a recent résumé regarding my professional activities.

Please call us, of course, if you should have any questions at this time about these matters.

We thank you again for considering our firm in this instance and very much look forward to working with you in negotiating and closing the contemplated transaction if this proposal is accepted.

Yours truly,

BARTON, SCHNEIDER, RUSSELL & EAST, L.L.P.

By: ________________________________
    For the Firm

Enclosures

Accepted and Agreed
this ___ day of December, 2004

__________________________
(NAME OF COMPANY)

By: ________________________________
Name: ____________________________
Title: ____________________________
BARTON, SCHNEIDER, RUSSELL & EAST, L.L.P.

POLICY STATEMENT REGARDING

BILLING AND PAYMENT PROCEDURES

DECEMBER 1, 2004
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1. **Introduction.**

   It is the policy of our firm to endeavor to assure that our clients clearly understand the manner in which we bill for our legal services and for disbursements advanced by the firm on their behalf. Our experience shows that the manner in which fees and expenses are computed and charged and procedures for billing and payment vary from law firm to law firm. This statement is intended to set forth our standard policies and procedures concerning the manner in which statements for services rendered and expenses incurred by us on behalf of our clients will be prepared and paid. We believe that a prior understanding of such matters is essential to a harmonious professional relationship. Consequently, we encourage our clients to pursue with us at the outset of our professional relationships any questions necessary to obtain such a full understanding which are not clearly resolved by this statement.

2. **Terms of Engagements.**

   In consideration of the services we are to provide, unless other arrangements are made in specific instances, it is understood that clients engaging our firm to perform legal services have agreed to pay legal fees based on our standard hourly rates, as in effect from time to time during the course of the engagement, for the attorneys and para-professional personnel of this firm who perform such services.

   Copies of this policy statement will be provided to existing and prospective clients of our firm. In addition, pursuant to the rules of professional conduct applicable to our firm, existing and new clients of the firm will be requested to execute engagement letters acknowledging the contents of this policy statement, setting forth the terms of our engagement in particular instances and describing the manner, if applicable, in which such terms may differ from the standard policies and procedures set forth in this statement. In any event, however, unless indicated to the contrary in writing, it will be understood that services which we are asked to perform on behalf of our clients will be rendered pursuant to the terms and conditions of this statement.

3. **Performance of Services.**

   Most services required by our firm's clients will be performed by lawyers, legal assistants and administrative personnel who are employed by the firm on a full-time basis. The firm currently employs ten lawyers, two legal assistants, five administrative assistants and a firm administrator on a full-time basis. All individual client matters are assigned to specific lawyers who are responsible for assuring that the matters are addressed in a timely and professional manner.

   The firm also has referral and working relationships with other attorneys, briefing clerks and legal assistants who are occasionally requested to assist the firm's personnel in serving firm clients. The determination of the appropriate strategy to utilize in staffing individual situations from sources both within and outside the firm is based generally on considerations of experience, expertise, time availability and billing efficiency. The overall goal in such situations is to utilize the resources available to the firm in a manner which provides our clients with high quality, timely and cost-effective services which are commensurate with the client's objectives in particular instances.

   In cases where the services obtained from such sources outside the firm are anticipated to involve significant costs or essential contributions to the particular matter in question, the client's approval will ordinarily be sought in advance. Generally, fees and expenses of such referral sources will be included in the firm's bills to its clients, but statements may be rendered directly to the clients by the individual referral sources in particular situations. Ultimately, however, our firm will be responsible for assuring that services are being performed to the client's satisfaction and for addressing any questions which may arise in that regard.

Our firm is subject to canons of professional conduct regarding the reasonableness of fees charged to our clients. Under these rules, the factors to be taken into account in determining the reasonableness of fees in particular instances include the following: (a) the time and labor required, the difficulty of the task and the skill requisite to perform it; (b) the likelihood that the employment in question will preclude other employment of the lawyer; (c) fees for similar services in the local area; (d) the amount of money involved in the matter and the results obtained; (e) the time limitations imposed by the client or by circumstances; (f) the nature and length of the lawyer's professional relationship with the client; (g) the experience and ability of the lawyer; and (h) whether the fee is fixed or contingent. Our firm has assigned standard hourly rates to time-keeping personnel employed by or associated with the firm which have been determined by taking the foregoing factors into account.

Several methods are available to our clients for determining the fees to be charged for our services in particular instances. Generally, our fees will be calculated on the basis of the time expended on the client's matter in accordance with our standard hourly rates as described below. In other instances, our fees are also determined on the basis of the time expended on the client's matter, but an agreement is made in advance to employ applicable hourly rates which are higher or lower than our standard rates in order to more closely conform to the criteria described above in those particular instances. In certain hourly rate billing arrangements, agreements may be made in advance that our fees will be subject to maximum and/or minimum amounts.

5. Hourly Rate Billing Procedures.

The standard method of computing fees for legal services rendered by our firm with respect to particular client matters is to record in quarter-hour increments on a daily basis the time spent by each person performing services in connection with such matters (whether such services be telephone consultations, office consultations, research, drafting documents, travel or the like), and to total the time expended at the end of each billing month. There is then applied to the time so computed the applicable hourly rate for the respective individuals who performed service on such matters. Unless otherwise agreed in particular instances, our standard hourly rates are utilized for such purposes.

Our standard hourly rates change from time to time as warranted, but the current standard rates for the personnel employed by or associated with our firm are as set forth on the Rate Schedule attached as Attachment A to this policy statement.

We occasionally adjust our standard hourly rates for some personnel at other times to reflect particular circumstances, but our general practice is to evaluate our standard hourly rates for individual time-keeping personnel annually in January of each year to determine whether adjustments are appropriate to reflect additional knowledge and experience acquired during the preceding year or to reflect changing market conditions. Any such adjustments in our standard hourly rates are applied to services rendered during the month in which such adjustments become effective and thereafter. Unless otherwise agreed in specific instances, any such adjustments in our standard hourly rates will not be subject to prior client approval. Notice of any such adjustments in our standard hourly rates will be provided, however, to those clients with whom we have engagement relationships utilizing such rates.

Because our hourly rate fees are based on the time expended, it is beneficial for our clients to make efficient use of our time, to be conscious of the time which may be required for particular tasks we are requested to perform and to define clearly for us the scope of the work which we are to perform at the outset of each project where our clients have preconceived budgetary notions. Where no budgetary limitations are discussed and set in advance, we will use our best judgment as to what efforts are necessary to achieve the desired result.

Since for the most part we base our fees on personnel time expended, our production capacity is limited by the time available to perform legal services, so it is our practice to apply the applicable hourly rates, plus travel expenses, for any time we are required to travel out of the office. This practice is based on the assumption that most companies, firms or individuals are not compensated on an hourly basis (since they are not personal service
businesses) and that it is more economical for them to attend meetings at our offices. Nevertheless, if it is desirable for us to attend meetings out of our offices, we are always willing to do so and frequently do so.

We retain detailed records of time spent on any matter or transaction, which are the basis on which our hourly rate statements are computed. If, at any time, a client has questions about the basis of compilation of any such statement, we will be happy to meet with the client to make those records available to assist the client in understanding the fee computation. We urge our clients to raise questions as statements are rendered in order for us to be able to gain a mutually satisfactory feeling for our financial relationship as well as our professional relationship.

6. Reimbursement of Expenses.

Amounts advanced or expended by us on behalf of our clients for expenditures such as long distance telephone charges, photocopying and telecopying charges, postage charges, shipping and delivery charges, courier expenses, travel expenses, printing costs, filing fees, computer research costs, court reporter fees, expert witness fees, employee overtime and expense reimbursement costs and the like are considered to be reimbursable by our clients unless otherwise agreed in particular instances and are generally included in the statement rendered to the client for the month in which such amounts are advanced or incurred. Certain costs which are incurred internally for items such as photocopying, telecopying and long distance telephone costs are billed to our clients at rates comparable to third-party charges, which do not necessarily reflect the firm’s direct out-of-pocket expenses and may include amounts which represent recovery of the administrative costs and investment expenses which the firm has incurred in making such services available and accounting for such expenses.

Unless otherwise agreed in connection with specific engagements, it is understood that our firm has no obligation to advance any of the foregoing costs on behalf of our clients. We may require that the clients make arrangements in advance to fund such expenses either by means of an escrow deposit with our firm or by means of direct arrangements with third-party vendors or a combination of such arrangements.

7. Supplemental Services.

Our standard policy is that any involvements which our firm may have with regard to subsequent disputes between our clients and third parties involving matters with respect to which we have provided legal services, including our providing documents or testimony and responding to interrogatories or other discovery, are a part of the engagement, and that we are entitled to be paid for our time, services and expenses attributable to such activities. Unless otherwise specified by the terms of our original engagement in particular instances or subsequently agreed in connection with the performance of such supplemental services, it is understood that our fees for any such supplemental services will be determined on the basis of our standard hourly rates which are in effect at the time such supplemental services are rendered regardless of the billing arrangement which was applicable in connection with the original engagement.

8. Payment Terms.

As to the method of billing and payment, our practice is to bill monthly where our fees are based on hourly rate billing. We have found this procedure is desired by clients so that they will know on a regular monthly basis what their current total legal fees are and so that they will not receive any accumulated surprises. We normally close our books on or about the last day of each calendar month and render statements on or before the 10th day of the next calendar month. Unless other arrangements are mutually agreed upon in writing in specific instances, we request that payment of statements be made within twenty (20) days after the date the statement is received.

Although our standard practice is to bill and collect monthly, on occasion a transaction may arise in which it is agreed that it would be more appropriate to defer the billing until a later date. In such instances, we reserve the right to add interest at a rate of one percent (1%) per month (or the maximum rate permitted by applicable law, if lower), compounded monthly, to all accrued and unbilled balances, beginning the first month following the month in which such charges are actually incurred.

BARTON, SCHEIDER, RUSSELL & EAST, L.L.P.
POLICY STATEMENT REGARDING BILLING AND PAYMENT POLICIES
DECEMBER 1, 2004
It is also understood that we reserve the right to add interest at the rate of one percent (1%) per month (or the maximum rate permitted by applicable law, if lower), compounded monthly, to all billed and unpaid balances beginning thirty (30) days following the date upon which such charges are actually billed.

It is also understood that this firm shall be entitled to recover reasonable attorneys' fees and expenses and court costs in connection with any efforts necessary to collect amounts due and unpaid pursuant to any engagement between a particular client and our firm.

9. **Retainer Deposits.**

We frequently will ask that new clients deposit a cash retainer with us in advance as security for payment of our fees and expenses. In addition, when representing new or existing clients on large projects which will require substantial personnel and equipment involvement over a long period of time, such as significant litigation, major real estate acquisitions and complex loan workout negotiations, we frequently will request a project retainer in advance. Our practice is to deposit retainers in a trust account and to transfer "progress payments" from our trust account to our operating account as segments of the work are completed or other appropriate billing stages are attained. A detailed accounting will be provided of the application of all funds so transferred. If the work for a particular client or project continues over an extended period of time, we will generally require and bill additional retainers monthly until the work is completed.

10. **Termination of Engagement.**

We reserve the right to suspend or terminate any work in progress, including withdrawal from pending litigation, in the event of non-payment of our statements within twenty (20) days after a statement is due. In the event that we exercise such right to suspend or terminate work in progress or withdraw from pending litigation, we will be entitled to receive from the client a written acknowledgment that we are permitted to exercise such suspension, termination or withdrawal right under the terms and conditions of our engagement with the client.

In addition to our right to withdraw from a representation engagement at any time if the payment terms described above are not satisfied, it is understood that, subject to certain exceptions with respect to contingent fee matters, our clients reserve the right to terminate their engagement of our firm at any time, upon payment in full of fees and expenses accrued up to that time.

11. **Ownership of Files.**

We consider the files which are generated and maintained by us in connection with services for our clients to be the property of our firm and not the property of our clients, except for documents and materials ("Client Papers") which fall within the following categories: (i) original documents and materials which are furnished to us by our clients; (ii) original documents and materials, such as executed contracts and corporate records, which are prepared by us for our clients; and (iii) other documents and materials which may affect our clients' rights or the exercise of such rights. We will assert and maintain a possessory retaining lien on all such Client Papers as security for the payment of our fees and expenses, except to the extent that retention of such Client Papers would prejudice the rights of our clients. In the event of a termination of our engagement, except as stated above, we will release such Client Papers and copies of the materials in our files to our clients only upon (i) written request and instructions from the client; (ii) payment in full of all of our unpaid fees and expenses; and (iii) payment in advance of all reasonable copying costs which will be incurred in making copies of the Client Papers for our permanent files and in making copies of the other materials in our files for the client.

12. **Services for Related Entities.**

It is contemplated that we may be requested on occasion to render services for individuals, partnerships, corporations and other entities which are affiliated with our principal client in a particular engagement. In such instances, unless otherwise agreed in advance, we will consider all participants in the transaction to be jointly and
severally liable for the payment of our fees and expenses as outlined in this statement and the relevant engagement letter. Unless other arrangements are made in advance, however, we will render our statements to, and will expect full payment from, our principal client and will not be responsible for honoring any internal cost-sharing arrangements which may be in effect between the participants in the transactions.

13. **Personal Guarantees.**

We understand that individuals whom we consider to be our clients may sometimes request statements for our services to be rendered to entities which they control and/or through which their business activities are conducted. In order to avoid any confusion in this regard, however, and in recognition of the fact that our services will be primarily for the benefit of the individual client, we may ask that our engagement be executed by both the entity and the individual in order to acknowledge that both the individual and the entity will be responsible for payment of our fees and expenses in connection with the engagement.

14. **Texas Lawyer's Creed.**

We are required to advise our clients of the existence of and our obligations under the Texas Lawyer's Creed. A copy of the complete Creed is attached as Attachment B. Pursuant to the Creed, our clients are advised as follows, which advice is acknowledged by the execution of engagement letters contemplated in this policy statement:

1. Proper and expected behavior of counsel are described in the Creed.
2. Civility and courtesy are expected from lawyers and are not a sign of weakness.
3. We will not pursue conduct which is intended primarily to harass or drain the financial resources of the other party.
4. We will not pursue tactics which are intended primarily for delay.
5. We will not pursue any course of action which is without merit.
6. We reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect your lawful objectives.
7. You are advised that mediation, arbitration and other alternative methods of resolving and settling disputes are available to you to resolve disputes with opposing parties.

15. **Notice to Clients.**

We are required to provide our clients with a notice that the State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. This notice is required of all lawyers in Texas. A copy of the required notice is attached to this policy statement as Attachment C and is incorporated herein by reference.

16. **Privacy Policies.**

Our firm has adopted privacy policies in accordance with federal requirements governing providers of financial services. Our policies are described in the "Notice of Our Firm's Privacy Policies" which is attached to this Policy Statement as Attachment D.
17. Conclusion.

It is hoped that the foregoing discussion will anticipate most, if not all, of the issues which will arise in connection with billing and payment procedures of our firm. Clients having general or specific questions regarding the policies and procedures set forth above are encouraged, however, to raise those issues with the firm at an early date in order to resolve any such questions as soon as practicable.
## ATTACHMENT A

**BARTON, SCHNEIDER, RUSSELL & EAST, L.L.P.**

**Hourly Rate Schedule – December 1, 2004**

<table>
<thead>
<tr>
<th>Personnel Category</th>
<th>Rate Per Hour</th>
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</tr>
<tr>
<td>Legal Assistants</td>
<td>$ xx</td>
</tr>
<tr>
<td>Administrative Assistants</td>
<td>$ xx</td>
</tr>
</tbody>
</table>
ATTACHMENT B

THE TEXAS LAWYER'S CREED--A MANDATE
FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."

2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.

5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

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

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities.
ATTACHMENT C

NOTICE TO CLIENTS

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.

Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint.

For more information, please call 1/800/932/1900. This is a toll free call.
ATTACHMENT D

NOTICE OF OUR FIRM'S PRIVACY POLICIES

We, as lawyers, together with all other providers of personal financial services, are now required by law to inform our clients of our policies regarding privacy of client information. For us, this is nothing new. The sanctity of the lawyer-client privilege is at the heart of our profession. The Model Rules of Professional Conduct provide that we as lawyers may not reveal information relating to our representation unless our client consents after consultation. Nevertheless, to assure compliance with both the letter and spirit of the rules and applicable federal law, we are providing this notice of our policy. We have in the past and will always continue to protect your right of privacy.

Information We Collect About You

We collect nonpublic personal information about you only in connection with providing you with the legal services that you request. The types of nonpublic personal information that we collect vary according to the services that we perform for you, and may include:

- Information that we receive from you (such as your name, address, income, assets, social security information, and other financial or household information);
- Information about your relationship and past history with us and others (such as the types of legal services we provide to you, your invoice balances and payment history);
- Information that we receive, with your authorization, from third parties such as accountants, financial advisors, insurance agents, banking institutions and others.

How We Handle Your Information

We do not disclose to anyone outside our firm any public or nonpublic personal information about you that we have collected, except as authorized by you or required by law. For example, with your consent, we may disclose personal information to a third-party contractor, such as an appraiser or accountant, who is assisting us in providing services to you. In addition, we will release information to the extent required by law or regulation.

We do not sell client information to anyone or disclose client information to marketing companies.

We may disclose information regarding the type of legal services we have provided to you, your invoice balance, and your payment history as necessary to terminate our relationship or collect unpaid sums due to us.

How We Protect Your Information

We restrict access to nonpublic personal information about you that we have collected to attorneys and staff members in our firm. All of our attorneys and employees are required to maintain the confidentiality of all nonpublic personal information about you. We maintain physical and procedural safeguards to protect the nonpublic personal information that we collect about you.

While the federal laws and regulations establish rules and disclosure requirements, they do not limit the attorney-client privilege or the confidentiality rules for information provided to attorneys. In circumstances where applicable federal laws may allow disclosure, we will continue to follow the stricter non-disclosure rules of attorney-client privilege and client confidentiality.

Please call if you have any questions, because your privacy, our professional ethics and the ability to provide you with quality legal services are very important to us.