SHOES FOR THE SHOEMAKER’S CHILDREN

PRACTICAL FORMS AND SUGGESTIONS FOR ETHICAL COMPLIANCE AND MALPRACTICE PREVENTION

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CHAPTER 4.3
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SHOES FOR THE SHOEMAKER'S CHILDREN
Practical Forms and Suggestions for Ethical Compliance and Malpractice Prevention

I. INTRODUCTION.
Like the shoemaker's children that have no shoes, attorneys often fail to handle their own law practice with the care;ful consideration and documentation that they demand when representing their clients. The purpose of this paper is to help the real estate attorney identify the potential pitfalls that arise during the attorney-client relationship so that he or she may thoughtfully plan on how these anticipated problems should be handled. Being proactive is much more effective than waiting until the sticky situation arises. By waiting until the issue erupts, the attorney's ability to react optimally is often hindered because of time pressures and client relations. In fact, in the heat of the deal, the attorney may not even recognize the potential trap. Thus we all need to take time to make shoes for the shoemaker's children.

The advice and forms1 contained in this article are arranged chronologically from the initial client interview to the termination of the attorney-client relationship. While I anticipate that these forms will need to be customized to the reader's particular law practice and that additional forms will be needed, it is my goal to make the reader think about these issues in advance of a problem and to encourage the generation of customized forms.

II. THE ATTORNEY-CLIENT RELATIONSHIP.
A. Agency Rules Apply - Fiduciary Duties Imposed.
The relationship of attorney and client is one of principal-agent. It is governed by the general rules covering agency. Fiduciary obligations and responsibilities are imposed upon the attorney.

B. Created By Consent.
Before the duties arise from the relationship, the attorney and client must have consented to the relationship.

C. Implied Relationship.
The attorney-client relationship can be implied from the conduct of the parties. A written contract and/or a payment of a retainer is not necessary. 


D. Question of Fact.

III. AREAS OF CONCERN WHEN CONSULTING A POTENTIAL CLIENT.
A. Consultation v. Attorney-Client Relationship.

B. Duties During Consultation.
Nevertheless, some duties do attach during a consultation. See e.g. Paragraph 12 under "Scope" found in the Preamble of the Texas Disciplinary Rules of Professional Conduct ("Texas Rules").

1. Confidentiality.

2. Avoid Conflicts.
An attorney must be wary to avoid current and future conflicts such as when two parties are involved or when a corporation and one of its officers is involved. Id. This is often difficult in real estate transactions.

3. Advise Regarding Deadlines.

1In the spirit in which this paper is presented the author disclaims everything in it. No warranties express or implied are made. I do not purport to give legal advice nor am I attempting an in-depth discussion of all the precautions an attorney should consider. None of the attached forms and sample letters have been cited authoritatively by any court, nor will they in any given case, completely exonerate the lawyer using them. Nevertheless, one can hope that the use of forms to document disclosures, to clarify the terms and conditions of the attorney-client relationship, and to memorialize the lawyer's good faith attempt to comply with applicable rules of professional conduct, will help protect lawyers from unwarranted and otherwise unsupportable lawsuits.

Shoes for the Shoemaker's Children I-1
a. At least one state has held lawyers liable for negligently investigating the claim. This was true even though the lawyer refused to take the case. Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686 (Minn. 1980).

b. Further confusion may result if an attorney has a continuing or gratuitous relationship with a client. Bresette v. Knapp, 159 A.2d 329 (Vt. 1960).

C. Beauty Contests.

Firms need to be particularly careful when invited to a "beauty contest" by a potential client. Be careful what you hear -- you could be unwittingly conflicting yourself out of a matter. Texas State Committee Opinions 494 (July 1994) and 501 (May 1995). See, e.g., Garwin, "Beware of Beauty Contests," ABA Journal, p. 84 (January 1992); and B.F. Goodrich Co. v. Formosa Plastics Corp., 638 F.Supp. 1050 (S.D.) Tex. 1986). At least one court has disqualified a lawyer due to a conversation he had when recommending counsel. Georgia International Brokerage v. Stroker, No. 1-92-CV-015 JOF (N.D. Ga. 1993). To avoid future conflicts, some attorneys ask the client to waive any claim that information received by the attorneys during the interview process would bar the attorneys from representing any other party in connection with the matters discussed. See as an example the letter attached as Exhibit A.

D. Ethics Rules to Consider When Contemplating Accepting Representation.

A lawyer should not accept representation in a matter unless he can perform competently, promptly and without a conflict of interest. See generally Texas Rules 1.01, 1.06, 1.07, 1.08, 1.09 and 1.15.

E. Practical Considerations to Consider When Contemplating Accepting Representation.

If your instincts tell you a prospective client or prospective business may cause trouble, follow your instincts. A lawyer is not required to represent all of those that seek his advice. Properly screening and evaluating potential business and clients may be the single most important task of the lawyer seeking to minimize malpractice exposure.

1. Turn Down Unwanted Business.

In difficult economic times one might wrongly assume that all business is wanted. However, it is important to note that declining certain business can be a shrewd business decision. For example, is the business outside your area of practice? Even if it is within your area of expertise, can the matter be handled by you firm on a cost effective basis? If the potential matter is large, is your firm adequately staffed to handle the business within the deadlines contemplated? Is the matter too small for your firm - - will it get lost in the shuffle? The ABA estimates that on a national scale 15% of all disbarments and 15% of all suspensions are for neglect. ABA Journal, October 1, 1986, p.65. Most of these problems seem to result from a situation when a lawyer takes on business or a client he would rather not have.

2. Turn Down the Unwanted Client.

Attorneys who defend lawyers in malpractice actions recommend that a lawyer turn down the "unwanted client". Bock, "Legal Malpractice: Preventing and Minimizing Claims", 52 Tex. Bar J. 828 (1989). They describe the "unwanted client" as:

a. The client who cannot be satisfied.

b. The client who does not understand the system.

c. The client in a hurry,

d. The client seeking reinforcement.

e. The client whose attitude is too positive.

f. The client who is strapped.

g. The client with a matter outside your expertise.

h. The client with too large or too small a matter.

i. The client who dislikes lawyers or has been dissatisfied with several attorneys.

3. Tips on Recognizing the Characteristics of a Bad Client.

Need help in identifying a problem client? Consider whether the client possesses many of the following characteristics:

a. Selfishness

b. Uses power to gain advantage

c. Abusive to people

d. Multiple business entities without real purpose

e. Fixation on results without regard to integrity of the process

f. Constant financial problems, stress and debt

g. His/her ship always about to come in

h. Regular confusions as to transactions

i. Documents that make no sense

j. Book and tax returns that do not make sense

k. Restrictions on whom you talk to

l. Lying to others in your presence

m. Suing is a way of life


F. How to Turn Down Business.

1. Example Non-Representation Letters.

A potential client may believe that an attorney-client relationship is created by the initial interview. Thus you should make it apparent that you are turning down business. It is a good practice to send a non-representation letter to anyone whose business you choose not to accept. Three examples of non-representation letters are attached as Exhibit B, Exhibit C and Exhibit D. These letters are merely suggestions. You should always draft a non-representation letter to fit the specific circumstances.

2. Return Client's Documents.

Texas Rule 1.15(d) requires the client's documents to be returned if the attorney retaining them will prejudice the client. Consider returning all documents and having their receipt acknowledged.
3. Potential Traps to Consider
   a. Consider providing the names of attorneys who might be willing to handle the matter. Remember, however, that if the matter is referred to another firm, the original firm may be liable for negligent referral.

   b. Be aware of any applicable notice provision, deadline or statute of limitation and advise the "client" of same in writing. In Villarreal v. Cooper, 673 S.W.2d 631 (Tex. App.--San Antonio 1984, no writ), a lawyer who held a client's case for 15 months was held subject to a malpractice action despite the fact that he returned the file and the client hired another attorney 77 days before the statute ran.

   c. Liability can result if a lawyer is negligent in not making it clear that he does not represent a person. Parker v. Carnahan, 772 S.W.2d 151 (Tex. App.--Texarkana 1989, writ ref'd n.r.e.). the sale of property, but do not intend to provide him with advice regarding the tax ramifications of the transaction, Reich, "The Right Choice" ABA Journal p.128 (Oct. 1987).

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

   a. If you represent a client in a transaction involving the sale of property, but do not intend to provide him with advice regarding the tax ramifications of the transaction, inform him of this in writing and advise him to seek tax advice from his regular tax advisor.

   b. If you represent a lending institution in connection with specific loans, it is advisable to include in the written fee agreement a disclaimer with respect to the role of the attorney, i.e., the firm has not undertaken the task of determining whether the loan meets government lending regulations, such as whether the loan violates the loans-to-one-borrower rule or violates lending rules on loans to bank or savings and loan officers. Bock, supra.

   c. If you represent a lender as local counsel hired to provide a legal opinion with regard to the enforceability of choice of law provisions contained within the deeds of trust securing property located in your state, the engagement agreement should define your role. As an example, see Exhibit H.

3. Retention and Destruction of Client Files.
   Consider adding a provision in your agreement concerning the retention and destruction of client files.

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

C. Abuse of Fee Agreement.
   Once a fee arrangement is agreed to, a lawyer should not handle the matter so as to further the lawyer's financial interests to the detriment of the client. For example, a lawyer should not abuse a fee arrangement based primarily on hourly charges by using wasteful procedures. Texas Rule 1.5. Renegotiating a fee agreement during the relationship is fraught with problems. See, Garcia v.
D. Ethical Obligations When Accepting Representation.

1. Who is the Client?
   The first step when accepting business is to determine exactly who the client is in a particular transaction. Such a determination, while on its face appears obvious, is often very difficult in real estate transactions. Remember you do not represent "the deal".

2. All Conflicts Must be Disclosed.
   a. An attorney must disclose all possible conflicts prior to accepting employment and those that arise during the course of employment. Texas Rule 1.06 and ABA Rules 1.7 and 1.8. To do this you should consider establishing and following procedures within your office which will identify conflicts.

   b. This disclosure requirement includes all personal conflicts, conflicts with current clients and any conflict with a past client. Texas Rule 1.09 specifically concerns former clients. 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. The newly added Comment 4A and 4B to the Texas Rules state that the "same matter" prevents a lawyer from switching sides while the "substantially related" language is intended to prevent a lawyer from using confidential information to either his own advantage or the client's disadvantage. See, Texas Bar J. p. 72 (January 1995). This applies to all partners and associates of the firm in which the disqualified attorney is practicing. See Comment 5 of Texas 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).

   c. "Chinese walls" are not universally recognized as a method for curing an existing conflict. For example, 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). See also Rules 1.06(f) and 1.07(e). Some authors cite Rule 1.09(c) as authority for the blanket statement that Chinese walls are recognized under the Rules; however, at least one legal malpractice insurer, ALAS, does not consider Texas to be among the states that recognize this screening procedure. ALAS Loss Prevention Journal Vol. II, No. 3, P.7 (Sept. 1991). In addition, ABA Rule 1.10 does not specifically provide for a Chinese wall exception and the Comment to ABA Rule 1.10 implies that the ABA Rules do not recognize Chinese walls. Please note, however, that Texas Rule 1.10(b) and ABA Rule 1.11 provide for Chinese walls after governmental service.

   d. The whole are of conflicts of interest can be particularly confusing when applied to a real estate practice. The safest course is to fully disclose any potential conflict in writing and obtain the client's written consent. See Exhibit E as an example.

3. Most Frequent Situations in Which Real Estate Attorneys Face Conflicts.
   a. Corporation/Officers. A firm can face disqualification and possible sanctions for not disclosing possible conflicts between potential corporate interests and those of individual officers. Texas Rule 1.12(a) and ABA Rule 1.13(a) specifically state that a lawyer employed or retained by an entity works for the entity. The lawyer must take remedial action whenever he learns or knows that:
      (1) an officer or other persons associated with the organization has committed or intends to commit an illegal act which might reasonably be imputed to the organization
      (2) the violation is likely to hurt the organization
      (3) the violation is related to the lawyer's representation of the organization.

   Furthermore, a lawyer must explain the identity of his client (the organization) whenever he meets with its employees, officers, directors or other constituents where it is apparent that their interest may be adverse. This, in effect, is a civil version of a "Miranda Warning."

   b. Attorneys as Directors. A more serious conflict may occur if the lawyer is actually on the board of directors. See Comment 16 to Texas Rule 1.06 and Comment to ABA Rule 1.7. If any member of a firm is a director, do not bill that attorney's attendance at board of directors meetings as attorneys' fees. If an attorney is a director or officer of a bank or savings and loan, do not have the attorney act as primary counsel for the lending institution. If the attorney who is the bank's director or officer does represent the bank, make sure that neither the attorney nor his firm is the primary counsel for the bank. Bock, supra.

   c. Partners. Does one represent one partner or all the partners or the partnership and none of the partners? The answer can vary depending on the jurisdiction. Generally, an attorney's representation of a partnership does not necessarily include partners. Burnap v. Linnortz, 914 S.W.2d 142 (Tex. App.--San Antonio 1995, writ denied). Remember, Texas Rule 1.12 applies to organizations, not just corporations. See, Bernap v. Linnortz, 914 S.W.2d 142 (Texas, App.--San Antonio 1995, writ denied). There is a split of authority over the question of whether a lawyer who represents a general partner and does the legal work for a limited partnership also represents the limited partners. See, Hopper v. Frank, 16 F.3d 92 (5th Cir. 1994); Roberts v. Heim, 123 F.R.D. 614 (N.D. Cal. 1988) and Quintel v. Citibank, 589 F.Supp. 1235 (S.D.N.Y. 1984).

   d. Members of Same Family. Family members do not always have interests that are aligned. See e.g. Lanier v. Sallas, 777 F.2d 321 (5th Cir. 1985); Brennan's Inc. v. Brennan's Restaurants, 590 F.2d 168 (5th Cir. 1979); and Hoggard v. Snodgrass, 770 S.W.2d 577 (Tex. App.--Dallas 1989, original proceeding). See also, State Bar Committee Opinion 494 (July, 1994) and Joachim v. Magrids, 737 S.W.2d 852 (Tex. App.--Houston [1st Dist.] 1987, writ denied).
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4. Attorney as Intermediary - Texas Rule 1.07.

Texas Rule 1.07 is the rule that applies when multiple clients ask a lawyer to represent all of their interests in a specific matter. An example would be where partners request an attorney to draft a partnership agreement. It places the attorney in the role of intermediary. The attorney must present the various alternatives to the clients in a neutral manner for their ultimate selection. Loyalty is 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.

a. Consent Required. Prior to accepting multiple representation, Texas Rule 1.07 requires client consent. Representation of multiple clients under Texas Rule 1.07 will require a tailor-made consent agreement.

b. Example Consent to Intermediary Representation. Exhibit J is attached for illustrative purposes. It is an example of a letter whereby an attorney would: (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. Concurrent Representation - Texas Rule 1.06.

Texas Rule 1.06 is the Rule that applies when one or more lawyers from a firm by coincidence represent clients with directly adverse interests. For example, 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, represents Client B in other matters. Texas Rule 1.06 applies in other situations as well.

a. Disclosure and Consent Required. Texas Rule 1.06 requires disclosure of the conflict and consent from the client. It is a good practice to make required disclosures in writing and to obtain a written consent.

b. Example Disclosure and Consent. Exhibit J is attached as an example of two letters that disclose a conflict and request consent. One letter is drafted to a new client and the other letter is drafted to an existing client.

V. AREAS OF CONCERN DURING THE REPRESENTATION OF THE CLIENT.

A. Communication.

1. Duty to Inform.

Texas Rule 1.03 (a) requires an attorney to keep the client reasonably informed.

2. Duty to Explain.

In addition, a lawyer has the duty to inform the client of relevant considerations and explain their legal significance to permit the client to make informed decisions. Texas Rule 1.03(b). In the final analysis whether to assert or forego legally available objectives is for the client to decide. Texas Rule 1.02.

3. Potential Traps to Consider.

Gary A. Grasso in his article entitled "Defensive Lawyering - How to Keep Your Clients from Suing You" (ABA Journal, October 1989 p. 98) writes as follows:

Real estate transaction law often concerns the informed-consent aspect of lawyering. Clients frequently claim that they were not aware of certain risks involved with the transaction and had they been told of those risks, they would not have gone forward. These claims are made time and time again, and are successful largely because the attorney's file lacks documentation.... [Real estate attorneys] must ... take appropriate steps to defend [themselves] against the potential malpractice claimant. Id. at p. 100.
4. Practical Advice.
   How does an attorney protect himself? The first step is to routinely provide the client with copies of all pertinent correspondence, documents and file memoranda. The second step is to advise your client in writing of risks involved with the transaction. Be sure you do not overlook the obvious. Also do not overlook those decisions made by the client which most lawyers would consider "business decisions". If the deal goes bad, you will want some protection from being blamed for a risk the client consciously decided to undertake.

5. Example Letters.
   Attached as Exhibit K and Exhibit L are the types of letters that might have helped prevent lawsuits that have been brought against Texas attorneys.

B. Duty of Confidentiality.
   A lawyer cannot reveal information relating to representation of a client unless the client consents after consultation, or except as impliedly authorized by the client in order to carry out the representation. Texas Rule 1.05(b) and ABA Rule 1.6(a). Exceptions to the Texas Rule are stated in Texas Rule 1.05(e) and (f) and exceptions to the ABA Rule are stated in ABA Rule 1.6(b) and in the Comment to that Rule.

C. Business Interests With Clients.
   Real estate attorneys are frequently sued in situations where the lawyer involves a client in a business transaction in which the attorney is personally involved.

1. Texas Rule 1.08(a) Prohibition.
   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. Texas Rule 1.08(a).

2. Exception to Prohibition.
   It should be noted, however, that the Comment to Texas 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 this is not enough to dissuade you from doing business with a client, reflect on the following:
   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) and Sherwood v. South, supra.
   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:
   a. Attorney acting as officer or director of company;
   b. Attorney investing in client’s securities;
   c. Attorney in business transaction with client;
   d. Attorney receiving stock in lieu of cash fee;
   e. Attorney receiving contingent fees in business deal;
   f. Attorney soliciting investments or giving investment advice;
   g. Law firms with consulting subsidiaries;
   h. 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.

   Attached as Exhibit M is an example that may provide you with ideas that could be incorporated into your tailor made consent agreement.

D. Other Ethical Problem Situations.

1. Disclosure of Nonrepresentation.
   In dealing with a person not represented by a lawyer, a lawyer shall not imply that he is disinterested and if the unrepresented person misunderstands his role, the lawyer must correct this misunderstanding. Texas Rule 4.03 and ABA Rule 4.3. For example, it is a good practice for a lawyer to make a written disclosure of nonrepresentation to the buyer and seller when representing the lender. See Exhibit N for an example. State Bar Opinion 525 (May 1998) outlines the rules governing the situation in which the lender’s attorney may do legal work (deed preparation) for the seller.

2. Communications with Opposing Client.
   One cannot contact or converse with the client of your opposing counsel. Texas Rule 4.02 and ABA Rule 4.2. See also State Bar Ethics Opinions 57, 78, 99, 117, 163, 170, 197, 297 and 355. This includes copying the opposing clients with the correspondence unless legal notice to the opposing client is required by law. Texas State Bar Ethics Opinion 358 (Dec. 1971).

3. Recording Telephone Conversations.
   An attorney cannot record a telephone conversation without the permission of the other party to the conversation. Texas State Bar Ethics Opinions 392 (July
B. Termination Due to Other Considerations.

1. Relationship Does Not Continue Automatically.
   Generally once the purpose of employment is completed, the attorney-client relationship disappears. Dillard v. Broyles, supra.

2. Death of Attorney.
   Death of the attorney terminates relationship. Partners of the deceased attorney cannot continue the representation without permission of the client.

3. Death of Client.
   Death of a client terminates the relationship unless the attorney secures the consent of the estate, Brooks v. Hale, 457 S.W.2d 159 (Tex. Civ. App.--Tyler 1970, writ ref'd n.r.e.). However, it has been held that an attorney can complete certain tasks under an express contract that do not require the client's "personal cooperation." Loden v. Fish, 20 S.W.2d 208 (Tex. Civ. App.--Amarillo 1929, writ ref'd).

C. Example Disengagement Letters.
   It is a good practice to send a disengagement letter to memorialize the termination of the relationship. See Exhibit Q, Exhibit P, and Exhibit O.

VII. AFTER THE ATTORNEY-CLIENT RELATIONSHIP IS TERMINATED

A. Duty of Confidentiality Continues.
   The duty to maintain confidentiality continues after the termination of employment. Texas Rule 1.09(a)(3) and ABA Rule 1.9(b).

B. Retention of Client Files.
   Neither the Texas Rules or the ABA Rules clearly address an attorney's obligation regarding the retention and destruction of client files. While Texas Rule 1.14 generally requires a lawyer to safeguard a client's property and the client's interests, this rule appears to focus on client funds as opposed to client files. In addition, Texas Rule 1.14 does not provide a specific time period for retention of client property, although it does require an attorney to keep complete records of client account funds and other property for a period of five years after termination of the representation. Adding to the confusion is the fact that it is not clear in most states whether the attorney or the client owns the entire client file generated by an attorney.

1. Texas Rules Do Not Address Ownership of Client Files.
   Texas Rule 1.15(d) indicates that upon termination of representation, a lawyer shall "take steps to the extent reasonably practicable to protect a client's interests, such as... surrendering papers and property to which the client is entitled... The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation." However, this rule does not address exactly what "papers and property" belong to the client.
2. **End Product Rule.**

Several courts have addressed the issue of ownership of client files and have adopted the "end product" rule -- the client owns the end product of the attorney's work, but the attorney retains ownership of materials such as notes and purely internal memoranda. See Corrigan v. Armstrong, Teasdale, Schlatly, Davis & Dicus, 824 S.W.2d 92 (Mo. Ct. App. 1992); Federal Land Bank v. Federal Intermediate Credit Bank, 127 F.R.D. 473, 480 (S.D. Miss. 1989), aff'd in part and rev'd on other grounds, 128 F.R.D. 182 (S.D. Miss 1989); Gries Sports Enters. v. Cleveland Browns Football Club, Nos 49184 & 49197 (Ohio Ct. App. April 25, 1985) (LEXIS, States Library, Omni file), rev'd on other grounds, 496 N.E. 2d 959 (Ohio 1986). In addition, while the ABA has indicated that, although the question of what papers belong to the client are a question of law, the "end product" rule should apply to determine the attorney's ethical obligations. See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1376 (1977).

3. **"Entire File" Rule.**

Other courts have emphasized the fiduciary duty created by the attorney-client relationship and have held that the entire contents of a client file belong to the client not the lawyer. See Resolution Trust Corp. v. H.---, P.C., 128 F.R.D. 647 (N.D. Tex. 1989), where the court noted that "so long as the files were created in the course of the representation of the client, they belong to the client." See also In re Kaledioscope, Inc., 15 B. R. 232 (Bankr. N.D. Ga. 1981), rev'd, 25 B.R. 729, 742-43 (N.D. Ga. 1982); In re Calestini, 321 F. Supp 1313 (N.D. Cal. 1971); In re Michigan Boiler & Eng'g Co., 87 B. R. 465 (Bankr. E.D. Mich. 1988). However, this position has been severely criticized. See Brian J. Slovut, Note, Eliminating Conflict at the Termination of the Attorney-Client Relationship: A Proposed Standard Governing Property Rights in the Client's File, 76 Minn. L.Rev.1483 (1992).

4. **Practical Considerations.**

a. **Attorneys may wish to obtain consent from the client to the destruction of client files pursuant to a record retention policy.** This can be done in the fee agreement (See IV.(B)(3) of this article) or in the disengagement letter (see Exhibit P). As an alternative, the attorney may offer to return the documents to the client.

b. **Attorneys may wish to adopt a policy whereby all important materials, as well as all original documents, are delivered to the client at the end of the transaction.** It is a good practice to document this transfer in writing.

c. **Many attorneys routinely organize a client file at the end of a transaction.** In the process, they may wish to determine whether inconsequential papers, such as interim drafts of documents and attorney notes can be destroyed. In addition, this is a good time to note whether the client has consented to the destruction of the file or if there is a need to postpone destruction of the file due to unique limitations periods, the presence of court orders, etc....

d. **At the time a client file is slated for destruction or return to a client, attorneys may wish to review the file to ensure that no papers subject to court orders are inadvertently destroyed or delivered to a client in violation of an applicable court order.**

e. **Similarly, destruction of a client file should be suspended if the file is subject to a subpoena or document request served on the firm or the client.**

**VIII. CONCLUSION.**

I have always loved David Letterman’s "Top Ten" lists. Therefore, this paper concludes with the following:

A. **Top Ten Reasons for Disciplinary Sanctions.**

1. **Failure to Respond to Grievance Committee Requests**

2. **Advertising Violations**

3. **Neglect**

4. **Failure to Return Phone Calls**

5. **Failure to Explain Settlements**

6. **Failure to Clarify and/or have a Written Fee Agreement**

7. **Failure to Provide Clients with Files and Papers**

8. **Creation of Unreasonable Expectations**

9. **Failure to Prepare**

10. **Trust Account Violations**

B. "**Follow These Ten Rules and You, Too, Can Be Sued for Malpractice"**

1. **Ignore conflicts of interest**

2. **Sue your former client for an unpaid fee**

3. **Accept any client and any matter that comes along**

4. **Do business with your client**

5. **Practice outside your area of expertise**

6. **Go overboard in opening branch offices and making lateral hires**

7. **Leave partner peer review to the other firms**

8. **Ignore a potential claim and represent yourself in a professional liability dispute**

9. **Settle a matter without written authorization from your client**

10. **Fail to communicate with your client**


C. **Top Ten Areas of Practice Sued for Malpractice**

1. **Personal Injury-Plaintiff 21.65**

2. **Real Estate 14.35**

3. **Business Transactions 10.66**

4. **Family Law 9.13**

5. **Corporate/Business Organization 8.87**

6. **Collection and Bankruptcy 7.91**

7. **Estate, Trust and Probate 7.59**

8. **Criminal 3.82**

9. **Workers' Compensation 3.30**

10. **Personal Injury-Defense 3.27**

(ABA Journal, pp. 100-101 March 1997)
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Some of the following exhibits rely in part on forms located in *Preventing Legal Malpractice* by Jeffrey M. Smith and Ronald E. Mallen, a text published by West Publishing Co. (1989) which is highly recommend. Others rely in part on forms created and used by various law firms which will remain anonymous. As stated earlier, these forms are just examples which should be conformed to fit your particular situation.
EXHIBIT A
"BEAUTY CONTEST" LETTER

(Date)

[Address]

Re: [Style]

Dear [Client's Name]:

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

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

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

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

Very truly yours,

[Firm's Name]

By:________________________________________

Enclosure

AGREED TO AND ACCEPTED:

________________________________________
[Client's Name]
BY MESSENGER - RECEIPT REQUESTED

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

Re: Potential Claim Against Prior Surveyor, Sam Sloppy

Dear Mr. Owner:

You have contacted this firm and requested that I evaluate whether this firm will represent you in a claim you believe should be filed against Sam Sloppy in connection with a survey he performed for you. I met with you yesterday and have subsequently reviewed the 1996 survey prepared by Sam Sloppy and the 1997 survey prepared by Abraham Accurate you left with me. I am returning both surveys with this letter.

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

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

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

Please call if you have any questions.

Yours truly,

Andy Attorney

Enclosures
BY MESSENGER - RECEIPT REQUESTED

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

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

Dear Mr. Buyer:

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

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

I strongly recommend that you contact another attorney regarding this matter who is familiar with real estate transactions. Because your purchase and sale agreement allows you to terminate the contract and recover your earnest money if you send the appropriate written termination notice on or before February 1, 1998 you should make every effort to retain legal counsel immediately so that your attorney will have time to properly evaluate the circumstances and advise you well in advance of this February 1, 1998 deadline. Failure to terminate the purchase and sale agreement on or before February 1, 1998 may cause you to lose your earnest money if you subsequently decide not to close this transaction.

As I told you on the phone, I will be glad to recommend several attorneys that practice in this area or you can contact the Houston Bar Association Lawyer Referral Service at (713) 237-9429.

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

Sincerely,

Lawyer Jones

Enclosures
EXHIBIT D  
NON-REPRESENTATION LETTER

(Date)

[ADDRESS]

Re: [STYLE]

Dear _________:

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

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

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

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

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

[If appropriate, consider adding the following: Except for specific information relating to ____, we do not believe that we have obtained any information either from or about [Company's Name or you] or _______ that must be considered confidential. If you disagree in any respect with this evaluation, please advise the undersigned as soon as possible.]

We thank you, again, for presenting us with the opportunity to represent [Company's Name or you] in this matter, and we trust that you understand why we are unable to do so. [To acknowledge your receipt of the enclosed papers and other information, please sign the enclosed copy of this letter and return it to the undersigned.] Thank you very much.

Very truly yours,

[Firm's Name]

By:__________________________________________

Enclosures

RECEIPT ACKNOWLEDGED:

[Client's Name]
EXHIBIT 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. I am confident that our firm will be able to provide quality services in an efficient manner.

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

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

Scope

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

Our sole client will be Corporation X. You have agreed to seek independent counsel to advise you regarding your 5 percent ownership of stock in both corporations. You have also informed me that Corporation Y will be represented by its outside general counsel, D, E & F. As we discussed yesterday, our firm has represented Corporation Y in a few matters. At the present time, there is no active representation of Corporation Y.

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

First, you need to be aware that our firm has and continues to enjoy a good relationship with D, E & F. This will not prevent A, B & C from vigorously representing the interests of Corporation X. Nonetheless, this relationship is a matter you deserve to be aware of prior to retaining our firm. Despite this disclosure, we believe our relationship with D, E & F will in fact be an asset in the merger.

Second, because Corporation X and Corporation Y will be legally adverse, despite the anticipation of a friendly merger, we feel it is prudent to receive permission from Corporation Y to represent Corporation X in this transaction. As a former client, it might contend we had confidences or secrets which could be used adversely. Therefore, I enclose a copy of a letter which we propose to send to D, E & F. Assuming you approve this letter, we will forward it to D, E & F and expect a positive response.

Legal Fees and Expenses

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

CORPORATION X

By: ________________________________
Name: ______________________________
Title: _______________________________
Re: [STYLE]

Dear [client's name or you]:

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

**Scope of Engagement**

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

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

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

**Cooperation**

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

**Fees**

Our fees are based on the time spent by the lawyers and paralegal personnel who work on the matter. We will charge for all time spent in representing [client's or your] interests, including by way of illustration, telephone and office conferences with [client's representatives or you and your representatives], consultants (if any), opposing counsel, and others; conferences among our legal and paralegal personnel; factual investigation; legal research; responding to your requests for us to provide information to your auditors in connection with review or audits of financial statements; drafting letters and other documents; and travel.

Billing rates for our attorneys vary according to the experience of the individuals. Our current billing rates for those attorneys expected to work on your matter range from $____ an hour for the most junior associate to $____ an hour for the most senior partner. In an effort to reduce overall legal costs, we utilize paralegal personnel whenever appropriate. Time devoted by such paralegal personnel to client matters is currently charged at billing rates generally ranging from $____ to $____ per hour. Billing rates for both attorneys and paralegal personnel are, from time to time, reviewed and adjusted on a firm-wide basis. [If agreed to by client: the fees ultimately charged may be increased based upon a number of factors, such as the value of the services we render, the degree of experience we have in performing our services, our efficiency in handling your matter, the size of the matter, and the results we achieve.]

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

[Alternative, if appropriate, for two preceding paragraphs]

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

Other Charges

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

Billing Cycle

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

Cost Estimates

Although we may from time to time, at the client's request, furnish estimates of legal fees and other charges that we anticipate will be incurred, these estimates are by their nature inexact (due to unforeseeable circumstances) and, therefore, the actual fees and charges ultimately billed may vary from such estimates.

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 or you] agreement with respect to the areas in which the Firm is free to take such an adverse position.

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

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

Withdrawal or Termination

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

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

Client Documents

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

Other

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

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

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

Very truly yours,

[Firm's Name]

By: __________________________________________

Enclosure

AGREED TO AND ACCEPTED:

[Client's Name]
[By:]
PRIVILEGED--ATTORNEY-CLIENT COMMUNICATION

(Client Name)
(Client Address)
(City)

Re: (Style of matter)

Dear ____________________:

Please read this letter carefully. It describes the terms and conditions under which we will undertake to represent (list all clients) in connection with the above-described matter. Our firm policy requires that each client sign a copy of this letter, agreeing to the terms and conditions described below. Indeed, we require that the letter be signed before we can engage in representation. The terms and conditions of our engagement are as follows:

1. Our fees for legal services are based primarily on the published hourly rates in effect for each lawyer and legal assistant in our firm at the time the services are rendered. Our current hourly rates are attached. We review these hourly rates annually and adjust them on January 1 if appropriate.

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

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

4. If in the course of our representation we anticipate a significant increase in the level of our activity on your behalf, e.g., the commencement of trial preparation or trial, we may bill you on a basis more frequent than monthly. We will expect that such statements will also be paid promptly.

5. It is our usual practice to require a cost deposit before we commence work for a client. We have asked that you remit to and maintain with us, during the entire course of our representation of you, a cost deposit in the amount of at least $_______________. We will place these funds [in an interest-bearing trust account] [or] [in a State Bar of Texas Interest on Lawyers Trust Account, the interest on which inures to the benefit of the Texas Equal Access to Justice Foundation.] The cost deposit will be applied to our final statement for fees and expenses, or, in our discretion, to any past due monthly statement. Upon the termination of our services, we will promptly refund the cost deposit to you, less any balance for fees and expenses unpaid as of the date of our final bill.

6. Our agreement to provide legal representation in the above-referenced matter is conditioned not only upon your execution of this engagement letter, but payment of the requested cost deposit.
7. This firm retains the discretion to request a supplemental cost deposit, over and above the cost deposit required prior to our commencement of the engagement, in the event of an increase in our anticipated fees and expenses during the course of litigation.

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

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

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

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

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

Sincerely,

[Firm Name]

By: _______________________________
Name: _______________________________
Title: Partner

Attachments:
Sample Monthly Statement
Current Hourly Rates
I-22

Advanced Real Estate Law Course

ACCEPTED:

[Name(s) of client(s)]

By: ______________________

Date: ____________________

Social Security or EIN
Number: ___________________

(Please provide this number for
bank use in establishing trust account)
Mr. John Smith  
Development Director  
National Development Co.  
Chicago, Illinois 00000  

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

Dear John:

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

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

Second, I want to address the billing arrangements in connection with the above-referenced purchase. Our firm charges on an hourly basis and current hourly rates for our attorneys and legal assistants are listed on the enclosed 1998 Schedule of Rates. We customarily bill on a monthly basis and our statement will include our out-of-pocket expenses. In this way, you will know on a monthly basis what charges have accrued. We request that payment be made within fifteen (15) days of the receipt of our statement. In the event that you have any questions or concerns regarding any of our statements, please do not be embarrassed to contact me.

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

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

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

Sincerely,

DOE & DOE

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

NATIONAL DEVELOPMENT CO.

By: ________________________________
Name: John Smith
Title: Development Director

Enclosures
EXHIBIT I
EXAMPLE LETTER OUTLINING FEE AGREEMENT,
DISCLOSING POTENTIAL RISKS AND REQUESTING
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
I understand that this prior representation may unconsciously bias me in favor of [name] in the event of any disagreement between you. Should I at any time determine that such a bias exists, then I must withdraw from the representation.

The fourth matter is that of ultimately allocating our fees and disbursements. Unless we receive joint instructions to the contrary, we shall send our entire bill for fees and disbursements for organizing the Corporation to [name]. You should enter into a written agreement for reimbursement of [name]. When you have reached an agreement on this subject, we will discuss with you whether we can ethically draft it. If not, we will recommend independent counsel for you. However, we cannot provide advice to any of you in connection with any claim you may possess or desire to assert against the other for indemnity or reimbursement of fees and disbursements billed by us in connection with this representation.

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

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

As is true with all legal services, we can not and do not guarantee the results of our representation. We can not and do not make any warranties express or implied with regard to our representation.

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

Yours truly,

[NAME OF FIRM]

By: [Name of Attorney]

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

Date: [Name of Client]
EXHIBIT J
WAIVER OF CONFLICT OF INTEREST
Example 1: Letter to New Client
Example 2: Letter to Existing Client

(Date)

DELIVERED BY MESSENGER

[New Client]
__________________
__________________

Re: Waiver of Conflict of Interest

Dear ___________

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

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

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

Sincerely,

__________________

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

__________________

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

DELIVERED BY MESSENGER

____________________  ______________________
[Existing Client]                               ______________________

Re: Waiver of Conflict of Interest

Dear _________:

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

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

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

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

Sincerely,

____________________  ______________________
[Existing Client]                               ______________________

By: ________________________________  
Name: ________________________________  
Title: ________________________________
EXHIBIT K
LETTER ADVISING CLIENT OF
(1) PERSONAL LIABILITY ON NOTE AND
(2) HER OWN DUTIES AND RESPONSIBILITIES

January 1, 1998

BY MESSENGER - RECEIPT REQUESTED

Ms. Barbara Buyer
440 Louisiana, Suite 650
Houston, Texas 77002

Re: Purchase of Lots 10, 11, 12, 13 and 14, Block 4 of Afton Village, Section 1, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in Volume 46, Page 54 of the Map Records of Harris County, Texas (the "Property")

Dear Barbara:

You have asked me to review the real estate documents to be executed in connection with your purchase of the Property from Mr. Sam Seller. It is my understanding that the Property is unimproved and that you contemplate developing these lots for multi-family housing at some future point in time.

In connection with my review of these documents, I thought it wise to reiterate several points that we have previously discussed. First, as part of the transaction contemplated, you will be expected to execute a promissory note in favor of Solvent Mortgage Company and a promissory note in favor of Sam Seller. Neither promissory note will contain a non-recourse provision, or in other words, both promissory notes will create personal liability. Thus, for example, if you default under either promissory note the holder of the note may elect to foreclose on the Property and sue you for the deficiency (the amount owed less the price received for the Property at foreclosure). In addition, the note holder has the right to, in the event of a default, forgo foreclosure and sue you for the full amount owed under the note.

Second, although the City of Houston is a city that currently has no zoning, it is important to understand that the restrictive covenants identified in the Title Insurance Commitment affect how the lots can be developed as well as for what purpose the lots may be utilized. What this means is that you will need to carefully review the restrictive covenants to insure that they do not prohibit the development that you contemplate.

Finally, since it is not within my field of expertise, I previously advised you to determine independently that the rights to sewer capacity being acquired in connection with this transaction are adequate for the development you contemplate.

When I finish my review of the proposed closing documents I will call you so that we may discuss what changes, if any, need to be made. In the meantime, if you have any questions please call me.

Sincerely,

Bob Attorney
EXHIBIT L
LETTER ADVISING CLIENT OF POTENTIAL RISK INVOLVED IN ACCEPTING SECOND LIEN SECURITY

January 1, 1998

BY MESSENGER - RECEIPT REQUESTED

Mr. Sam Seller
4200 Texas Commerce Tower
Houston, Texas 77002

Re: Sale of Lots 10, 11, 12, 13 and 14, Block 4 of Afton Village, Section 1, a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in Volume 46, Page 54 of the Map Records of Harris County, Texas (the "Property")

Dear Sam:

You have asked me to review the real estate documents to be executed in connection with your sale of the Property to Ms. Barbara Buyer. In connection with my review of these documents, I thought it wise to reiterate one of the major issues that we have previously discussed with respect to the fact that a portion of the purchase price of the Property will be "owner financed".

The closing documents as drafted indicate that twenty percent (20%) of the purchase price will be paid in cash, that sixty percent (60%) will be paid via a loan to Ms. Buyer from Solvent Mortgage Company and that the remaining twenty percent (20%) of the purchase price will be financed by you. Both Solvent Mortgage Company's loan and your loan to Ms. Buyer will be evidenced by promissory notes secured by the Property. Solvent Mortgage Company's liens will have priority over your liens. In other words, Solvent Mortgage Company will hold the "first lien" and you will hold the "second lien" against the Property.

I have previously advised you of the risks involved in accepting a second lien as security for a promissory note. While we have obtained an agreement from Solvent Mortgage Company to provide you with notice of any default under their note and with notice of foreclosure, the fact is that if Ms. Buyer defaults and Solvent Mortgage Company forecloses under its first lien deed of trust, your lien and the security for your promissory note will vanish. You will still have the ability to sue Ms. Buyer for the full amount owed under your note, however if she is insolvent at that time it may be a hollow remedy.

It is my understanding and you have represented to me that you have examined this possibility thoroughly and have determined to undertake the risk associated with this transaction.

When I finish my review of the proposed closing documents I will call you so that we may discuss what changes, if any, need to be made. In the meantime, if you have any questions please call me.

Sincerely,

Bob Attorney
EXHIBIT M
CONSENT TO DO BUSINESS WITH A CLIENT

January 1, 1998

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

Re: Acquisition of Gulfway Plaza

Dear Mr. Smith:

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 shall let you know my decision by next Friday.

Nevertheless, 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. You, of course, clearly have the right to hire independent counsel!

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 shall repeat them here. The terms are (list terms).

Although not required by our State Bar's rules of ethics, I must insist that you seek independent counsel prior to our entry into this venture. I shall be glad to recommend to you any one of several attorneys or you can get a referral from the Houston Bar Association Lawyer Referral Service.

Once you have had a chance to consult with an attorney, please put his name in the blank I have provided and then sign and return the copy of this letter to signify your consent for me to have an interest in the above-described acquisition.

Yours truly,

John Lawyer

I have consulted with ________________________ and having availed myself of his/her advice I knowingly agree for John Lawyer's acquisition of an interest in the Gulfway Plaza on the terms outlined in this letter, which I believe are fair and reasonable. I am also requesting that John Lawyer act as legal counsel in this transaction, with the terms of the engagement to be outlined in a separate letter agreement.

Joe Client

[Note: Rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct is comparable to Rule 1.8(a) of the ABA Model Rules of Professional Conduct.]
EXHIBIT N
NON-REPRESENTATION LETTER TO BUYER AND SELLER
WHEN REPRESENTING LENDER

(Date)

[BUYER'S ADDRESS]

[SELLER'S ADDRESS]

Re: [DESCRIBE TRANSACTION]

Dear [BUYER'S NAME AND SELLER'S NAME]:

I have represented [NAME OF LENDER] in the preparation of legal documents for use in closing the transaction described above.

While I have acted solely on behalf of [NAME OF LENDER], [BUYER'S NAME], the buyer, and [SELLER'S NAME], the seller, acknowledge that the legal fees incurred in preparing the legal documents will be paid for in part by the buyer and in part by the seller even though I have not in any manner undertaken to render legal advice to the buyer or the seller. The buyer and the seller further acknowledge and understand that they may retain independent legal counsel to represent their individual interests in the referenced transaction.

The buyer and the seller specifically recognize that I do not have the responsibility to provide any truth-in-lending disclosures, any other truth-in-lending documents, or any other documents required by any regulations that apply to this transaction. The lender is responsible for providing those documents and no charge may be made for providing them.

Please sign below to acknowledge that you have been advised of my representation of the lender and that you understand that I am not your attorney.

Sincerely yours,

Lawyer Brown

Date:________________

__________________________, Seller

Date:________________

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

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

Dear Mr. Client:

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

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

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

We are now at a stage in the work-out negotiations that will provide you the opportunity to retain other counsel without jeopardizing your negotiating position. However, if we wait several more months, it is possible that circumstances will change and this opportunity will be lost. Consequently, as of January 31, 1998, we will cease to represent you.

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

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

If you wish us to continue representing you, we would be pleased to do so if satisfactory arrangements are made to take care of the outstanding and overdue fees and expenses, as well as to take care of the future fees and expenses.

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

Sincerely,

Lawyer Smith  
SMITH & JONES
EXHIBIT P
DISENGAGEMENT LETTER

(Date)

(NAME AND ADDRESS)

Re: [STYLE]

Dear ____________:

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

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

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

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

Very truly yours,

[Firm's Name]

By:_______________________________
EXHIBIT Q
DISENGAGEMENT LETTER

[DATE]

[NAME AND ADDRESS]

Re: [STYLE]

Dear [Receipient]:

Our purpose in writing is to memorialize our recent discussions and agreement to terminate [Firm's Name]'s representation and relationship as your counsel in connection with [describe matter].

Our Firm has to date received payment for our services and other charges in the amount of $____________. Pursuant to the terms of our initial engagement letter dated _________, we are enclosing herewith our statement for services and other charges accrued through the termination date.

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

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

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

We regret that our relationship had to be terminated with respect to this matter, an event that was not anticipated by either you or us when we began the representation.

[If appropriate: We thank you for the opportunity to work with [client's name or you] and will look forward to your calling on us in the future.] Please call the undersigned if any questions remain.

Very truly yours,

[Firm's Name]

By: ____________________________________