

LAW OFFICE ROAD MAP

PRACTICAL SKILLS *FOR*
WORKING *WITH* CLIENTS



Law Office Road Map

***Practical Skills for
Working with Clients***

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Practical Skills for Working with Clients



Austin 2012

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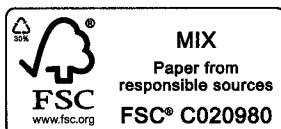
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The State Bar of Texas is pleased to publish the *Law Office Road Map: Practical Skills for Working with Clients*. With this book, the State Bar strives to support Texas attorneys and to facilitate their efforts to develop successful client relationships.

The State Bar extends its sincere gratitude to the many authors who contributed to this valuable resource. Through their efforts the Bar is able to provide this book and assist Texas attorneys in maintaining the ideals of the profession. The authors are to be commended for their exemplary service.

A handwritten signature in black ink that reads "Buck". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Buck Files
President, State Bar of Texas

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Preface

Often, one of the most difficult challenges an attorney may be confronted with will have little to do with the complex legal matter in which he represents the client. Instead, in some cases, aspects of the attorney-client relationship can prove most problematic. The ability to effectively manage client relations and expectations is a vital component for maintaining a successful law practice. Not only will this improve the overall quality of the attorney's practice, but it is also critical for avoiding potential grievance or malpractice disputes.

Law Office Road Map: Practical Skills for Working with Clients follows the attorney-client relationship from the initial client interview to the termination of the relationship, outlining best practices for interacting with clients and guidelines for managing a law practice. The book provides examples of what an attorney might do to document compliance with the disciplinary rules in situations occurring throughout the course of the attorney's practice.

TexasBarBooks wishes to acknowledge the numerous individuals and organizations whose contributions have made this publication possible, including the committees of the *Texas Real Estate Forms Manual*, the *Texas Family Law Practice Manual*, and the *Texas Collections Manual* for the use of material reprinted in this book. The Texas Young Lawyers Association has also generously allowed forms from "Office in a Flash" to be included in this publication. TexasBarBooks would also like to thank Frederick Forlano and Diane Dillard for the use of their articles.

In addition, the material in chapter 7 on social media was originally published in different form in the March 2010 issue of the *Texas Bar Journal*, and the Oregon Professional Liability fund allowed the use of their materials on law practice management, without which this book would have been incomplete.

Finally, TexasBarBooks appreciates the contributions of James E. Brill, William J. Chriss, Martha S. Dickie, Claude E. Ducloux, Dan Pozza, Pat Rafferty, Jonathan E. Smaby, Norma Levine Trusch, and Thomas H. Watkins who provided "practical advice" for the *Law Office Road Map*, highlighting real world ways to successfully handle challenging circumstances with clients.

Introduction

§ 1 Forms

1. Format and Content

a. Optional content

Within major sections of the text of forms, optional paragraphs or items are usually identified by boxed instructions. Because the book covers only relatively common situations, language needed to address an atypical issue in a particular case may not appear in the form. The user must take care to ensure both that language appearing in the form that is not appropriate for the particular case is eliminated and that any language needed for the particular case that does not appear in the form is added.

b. Typeface conventions

Two typefaces are used in the forms. Material in Times Roman (like most of this page) is appropriate for inclusion in a finished form. In contrast, Arial type is used for marginal notes and for instructions. When the Arial type is used within the form itself (rather than in a marginal note or instruction box), it appears in **boldface** for emphasis.

c. Bracketed material

Several types of bracketed material appear in the forms.

Choice of terms. In a bracketed statement such as [attorney/firm], the user must choose between the terms or phrases within the brackets. The choices are separated by forward slash marks. Alternative letters or phrases may also be indicated by the use of brackets, for example, “child[ren].”

Optional words. In a phrase such as “[nonrefundable] retainer,” the user must determine whether to include the word “nonrefundable.”

Substitution of terms. In a bracketed statement such as [**name of client**], the user is to substitute the name of the client rather than typing the bracketed material verbatim.

Instructions for use. Material such as [**include if applicable: . . .**] and [**specify**] provides instructions for completing the finished form and should not be typed verbatim in the document.

Introduction

d. Blank lines

Signature lines appear as blank lines. Spaces for dates and times that would be filled in *after* the document is prepared also appear as blank lines. (If an actual date or time should be inserted in the form when it is prepared, **[date]** or **[time]** appears instead.) Blank lines are also used for information that would be filled in by hand.

e. Language in boxes

Language in boxes is not to be typed in the finished document but constitutes instructions, usually either telling the user whether to use the form language following the box, describing what information should be included at that point in the finished document or attached to it, or providing cautionary reminders about use of the form language.

§ 2 Digital Product

The downloadable digital product version of the *Law Office Road Map: Practical Skills for Working with Clients* contains the entire text of the book as a single Adobe Acrobat PDF file that is searchable and hyperlinked to allow for easy, rapid navigation to topics of interest. Also included are electronic versions of all State Bar of Texas-copyrighted forms from the manual in Word, linked from the PDF file for easy retrieval.

Applicable Texas and federal case and statute citations in the practice notes and forms instructions are linked to case reports and main code sections cited via Casemaker online.

For more information about the digital product including usage notes, see the material under “How to Download This Book” on page 327.

Law Office Road Map

CHAPTER 1

Consulting Potential Client

Initial Consultation

The initial consultation between the lawyer and the client is critical for gathering information and setting the tone for the relationship. When the attorney initially meets the client, it is important that he listens to all the client has to say and that he inquires about any additional information the client may have failed to convey. The attorney must collect as much information as possible and insure that information is accurate and complete. The client may choose to discuss only what he believes to be the pertinent facts or to provide details that make the case appear less complicated than it actually might be. For example, in divorce cases, the client might explain to the attorney that the case is very simple and the parties are in agreement on all issues. However, while this may sometimes be true, the client should be aware the case may not be as simple as it seems, and there is always a potential for the matter to become more complicated. Helping the client to understand that the case may be more complex than it might seem is important for managing the client's expectations from the start of the relationship.

The initial client visit is an opportunity for the attorney to assess what information must be exchanged and to determine the facts as to who, what and where in order to establish a comprehensive understanding of the client's situation. During the initial visit the attorney should also discuss confidentiality with the client. Although the consultation alone does not create an attorney-client relationship, there are, nevertheless, some duties that attach during a consultation. *See* Tex. Disciplinary Rules Prof'l Conduct preamble ¶ 12. During the consultation, an attorney must maintain the requirements of confidentiality and must be wary to avoid conflicts with future clients. Explaining to the client that his information will be kept confidential may help the client to feel at ease and to discuss the matter more candidly.

The initial consultation may or may not lead to ongoing representation. However, if a continuing attorney-client relationship is formed, an agreement for legal services should be signed. Without an agreement, there can be uncertainty and misunderstanding. See forms 1 through 4 in this book for sample model engagement letters.

Signing a fee agreement for the initial consultation can also help to eliminate uncertainty by clearly defining the nature of the first meeting and stating what conditions must be satisfied if there will be a continuing attorney-client relationship. The agreement should require a fee for the initial conference and clearly state that a sepa-

rate written agreement will be required as evidence of the subsequent employment. See form 5 for a sample fee agreement for initial consultation.

During the initial consultation, the attorney should open a case file, assign a file number, and complete a client information sheet with as much information as possible. As the case progresses, additional information may be entered as it becomes known. The completed form should be the top item in the case file or otherwise placed where it can be referred to easily. Client information may also be kept in a computer database or file management system, which may be particularly helpful if the client refers multiple matters to the attorney.

Sample client information sheets for several practice areas are included as forms 6 through 12 in this book.

One of the most important single questions you can ask after discussing the matter with the client is "What do you think I can do for you?"

Claude Ducloux, Austin

Deciding Whether or Not to Take a Case

An attorney should not accept representation in a matter unless he can perform competently, promptly, and without a conflict of interest. See Tex. Disciplinary Rules Prof'l Conduct R. 1.01, 1.06, 1.07, 1.08, 1.09, 1.15. Further, an attorney should also consider declining bad or unwanted business as well as the unwanted client. An attorney is not ethically required to represent all who seek the attorney's advice. See Tex. Disciplinary Rules Prof'l Conduct R. 6.01 & cmts.

Moreover, a consultation and certainly an investigation may impose additional duties such as advising the potential client of the statute of limitations. See *Villarreal v. Cooper*, 673 S.W.2d 631 (Tex. App.—San Antonio 1984, no writ). At least one state has held an attorney liable for negligently investigating the claim, even though the attorney refused to take the case. See *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980). Further confusion may result if an attorney has a continuing or gratuitous relationship with a client. See *Bresette v. Knapp*, 159 A.2d 329 (Vt. 1960).

Attorneys decline to represent clients for a variety of reasons, including conflict with a current or former client, a claim that is barred by limitations, or failure to provide sufficient documentation to prosecute the claim. However, in some instances, a potential client may believe that an attorney-client relationship has been created by the initial interview. If the attorney decides not to represent a person, the declining of representation should be made clear. An attorney declining the matter should clearly state in writing that he is doing so and must take all reasonable steps to mitigate the consequences to the client. This can be done by sending a letter to the client advising that

the client may want to consult other attorneys and, if appropriate, that the failure to take action may result in the claim's being barred by limitations. Form 13 in this book is an example of a nonrepresentation letter. A nonrepresentation letter will help to eliminate confusion and future problems, which might have otherwise been prevented. For example, in a Texas Lawyers' Insurance Exchange case, an attorney tentatively accepted a personal injury case. After evaluating the case further, the attorney returned the file

It is better to say "no" early than to realize later that the attorney-client relationship isn't working or that the client's expectations about his case are out of sync with the facts, the law, or both. It is best to have that conversation early and in depth.

Dan Pozza, San Antonio

to the client and told the client he would not accept the case. The client sued the attorney after the statute of limitations on the personal injury claim ran, and, because of the absence of a nonrepresentation letter, a weak personal injury claim resulted in a substantial loss to the insurer for negligence on the part of this attorney. *See* 46 Tex. B.J. 998 (1983).

The client may also decide that he does not wish to retain the attorney's services. In this situation, the attorney should confirm with the client that he will take no further action on the matter. See form 14 for a sample letter confirming the request to take no further action on a case.

Tex. Disciplinary Rules Prof'l Conduct R. 1.15(d) requires the potential client's documents to be returned. They may be withheld only if other law, such as a lien, permits the withholding of documents and if the client will not be prejudiced by the retention.

Listen to your common sense and think down the road. Go with your gut.

Martha S. Dickie, Austin

See Tex. Comm. on Prof'l Ethics, Op. 395 (1979). If the documents are particularly valuable, the attorney should consider having their receipt acknowledged.

If the attorney declines the representation, there is a question about whether the attorney should advise the nonclient of any rights or statutes of limitation. Some attorneys, as a matter of policy, will advise the nonclient of such matters if the attorney is aware of them. Other attorneys believe that advice implies some representation of the nonclient and therefore, as a matter of policy, do not offer any advice in the nonrepresentation letter.

CHAPTER 2

Establishing Attorney-Client Relationship

The relationship between the attorney and client is one of agent and principal. *Duval County Ranch Co. v. Alamo Lumber Co.*, 663 S.W.2d 627, 633 (Tex. App.—Amarillo 1983, writ ref'd n.r.e.). It is created by consent and governed by the general rules covering agency. *Bar Ass'n of Dallas v. Hexter Title & Abstract Co.*, 175 S.W.2d 108, 115 (Tex. Civ. App.—Fort Worth 1943), *aff'd*, 179 S.W.2d 946 (Tex. 1944). The fiduciary obligations and responsibilities imposed on the attorney are predicated on the existence of the attorney-client relationship. See *Shropshire v. Freeman*, 510 S.W.2d 405 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.).

The attorney-client relationship can also be implied from the conduct of the parties. *Duval County Ranch Co.*, 663 S.W.2d at 633. A written contract or payment of a retainer is not necessary. For example, gratuitous services can establish an attorney-client relationship. See *Prigmore v. Hardware Mutual Insurance Co. of Minnesota*, 225 S.W.2d 897, 899 (Tex. Civ. App.—Amarillo 1949, no writ). But the fact that an attorney had business dealings with someone does not establish an attorney-client relationship. *McGary v. Campbell*, 245 S.W. 106, 116 (Tex. Civ. App.—Beaumont 1922, writ dism'd w.o.j.).

If it is disputed, the existence of an attorney-client relationship is a question of fact. *Jinks v. Moppin*, 80 S.W. 390, 393 (Tex. Civ. App.—San Antonio 1904, no writ).

The first step when accepting a matter for representation is to determine who the client is. In many cases, it will be very clear who the lawyer represents. However, in matters that involve more complex transactions, there may be numerous parties involved and the lawyer must be clear regarding who he represents.

The attorney must begin to manage the client's expectations at the start of the relationship. A thorough engagement letter should clearly outline the terms and conditions of employment including detailed information regarding fees and billing and the responsibilities of the client. See forms 1 through 4 in this book for samples of model engagement letters. The attorney should make it clear that he has other clients and that, while he will do everything he can to assist the client and properly represent him, it will not be at the exclusion of other clients. Clients must also be reminded that the case may not be resolved exactly in the way they are expecting and they may not win the case. It is important to identify potential obstacles and possible variables that might affect the case and the outcome and to discuss with the client what can and cannot be accomplished. The client should also know what is expected from him, including responding to inquiries, providing witnesses as necessary, and being available

when needed. The client should be asked to assist as appropriate, including gathering necessary documents and paperwork and identifying what information the opposing party might have that would be helpful. However, the client also must know what his role is and how his actions may affect the proceedings. The attorney should advise the client that if he engages in discussion with the other party, he could inadvertently create a binding, enforceable agreement. The attorney should discuss whether the client should have any contact with the opposing party at all and under what specific circumstances, if any. See form 15 for an example of a letter regarding an informal settlement in a divorce case and form 16 for a sample letter regarding an inadvertent agreement in a divorce case.

One of the most important aspects of the attorney-client relationship is to control expectations. Don't promise your client the moon. Let them know the parameters of what you can do for them.

Norma Levine Trusch, Houston

Providing the client with a general timeline of how the case will proceed and explaining the legal system can help to avoid frustration if the client feels the case is not moving as quickly as he feels that it should be. If the client has a general understanding of issues such as time frames for discovery and scheduling orders, the client's expectations may be more reasonable.

When working with clients, or potential clients, it is critical for the attorney to remember the scope of his role. The attorney should not be the decision-maker. Instead, the attorney should serve as an advisor to his client. The client should look to the attorney as someone with knowledge of the law and the consequences of the facts that might exist in a particular situation. The attorney's role is to advise the client as to what the attorney thinks is in the client's best interest and then allow the client to decide what to do. In order to effectively assist the client, the attorney must not only consider the facts of the case but must also take into account the emotions of the client and of the other parties.

Disclosure of Conflicts

An attorney must disclose all potential conflicts before accepting employment and those that arise during the course of employment. Nonlitigation conflicts are addressed specifically in Texas Disciplinary Rules of Professional Conduct rule 1.06, comments 13 through 16. Unfortunately, these comments merely provide examples and conclude that the question is "often one of proximity and degree." See Tex. Disciplinary Rules Prof'l Conduct R. 1.06 cmt. 13 (*reprinted in Tex. Gov't Code Ann., tit.*

2, subtit. G, app. A (West 2005 & Supp. 2012) (Tex. State Bar R. art X, § 9). Relevant factors include the duration of the relationship and intimacy that an attorney has with a client, the duties performed, the likelihood a conflict will arise, and the likelihood of resulting prejudice.

The disclosure requirement includes all personal conflicts, conflicts with current clients, and conflicts with past clients. For examples of disclosures and waivers of specific types of conflicts of interest, see forms 17 through 22 in this book.

In order to avoid confusion and potential conflicts when representing an organization, it is a good practice to clarify that the client is the entity and not the individuals within the organization. Tex. Disciplinary Rules of Prof'l Conduct R.1.12(a). In addition, rule 1.12(e) requires the attorney to inform shareholders and officers that the attorney will not represent them if their interests are adverse to the interests of the entity. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.12(e) & cmt. 4.

Consent Required for Representation of Multiple Clients

Some types of cases may include transactions that involve more than one party. For example, a real estate transaction may involve multiple parties, including the sellers, purchasers, agents, and brokers, as well as the attorneys. In addition, if any of the parties are corporations or partnerships, the individual officers, directors, shareholders, partners, or venturers involved may have interests that diverge from those of the business entity. An attorney who provides legal counsel for more than one of the parties faces a potential conflict of interest that should be carefully examined before the attorney undertakes representation.

In examining the potential attorney-client relationship, the attorney should carefully consider the unique facts of the transaction and the purpose of the engagement. Representation may be analyzed under two theories: the traditional multiple-representation analysis (*see* Tex. Disciplinary Rules Prof'l Conduct R. 1.06) and the intermediaries analysis (*see* Tex. Disciplinary Rules Prof'l Conduct R. 1.07).

In many cases, the multiple clients have adverse positions to each other but, because of economic constraints, want only one attorney to represent them in the transaction. Rule 1.06(a) prohibits an attorney from representing opposing parties in the same litigation. Rule 1.06(b) also prohibits an attorney from representing a client if the representation is substantially related and materially and directly adverse to the interest of another client of the attorney or if the attorney would be limited by other responsibilities. Notwithstanding the prohibition of rule 1.06(b), subsection (c) allows the attorney to represent multiple clients if the attorney believes each client's representation will not be materially affected and each client consents to the multiple representation after full disclosure.

Rule 1.07 may also affect the consent required for representation of multiple clients. Rule 1.07 is designed to set forth the prerequisites for a lawyer acting as an intermediary between clients. The rule prohibits an attorney from acting as an intermediary

unless three requirements have been met. First, the lawyer must thoroughly and fully consult with each client concerning the implications of the common representation and must then obtain each client's informed written consent. Second, the attorney must also have an objective reasonable belief that the matter will not require contested litigation, each client's best interests will be served, each client will be able to make adequately informed decisions, and there is little risk of material prejudice to any client. Finally, the lawyer must have an objectively reasonable belief that he can act impartially with respect to all clients and without undue consideration of other responsibilities the lawyer may have to any one of the clients. The lawyer may act as an intermediary only if these requirements are met.

The intermediary rule is intended to provide ethical guidance to lawyers who would like to accommodate clients seeking multiple client representation in order to save time and cost. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.06 & cmt. 1. However, subsection (d) of rule 1.07 provides that a lawyer is acting as an intermediary any time "the lawyer represents two or more parties with potentially conflicting interests." Arguably, this rule would then apply any time a lawyer represents more than one person or entity in a matter, whether husband and wife, parent and child, office and corporation, or partner and partnership. So, although the rule was originally intended to address only very limited, although reportedly common, practice situations, it can arguably be interpreted to have an extremely broad scope. *See generally* William J. Chriss & John F. Sutton, Jr., "Commentary on the Texas Disciplinary Rules

Clients are not interested in legal theories—they are interested in solving problems.

James E. Brill, Houston

of Professional Conduct Governing the Duties Between Lawyer and Client," in *Texas Lawyers' Professional Ethics* (State Bar of Texas 4th ed. 2007).

Therefore, if the attorney concludes that multiple representation is appropriate,

obtaining written consent of the clients is advised. Forms 18 and 19 in this book are examples of letters disclosing and requesting waivers of conflicts. See also forms 20 through 22 for sample letters dealing with multiple representation in various situations. Separate engagement letters for each client may be appropriate in addition to the multiple-representation consent letter.

An additional problem that may arise when representing multiple clients in the same transaction is the division of the legal bill. Any representation of multiple clients will require a tailor-made consent agreement that clarifies the billing arrangement. See form 22 for an example of a consent agreement.

Further, if multiple parties are to receive cash or some other consideration, the attorney may have a duty to make sure all parties represented concur in the way the consideration is to be divided. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.08(f); *Quintero v. Jim Walter Homes, Inc.*, 709 S.W.2d 225, 229 (Tex. App.—Corpus Christi

1985, writ ref'd n.r.e.) (involving litigation but easily analogized to business settlements).

Representing Husband and Wife

In some instances, a husband and wife may wish to be represented by the same attorney for a matter such as drafting wills or a business transaction. The same rules applicable to the representation of multiple parties apply when representing a husband and wife. The lawyer must obtain the consent of both parties and can only take on the representation if he reasonably believes the representation of each client will not be materially affected. Tex. Disciplinary Rules Prof'l Conduct R. 1.06(c). The lawyer must also consider the special circumstances that may arise when working with both spouses. For example, while the interests of the spouses may be aligned initially, this could change throughout the course of the representation. Both spouses must clearly understand the relationship and the implications of each being represented by the same attorney. Unless the husband and wife agree otherwise, the attorney must maintain a duty of confidentiality to each client. Tex. Disciplinary Rules Prof'l Conduct R. 1.05. The lawyer also has a duty to keep the clients reasonably informed and must maintain a duty of loyalty to each client. Tex. Disciplinary Rules Prof'l Conduct R. 1.03, 1.06. Each spouse must be aware of whether the attorney will maintain a duty of confidentiality to each party or whether information will be shared between them. Clearly outlining the terms of the representation agreement, including specifications regarding the duty of confidentiality, can help to eliminate confusion and potential difficulties when representing both spouses. The attorney should also consider the potential conflicts and issues that may arise when representing both parties in a divorce and whether he can represent both parties in compliance with the rules. See appendix A in this book for additional information on the implications of representing both parties in a divorce.

Legal Fees

Maintaining effective communication with the client must include ongoing communication regarding legal fees. Initially, the attorney should discuss with the client whether the case will be on a contingent fee or an hourly basis. The client should understand clearly whether he will be charged for court costs and witness and expert fees, as well as what other charges will be included in the fee. The client and attorney should discuss whether the attorney will have a power of attorney from the client allowing the attorney to endorse and deposit settlement checks and how soon thereafter the client should expect to receive his money. If the case will be taken on an hourly basis, the attorney and client should discuss whether a retainer will be required. If the case will be handled by a contingency fee, the attorney should explain in writing how the fee will be charged and when the fee will be due. The client should be kept

informed of charges at all times and should be billed promptly and on a regular basis. If the attorney is charging the client on an hourly basis and intends to change the rate, appropriate notice should be given to the client so that the increase in rate can be agreed on before a disagreement arises.

A clear understanding of the rules that govern legal fees will foster the attorney client relationship and help to avoid possible disciplinary issues for the attorney. An attorney may not enter into an agreement for, charge, or collect an illegal or unconscionable fee. Tex. Disciplinary Rules Prof'l Conduct R. 1.04(a). A fee is unconscionable if a competent attorney could not form a reasonable belief that the fee is reasonable. Tex. Disciplinary Rules Prof'l Conduct R. 1.04(a). In borderline cases the comments specify two indications of unconscionability: the attorney's overreaching with a client, especially one susceptible to such a practice, and the attorney's failing to give the client at the outset of the representation a clear explanation of how the fee will be calculated. Tex. Disciplinary Rules Prof'l Conduct R. 1.04 cmt. 8. Rule 1.04(b) lists a number of factors that may be considered in determining the reasonableness of a fee.

Comment 2 to rule 1.04 of the Texas Disciplinary Rules of Professional Conduct provides:

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. If, however, the basis or rate of fee being charged to a regularly represented client differs from the understanding that has evolved, the lawyer should so advise the client. In a new client-lawyer relationship, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, in order to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding, and when the lawyer has not regularly represented the client it is preferable for the basis or rate of the fee to be communicated to the client in writing. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth. In the case of a contingent fee, a written agreement is mandatory.

The attorney should have a written fee agreement with the client, which may be included in the letter acknowledging receipt of the client's matter if appropriate. Fee agreements calling for a contingency fee must be in writing to be enforceable and must state the method by which the fee will be determined, the litigation and other expenses that will be deducted from the recovery, and whether such expenses will be

deducted before or after the contingency fee is calculated. Tex. Disciplinary Rules Prof'l Conduct R. 1.04(d).

Setting Fees

As implied in rule 1.04(c), the attorney's fee basis is established by an agreement between the attorney and the client. The attorney should, however, carefully outline the fee basis in order to avoid a possible misunderstanding with the client later. For example, the attorney might advise the client that there will be a fee to recover time previously spent to develop a limited partnership form or to recover unbilled or unpaid time for research incurred on another matter. "Sloppy fee-setting accounts for the largest volume of complaints to grievance committees. One of the two most common complaints against lawyers is the complaint involving the amount of the fee that was charged." State Bar of Texas, Office of the General Counsel, *Avoiding Unintentional Grievances* 1 (1979).

Rule 1.04(a) prohibits arranging for, charging, or collecting an illegal or unconscionable fee. Tex. Disciplinary Rules Prof'l Conduct R. 1.04(a). Some factors that may be considered in determining the reasonableness of a fee are set out in rule 1.04(b):

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Tex. Disciplinary Rules Prof'l Conduct R. 1.04(b). These factors are not exclusive.

Agreements to arbitrate fee disputes between lawyers and clients have been encouraged by bar associations for years. See ABA Model Rules of Arbitration (1995). Comment 19 to rule 1.04 endorses the arbitration of fee disputes and states: "If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by a bar association, the lawyer should conscientiously consider submitting to it." Tex. Disciplinary Rules Prof'l Conduct R. 1.04 cmt. 19.

Nonrefundable Retainers

In 1978 the Texas Committee on Professional Ethics issued its opinion 391, which stated that an attorney may deposit nonrefundable retainer fees into his general operating account because the attorney has “earned” the fee once it is received. As a result, the propriety of using nonrefundable retainer agreements was presumed. However, in 1986 the committee modified opinion 391 to the extent that it states every retainer designated as “nonrefundable” is earned at the time it is received. The committee took the position that a fee is not earned simply because it is designated as “nonrefundable.” The committee observed that a “true retainer” is a payment to compensate the attorney for his commitment to provide certain services and forgo other employment opportunities. The committee opined that nonrefundable retainers are not inherently unethical but must be used with caution; the retainer may be viewed as excessive. *See* Tex. Comm. on Prof’l Ethics, Ops. 391 (1978), 431 (1986).

In 2007 the issue of nonrefundable retainers moved from the committee into the Texas appellate courts. In that matter, a client contracted with her lawyer for legal services, agreeing to pay a “nonrefundable retainer” of \$15,000, against which the lawyer agreed to bill at the rate of \$150 per hour. Later, the client discharged the lawyer and requested a refund of the unearned portion of the fee. The lawyer refused to refund any amount, pointing out that the retainer was nonrefundable. The State Bar Commission for Lawyer Discipline took issue and brought suit against the lawyer, alleging that he committed professional misconduct. The trial court and the Austin court of appeals agreed with the commission. The appellate court explained that a true retainer is paid to ensure the lawyer’s availability and compensate the lawyer for lost opportunities, which did not occur in this case. Instead, the funds were a prepayment of a fee against which the lawyer billed. Designating the fee as “nonrefundable” did not change the facts. The realities were that the \$15,000 was not a retainer but, rather, was an advance payment of a fee to be billed at an hourly rate. The judgment of the trial court holding that the lawyer was guilty of professional misconduct was affirmed. *Cluck v. Commission for Lawyer Discipline*, 214 S.W.3d 736 (Tex. App.—Austin 2007, no pet.).

Contingent Fees

In civil cases, an attorney may contract with a client for a reasonable contingent fee. Tex. Disciplinary Rules Prof’l Conduct R. 1.04(b)(8), (d), (e). The rules, however, discourage contingent fees in family law cases.

Comment 9 to rule 1.04 states:

Contingent and percentage fees in family law matters may tend to promote divorce and may be inconsistent with a lawyer’s obligation to encourage reconciliation. Such fee arrangements also may tend to create a conflict of interest between lawyer and client regarding the appraisal of assets

obtained for client. . . . In certain family law matters, such as child custody and adoption, no res is created to fund a fee. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified.

Tex. Disciplinary Rules Prof'l Conduct R. 1.04 cmt. 9.

Although contingent fees are discouraged in family law matters, they may be appropriate in tort causes of action arising in domestic relations circumstances.

Any contingent fee contract must be in writing and signed by the attorney and client; state the method by which the fee is to be determined, including any percentage differentiation in the event of settlement, trial, or appeal; and provide for all expenses. On conclusion of the matter, the attorney must give the client a written closing statement stating the outcome of the representation and, if there is a recovery, showing the remittance to the client and describing how it was determined. Tex. Gov't Code § 82.065(a); Tex. Disciplinary Rules Prof'l Conduct R. 1.04(d).

Fee Splitting

Rule 1.04(f) states under what circumstances an arrangement for fee splitting may be made. It provides that a division between lawyers not in the same firm may be made only if (1) the division is in proportion to the professional services performed by each lawyer or made between lawyers who assume joint responsibility for the representation; (2) the client consents in writing to the terms of the arrangement before the time of the proposed association or referral, including the identity of all lawyers or firms who will participate in the agreement, whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility, and the share of the fee that each lawyer or firm will receive or, if the division is based on the proportion of the services performed, the basis on which the division will be made; and (3) the aggregate fee is not illegal or unconscionable. Tex. Disciplinary Rules Prof'l Conduct R. 1.04(f).

Every agreement that allows a lawyer or firm to associate other counsel or refer the person to other counsel and that results in such an association or referral must be confirmed by an arrangement conforming to rule 1.04(f), and consent by a client without knowledge of the information specified in that rule does not constitute a confirmation. An attorney may not collect or try to collect fees or expenses in connection with an agreement that is not confirmed in that way except for the reasonable value of the legal services provided to the person and reasonable and necessary expenses actually incurred on behalf of the person. Tex. Disciplinary Rules Prof'l Conduct R. 1.04(g).

An attorney may share fees with an "of counsel" attorney (Tex. Comm. on Prof'l Ethics, Op. 450 (1988)) or with a former partner or associate (Tex. Disciplinary Rules Prof'l Conduct R. 1.04(h)).

Handling Money

An attorney must hold all funds and other property belonging to clients separate from the attorney's own property. These funds must be kept in a separate account designated a "trust" or "escrow" account. The attorney must keep complete records of the account funds and preserve the records for five years after termination of the representation. Tex. Disciplinary Rules Prof'l Conduct R. 1.14(a). If a client's funds either are of an amount or are held for a long enough time that the interest generated is likely to exceed the costs of setting up and maintaining an account, an individual account must be set up for the client. For a client's funds that are a small amount or likely to be held only for a short time, attorneys are required to maintain an interest-bearing account in which to pool the funds. Under the Interest on Lawyer's Trust Accounts (IOLTA) program, interest from these pooled accounts is paid to the Texas Access to Justice Foundation, which awards grants to organizations in Texas that serve the poor in civil legal matters. Attorneys must submit an annual IOLTA compliance statement to the Foundation. Tex. State Bar R. art. XI. *See also* the Rules Governing the Operation of the Texas Access to Justice Program (reproduced in the Texas Rules of Court—State (West 2012)).

The attorney must promptly notify the client of the receipt of any funds for the client, must promptly deliver to the client any funds to which the client is entitled, and must, on request by the client, promptly render a full accounting of the funds. Tex. Disciplinary Rules Prof'l Conduct R. 1.14(b).

Conflicts Over Fees

In *Archer v. Griffith*, 390 S.W.2d 735, 739 (Tex. 1964), the court noted that, because of the confidential relationship, courts "scrutinize with jealousy" all contracts for compensation made between attorney and client while the relationship exists. "There is a presumption of unfairness or invalidity attaching to the contract, and the burden of showing its fairness and reasonableness is on the attorney." *Archer*, 390 S.W.2d at 739. The presumption applies only if the contract for compensation was made while the attorney-client relationship was in existence.

Intervention for Attorney's Fees

Attorneys are generally advised against suing clients for attorney's fees because "[i]nvariably [the] suit for attorney's fees will be followed by a suit against [the attorney] for some alleged act of malpractice." Larry H. Schwartz, *Attorney's Fees*, 1 State Bar of Tex. Prof. Dev. Program, Advanced Family Law Course 8 (2003). *See also* Kathryn J. Murphy, *Attorney's Fees Agreements*, 1 State Bar of Tex. Prof. Dev. Program, Advanced Family Law Course 6 (2011). However, if the attorney is determined to do so, he must first withdraw and then file suit. He may intervene if he can show that the intervention will not complicate the case and that the intervention is almost

essential to effectively protect his interest. *Collins v. Moroch*, 339 S.W.3d 159, 163 (Tex. App.—Dallas 2011, pet. denied).

Withholding Services until Fee Is Paid

Late payment or nonpayment of a fee does not justify withholding services from a client. If the client substantially fails to fulfill an obligation to the attorney regarding the attorney's services, including an obligation to pay the attorney's fee as agreed, the only recourse is to withdraw from representation. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(b)(5). Withdrawal is permitted only on written motion for good cause shown. Tex. R. Civ. P. 10. The attorney must take steps to the extent reasonably practicable to protect the client's interests. These steps include giving reasonable warning to the client that the attorney will withdraw unless the obligation is fulfilled, allowing time to employ other attorneys, and surrendering papers and property to which the client is entitled. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(b)(5), (d). The attorney must continue representing the client, notwithstanding good cause to withdraw, if the court so orders. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(c).

Failure to return the client's property, even during a fee dispute, may subject the attorney to disciplinary procedures. A Texas attorney was publicly reprimanded when, after obtaining a divorce for his client, he failed to distribute all the property awarded to the client. He kept certain properties in his own name and failed to return them because of a fee dispute with the client. The district grievance committee concluded that those actions constituted professional misconduct. 45 Tex. B.J. 203 (1982).

An attorney may condition acceptance of employment on advance payment but may not condition completion of legal services on payment of unpaid portions of the fee. A client's failure to pay for the attorney's services does not relieve the attorney of the duty to perform completely and on time unless the attorney withdraws from representation in a manner that does not prejudice the client's legal rights. *See In re Ambrose*, 442 N.E.2d 900 (Ill. 1982) (failure to file divorce decree or withdraw after client failed to pay fee warranted reprimand); *In re Daggs*, 187 N.W.2d 227 (Mich. 1971) (withholding services to induce payment justified disciplinary action).

Tax Deduction for Attorney's Fees

A client may deduct appropriate attorney's fees in cases in which the attorney has actually given tax advice to the client or fees expended for the production or collection of taxable income (for example, alimony). *See* 26 U.S.C. § 212(1), (3); Treas. Reg. §§ 1.212-1(a)(1), 1.262-1(b)(7). These and other "miscellaneous deductions" are allowable only to the extent that the aggregate of all such deductions exceeds 2 percent of adjusted gross income. 26 U.S.C. § 67(a), (b); Temp. Treas. Reg. § 1.67-1T.

Letters advising of the deductibility of fees should be used sparingly, and the attorney may want to consider whether he is qualified to give tax advice to a client.

Engagement Agreements Detailing Fee Arrangements

Rule 1.04(c) states:

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

Tex. Disciplinary Rules Prof'l Conduct R. 1.04(c) (emphasis added). Forms 1 through 4 in this book provide examples of engagement letters.

Record Retention and Destruction

Neither the rules nor Texas case law specify if, or how long, an attorney must retain client records. Tex. Disciplinary Rules Prof'l Conduct R. 1.14 requires a lawyer to safeguard a client's property and the client's interests. The rule states that a lawyer must keep complete records of client account funds and other property for a period of five years after termination of the representation. Tex. Disciplinary Rules Prof'l Conduct R. 1.14(a). However, the rule does not specifically address the retention of client files. To resolve the ambiguity, some attorneys adopt a record retention and destruction policy. The policy should be disclosed to the client in either the engagement letter or the closing letter, allowing the client the opportunity to obtain the records and providing the attorney authority to dispose of the documents after a specified time. See forms 1 through 4 in this book for an optional paragraph concerning retention and destruction of records. See the discussion in chapter 9 of this book for further information about record retention.

To succeed as a lawyer you want to ensure that there is ample communication. I would say that this involves the following nine steps:

- 1. Fully assessing the facts, personal histories, and goals of a new client;**
- 2. Determining at the earliest opportunity if a conflict exists;**
- 3. Ensuring you understand what the client wants;**
- 4. Establishing the boundaries of communication;**
- 5. Discussing realistic objectives;**
- 6. Documenting the representation;**
- 7. Having a frank discussion and candor concerning costs and fees;**
- 8. Determining how you will get paid;**
- 9. Communicating clearly your rights to terminate under specific circumstances.**

Claude Ducloux, Austin

CHAPTER 3

Representation of Client

A lawyer may limit the scope, objectives, and general methods of the representation if the client consents after consultation. Tex. Disciplinary Rules Prof'l Conduct R. 1.02(b). The employment agreement should carefully state the scope of the attorney's representation and exclude, in writing, areas of nonrepresentation. For example, the employment agreement for a divorce case might state that the attorney agrees to "represent client in a divorce from spouse and related matters of grounds for divorce, division of property, and conservatorship of children through trial and signing of final judgment. Legal representation *does not* include title searches of property, defense of claims of creditors, preparation of wills, probate, corporate or partnership matters, tort claims, criminal defense, and appeals." A statement of representation in "family law matters" is ambiguous and could lead to problems concerning the nature of the representation. Any doubts about the scope of representation should be clarified by the lawyer.

A person will often present themselves to a lawyer full of rage or pain or both. They may cry out: I want justice! You must gently, but firmly, remind them that justice is a two-way street. Justice isn't given; it is earned.

Dan Pozza, San Antonio

Unless the representation is terminated, "a lawyer should carry through to conclusion all matters undertaken for a client." Tex. Disciplinary Rules Prof'l Conduct R. 1.02 cmt. 6.

Duty to Keep Client Informed

The client should be fully informed regarding the status of the matter and all legal consequences throughout the case. Rule 1.03 addresses the matter of communication of information from the lawyer to the client. Rule 1.03(a) provides that a lawyer shall keep a client reasonably informed about the status of a matter. In addition, the attorney is required to promptly comply with reasonable requests for information and shall explain a matter to the extent reasonably necessary to permit the client to make

informed decisions regarding the representation. Tex. Disciplinary Rules Prof'l Conduct R. 1.03(a), (b). The rule also includes further guidance concerning the adequacy of communication between lawyer and client under varying circumstances. Tex. Disciplinary Rules Prof'l Conduct R. 1.03 cmt.

The attorney should routinely provide the client with copies of all pertinent correspondence, documents, and file memoranda; advise the client in writing of risks involved with the transaction, including the obvious; and document the business decisions made by the client. If in the lawyer's judgment a proposed settlement would be unwise, it is the lawyer's ethical duty to so inform the client. See form 23 in this book for an example of a letter advising the client against settlement.

Confidentiality; Confidences and Secrets of Clients

The client must understand that, except in some circumstances, the attorney is required to keep the client's information confidential. The confidentiality requirement should foster candid communication between the attorney and client so that the attorney can best represent the client. The attorney should be familiar with the rules governing confidentiality and make sure the client also has a clear understanding of the rules and parameters as well.

An attorney may not knowingly reveal confidential information of a client or use such confidential information to the attorney's advantage or for the advantage of a third person. Tex. Disciplinary Rules Prof'l Conduct R. 1.05(b). The ethical duty to preserve a client's confidence is much broader than the attorney-client evidentiary privilege. This duty applies even if there is not yet an established attorney-client relationship—for instance, when a client comes in for an initial interview. *See* Tex. Disciplinary Rules Prof'l Conduct preamble ¶ 12. The obligation of confidentiality also continues after the termination of employment. Tex. Disciplinary Rules Prof'l Conduct R. 1.09(a)(2).

An attorney has the duty to maintain his clients' confidences and secrets. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.05. The rule is couched in terms of "confidential information," which includes both "privileged information" and "unprivileged client information." "Privileged information" is information of a client protected by the attorney-client privilege of Tex. R. Evid. 503 or by the principles of attorney-client privilege governed by Fed. R. Evid. 501. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the attorney during the course of or by reason of the representation of the client.

A lawyer may reveal confidential information under the following conditions:

- (1) When the lawyer has been expressly authorized to do so in order to carry out the representation.
- (2) When the client consents after consultation.

- (3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.
- (4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, the Texas Disciplinary Rules of Professional Conduct, or other law.
- (5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.
- (6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.
- (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.
- (8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.

Tex. Disciplinary Rules Prof'l Conduct R. 1.05(c).

An attorney may reveal unprivileged client information when the attorney is impliedly authorized to do so in order to carry out the representation or when the attorney has reason to believe it is necessary to do so in order to carry out the representation effectively, to defend the attorney or the attorney's employees or associates against a claim of wrongful conduct, to respond to allegations in any proceeding concerning the attorney's representation of the client, or to prove the services rendered to a client, or the reasonable value of the services, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client. Tex. Disciplinary Rules Prof'l Conduct R. 1.05(d).

If an attorney has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the attorney *shall* reveal confidential information to the extent revelation of the information reasonably appears necessary to prevent the client from committing the act. Tex. Disciplinary Rules Prof'l Conduct R. 1.05(e).

In all other situations, the attorney's obligation is to dissuade the client from committing the crime or fraud or to persuade the client to take corrective action. Tex. Disciplinary Rules Prof'l Conduct R. 1.05 cmt. 18. If the threatened crime or fraud is likely to have the less serious result of substantial injury to the financial interests or property of another, the attorney is not required to reveal preventive information but may do so. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.05(c)(7), (8).

Comment 14 to rule 1.05 notes:

Although preventive action is permitted by paragraphs (c) and (d), failure to take preventive action does not violate those paragraphs. But see para-

graphs (e) and (f). Because these rules do not define standards of civil liability of lawyers for professional conduct, paragraphs (c) and (d) do not create a duty on the lawyer to make any disclosure and no civil liability is intended to arise from the failure to make such disclosure.

Tex. Disciplinary Rules Prof'l Conduct R. 1.05 cmt. 14.

The same statement is *not* made with regard to paragraphs (e) and (f).

A lawyer must have true empathy for his client, but a lawyer must also be professional. A lawyer must give the client real-world advice, even if that advice risks upsetting an already fragile client. If you don't prepare the client, you have failed him terribly.

Dan Pozza, San Antonio

An attorney shall also reveal confidential information when required to do so by rules 3.03(a)(2), 3.03(b), and 4.01(b). Tex. Disciplinary Rules Prof'l Conduct R. 1.05(f). Rule 3.03(a)(2) states that an attorney shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act. *See* Tex. Disciplinary Rules Prof'l Conduct R. 3.03(a)(2). Rule 3.03(b) states that if an attorney discovers that he has offered material evidence that is false, the attorney shall make a good-faith effort to persuade the client to authorize the attorney to correct or withdraw the evidence. The attorney is obligated to take reasonable remedial measures, including disclosure of the true facts, if the client will not authorize the correction or withdrawal of the false evidence. *See* Tex. Disciplinary Rules Prof'l Conduct R. 3.03(b). Rule 4.01(b) states that an attorney shall not knowingly "fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client." *See* Tex. Disciplinary Rules Prof'l Conduct R. 4.01(b).

Recording Conversations

Either of two individuals having a telephone conversation may record it without violating the Federal Communications Act, 47 U.S.C. § 605. *See Rathbun v. United States*, 355 U.S. 107 (1957). This general rule has been applied to conversations between spouses. *See Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex. App.—Corpus Christi 1986, writ ref'd n.r.e.). However, a Texas attorney has been publicly reprimanded for involving a nonattorney in the installation of a device to record telephone conversations of her estranged husband. She also engaged in third-party recordings of telephone conversations without the knowledge or consent of the parties involved in

the conversations. The telephone calls, however, did not involve any clients. 52 Tex. B.J. 234 (1989).

Texas lawyers are governed by Ethics Committee opinion 575, which states that undisclosed recordings may be made by a lawyer, but only if several qualifications are met. First, a lawyer should make an undisclosed recording of a telephone conversation involving a client only if there is a legitimate reason to make the recording in terms of protection of the legitimate interests of the client or of the lawyer. Second, a lawyer should not record a telephone conversation with a client unless the lawyer takes appropriate steps consistent with the requirements to safeguard confidential information that may be included in the recording. Third, in view of the requirement that a lawyer not be involved in the commission of a serious crime, a lawyer should not make an undisclosed recording of a telephone conversation if the conversation proposed to be recorded by the lawyer is subject to other laws (for instance, the laws of another state) that make such a recording a serious criminal offense. Finally, regardless of whether the client is involved in the telephone conversation or has consented to the recording, the lawyer may not record a telephone conversation if making such a recording would be contrary to a representation made by the lawyer to any person. *See* Tex. Comm. on Prof'l Ethics, Op. 575 (2006) (overruling Tex. Comm. on Prof'l Ethics, Ops. 392 (1978) and 514 (1996)).

A complete discussion of the laws regulating recorded conversations is beyond the scope of this book. Attorneys should consult state and federal regulations to insure compliance with applicable laws.

Requirement to Report Party's Current Address and Other Personal Information

In a civil case filed in a district court, county court, statutory county court, or statutory probate court, each party or the party's attorney must provide the clerk of the court with written notice of the party's name and current residence or business address, unless the party has not appeared or answered in the case. The notice must be provided when the party files its initial pleading with the court or not later than the seventh day after the date the clerk requests the information. If the party's address changes during the case, the party or the attorney must provide the clerk written notice of the new address. Failure to provide the notice may be punished by a fine unless the party or the attorney could not reasonably have obtained and provided the information. Tex. Civ. Prac. & Rem. Code § 30.015. See form 24 in this book for a sample form for notice of current address.

The Texas Family Code requires that all final parent-child relationship orders except those under Code chapters 161 (termination) and 162 (adoption) contain the Social Security number and driver's license number of each party to the suit, including the child. *See* Tex. Fam. Code § 105.006(a)(1).

The Texas Civil Practice and Remedies Code requires that a party's initial pleadings contain the last three numbers of a party's Social Security number and driver's license number. *See* Tex. Civ. Prac. & Rem. Code § 30.014.

The Texas Business and Commerce Code states that a person may not require an individual to reveal his or her Social Security number to obtain services unless the person furnishing the services adopts a privacy policy, makes the policy available to the individual, and maintains the confidentiality and security of the number so obtained. Tex. Bus. & Com. Code § 501.052(a). The privacy policy must include how personal information is collected, how and when the information is used, how the information is protected, who has access to the information, and how the information is disposed of. Tex. Bus. & Com. Code § 501.052(b). Violating subsection (a) may result in a civil penalty of up to \$500 for each calendar month during which a violation occurs. Tex. Bus. & Com. Code § 501.053.

Requirement to Report Child Abuse

Section 261.101 of the Texas Family Code provides:

A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

Tex. Fam. Code § 261.101(a).

Code section 261.101(c) removes any exemption for otherwise privileged communications and applies the reporting requirement specifically to attorneys. *See* Tex. Fam. Code § 261.101(c). In most circumstances, the report may be made to the Texas Department of Family and Protective Services on a twenty-four-hour toll-free number, 1-800-252-5400.

A person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect or who testifies or otherwise participates in a judicial proceeding arising from a report, petition, or investigation of alleged child abuse or neglect is immune from civil or criminal liability that might otherwise be incurred or imposed.

A person who reports his or her own child abuse or neglect or who acts in bad faith or with malicious purpose in reporting alleged child abuse or neglect is not immune from civil or criminal liability. Tex. Fam. Code § 261.106.

Notice of the reporting requirement should be contained in the contract of employment between the attorney and the client as appropriate. See form 4 in this book for sample language regarding the requirement to report child abuse.

Business Interests with Clients

Rule 1.08(a) provides that an attorney may not enter into a business transaction with a client unless (1) the transaction and the terms on which the attorney acquires the interest in the transaction are fair and reasonable to the client and are fully disclosed in a manner that 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*. Tex. Disciplinary Rules Prof'l Conduct R. 1.08(a). Comment 2 to rule 1.08 indicates that the rule does not apply to standard commercial transactions between the attorney and the client for products or services the client generally markets to others, because the attorney has no advantage in dealing with the client.

In cases in which the attorney and client are both personally involved in a business transaction, malpractice insurance claims might be denied because the policies may exclude coverage under such circumstances.

See form 25 in this book for an example of a consent agreement for doing business with a client.

Duty to Clarify Nonrepresentation

An attorney dealing on behalf of a client with a person not represented by an attorney may not state or imply that the attorney has no interest in the outcome of the matter. If the attorney believes an unrepresented person misunderstands the attorney's role, the attorney must correct this misunderstanding. Tex. Disciplinary Rules Prof'l Conduct R. 4.03. For example, an attorney might make a written nonrepresentation disclosure to a borrower when representing a lender. See form 26 in this book for an example of a nonrepresentation disclosure letter in a real estate matter.

Communication with Someone Represented by Counsel

Except in limited circumstances, an attorney may not communicate about the subject of the representation with someone the lawyer knows to be represented by counsel. There are exceptions to this rule when the attorney is authorized by law or has the consent of the opposing counsel. Tex. Disciplinary Rules Prof'l Conduct R. 4.02. Likewise, the rules prohibit an attorney from encouraging a client to make such a communication. *See* Tex. Disciplinary Rules Prof'l Conduct R. 4.02 cmt. 2.

Incapacitated Clients

The Texas Disciplinary Rules of Professional Conduct address the dilemma an attorney faces if a client is suffering from a mental disability. If an attorney believes his client lacks legal competence and action is required to protect the client, the attorney is mandated to take reasonable action to secure the appointment of a guardian or other protective orders. Tex. Disciplinary Rules Prof'l Conduct R. 1.02(g). An attorney is permitted to reveal confidential information in order to comply with a court order, a disciplinary rule, or other law. Tex. Disciplinary Rules Prof'l Conduct R. 1.05(c)(4). The attorney may reveal unprivileged client information if it is necessary

Dos and Don'ts for Better Client Relations

- **Do appreciate the honor of being chosen to serve each of your clients.**
- **Do whatever you can to improve your listening and other communication skills.**
- **Do what you can to be client-oriented even when your practice is in a technical field.**
- **Do remember that clients have feelings and are hungry for personal attention.**
- **Do your best to give your clients reassurance, encouragement and even inspiration.**
- **Don't be aloof or patronizing to your clients.**
- **Don't neglect your human-relations skills.**
- **Don't be indifferent to the need to inform and educate your clients.**
- **Don't feel insulted by questions, objections or procrastination from clients.**
- **Don't think you are entitled to a successful practice just because you have a license to practice law.**

James E. Brill, Houston

to represent the client effectively. Tex. Disciplinary Rules Prof'l Conduct R. 1.05(d)(2)(i). To the extent that a guardian or other person becomes aware of any specific acts of abuse, neglect or exploitation, he is required to report it to the Texas Health and Human Services Commission and Department of Family and Protective Services. *See* Tex. Hum. Res. Code § 48.051. Section 48.051(c) provides that the duty imposed to report the abuse, neglect or exploitation includes a person "whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health professional." *See* Tex. Hum. Res. Code § 48.051. A guardian or other person is subject to criminal charges if he fails to report the abuse, neglect, or exploitation as required by Human Resources Code section 48.051. *See* Tex. Hum. Res. Code § 48.052(a). If discovered, he may be charged with a class A misdemeanor. *See* Tex. Hum. Res. Code § 48.052(a). See the discussion regarding the requirement to report child abuse above.

CHAPTER 4

Managing Your Law Practice

Attorneys for the Texas Lawyers' Insurance Exchange advise that attorneys who follow the procedures described below can reduce the chances of facing a malpractice claim.

Calendaring System

To avoid missing important deadlines, every firm should have an effective calendaring system that includes all cases the firm handles, including nonlitigation matters. Deadlines are crucial to all types of law practice. For example, one attorney postponed drafting a will for so long that the testator died, and the expected beneficiary sued for malpractice. *See Estate of Arlitt v. Paterson*, 995 S.W.2d 713 (Tex. App.—San Antonio 1999, writ denied). When a tickler system is set up so that every file comes up for regular review, these types of problems can be avoided. Files coming up for review may need no action other than being “retickled,” but the review provides the attorney a good occasion to advise the client that the matter is proceeding as expected or to explain why no immediate action is necessary.

Nonrepresentation Letters

Attorneys should always write nonrepresentation letters when they decline or withdraw from employment and should keep a permanent file of these letters. This practice can eliminate many potential malpractice actions based on claims that an attorney failed to pursue a claim for a client. See form 13 in this book for a sample nonrepresentation letter and form 27 for a sample letter terminating the attorney client relationship.

File Retention

Records of account funds and other property must be maintained for at least five years after final disposition of the underlying matter. Tex. Rules Disciplinary P. R. 15.10; Tex. Disciplinary Rules Prof'l Conduct R. 1.14(a). The rules do not clearly indicate for how long a client file must be retained following termination of the representation. However, as a conservative estimate, files should be kept intact for four years after a matter is completed, as most malpractice claims are filed within two to

four years of that time. Some files should be kept for even longer, however, such as those involving a minor and those in which the client was particularly troublesome. Also, files concerning clients who refused legal advice should be maintained and should contain a copy of the letter to the client detailing advice given, give reasons for the advice, and confirm the client declined to accept the advice. It may be inappropriate for the attorney to destroy the client's file. Because the attorney is the agent of the client, the work product generated by the attorney in representing the client belongs to the client. *In re George*, 28 S.W.3d 511, 516 (Tex. 2000). Moreover, in some instances, information contained in the file may become necessary after several years. See the discussion about record retention in chapter 9 of this book.

Supervision of Support Staff and New Associates

Attorneys must supervise their support staff and new associates closely. If, for example, a law clerk arrives at the wrong answer to an important question, the attorney is the one who could take a wrong action and face a possible malpractice suit. Clerks should be told to document their research so that its accuracy can be verified, and new secretaries should be responsible for filing petitions only when the attorney is certain that they know where and by when to file them. In short, all personnel must know both substantively and procedurally what their jobs require. Careful screening and interviewing of applicants is critical and hiring only professional secretaries and paralegals is also helpful. Instruction and training of support staff in the area of security and confidentiality of client information is essential.

For a detailed discussion on this issue, see Edward L. Wilkinson, *Supervising Lawyers, Supervised Lawyers, and Nonlawyer Assistants—Ethical Responsibilities under the State Bar Rules*, 64 Tex. B.J. 452 (2001); *see also* Tex. Disciplinary Rules Prof'l Conduct R. 5.01–.03.

Just because you have a law license doesn't mean you can handle complex cases. If something is beyond your expertise, seek help. The best thing young lawyers can do is find a good mentor.

Norma Levine Trusch, Houston

Avoiding Overload

Many malpractice suits result from mistakes made during periods of stress, and some attorneys let themselves become overextended or burdened with too many cases and responsibilities so that they lose both perspective and effectiveness. For their clients' sake as well as their own, many attorneys would be wise to slow down the pace

and offer each other support when signs of stress, such as abuse of alcohol or other drugs, becomes evident. The Texas Lawyers' Assistance Program, which may be contacted at 1-800-343-8527, is an excellent resource for obtaining immediate peer support for lawyers whose lives or practices are suffering because of physical or mental illness, including substance abuse or emotional distress. All information provided to the Texas Lawyers' Assistance Program is confidential. Additional information is also available at www.texasbar.com/tlap.

Standard of Care for Specialists

All Texas attorneys, whether specialized or not, appear now to be under the same standard of care for lawyer competence. See Tex. Disciplinary Rules Prof'l Conduct R. 1.01. However, attorneys who have been board certified as specialists in Texas and who hold themselves out to the public as specialists may eventually be held to a higher standard, perhaps the same standard of care as that applied to similar specialists in other fields.

Texas courts have held in medical malpractice cases that specialists must exercise a higher degree of skill than that of general practitioners. *King v. Flamm*, 442 S.W.2d 679, 681 (Tex. 1969).

At least one other jurisdiction has held legal specialists to a higher standard of care than the ordinary practitioner. In *Wright v. Williams*, 47 Cal. App. 3d 802, 810 (1975), a case involving a maritime law specialist, a California court of appeals held:

One who holds himself out as a legal specialist performs in similar circumstances to other specialists but not to general practitioners of law. We thus conclude that a lawyer holding himself out to the public and the profession as specializing in an area of the law must exercise the skill, prudence, and diligence exercised by other specialists of ordinary skill and capacity specializing in the same field.

Attorney Professional Liability Insurance

Professional liability insurance most often chosen by attorneys is known as a "claims made and reported policy." This type of policy provides coverage for those claims made against the named insured and reported during the period while the policy is in effect. The definitions of some important terms in the type of coverage follow.

"Insured" means the insured named in the policy, any past or present partner, officer, director, member of a professional association, stockholder, employee, independent contractor or of counsel as respects professional services rendered on behalf of the named insured. Attorneys who retire from the named insured are also covered. Coverage is available for members of prior law firms and predecessor firms.

“Covered conduct” means any claim arising out of the conduct of the insured’s profession as a lawyer or as a lawyer acting as an arbitrator, as a mediator, as a notary public, as an officer of any bar association, and in certain other capacities. The insured is also covered when acting in the capacity of a lawyer as an administrator, executor, guardian, or trustee.

“Liability limits” are stated in the policy declarations and include damages, attorney’s fees, other fees and costs, and expenses of investigating the claim.

“Deductible” is stated in the declarations, is applied to each claim, and is paid by the insured. It is first applied to the claims expenses with the remainder, if any, applied to the damages.

“Disciplinary proceedings” are covered by the policy, and the insured is indemnified for any reasonable fees, costs, and expenses incurred in responding to them.

“Extended reporting period coverage” allows the insured to purchase, for an additional premium, extended reporting period coverage for one, two, or three years or for an unlimited period after the insured separates from the named insured firm.

What is a quality law practice? Avoiding grievances? Avoiding a malpractice suit? The absence of complaints? Competent service? Certainly quality encompasses all of those, but I submit that quality law practice means matching your services to your client’s expectations. We deliver quality when we provide value for the client as the client defines value.

James E. Brill, Houston

Contingency Planning for Disasters or Other Events Affecting Physical Security

A critical component for maintaining the attorney’s practice is contingency planning to insure that clients can still be served in the event of a disaster. Disasters can include a variety of natural or man-made events that can have crippling effects on the attorney’s ability to represent his clients. Whether it is a natural disaster, such as a hurricane or wildfire, or a man-made event, such as terrorism or workplace violence, having a comprehensive contingency plan in place to deal with a disaster can minimize the impact on the attorney’s practice. A disaster may mean that the attorney is unable to access his office for a period of time or it may mean that the office has been destroyed. In each case the attorney can take steps to be prepared to continue to serve

clients and maintain business continuity. A comprehensive contingency plan should consider all possible scenarios that may occur and how the firm will be prepared to respond to each—from how to access client files and records to keeping employees safe. The plan should be developed with the input of staff and reviewed regularly. For more on this topic, see Paul T. Martin, *Bracing for Impact: A Practical Guide to Preparing for Disasters* (State Bar of Texas 2011).

CHAPTER 5

Use of Technology

Advances in technology have provided many new methods for interacting with and assisting clients. Although these advances may be convenient and can increase efficiencies, they also create new potential risks. The attorney must use caution to be sure that confidential information remains protected and that the attorney's conduct is in compliance with the disciplinary rules.

Communicating with Clients

With the continued use and acceptance of e-mail by business, industry, and the courts, it has become easier and more economical to communicate with clients. However, there are several aspects of e-mail communication that may be problematic when dealing with sensitive or confidential information. First, the attorney should always be mindful of confidentiality of the client's information. When an e-mail is transmitted it can potentially be accessed by people other than the client and the attorney. One way to protect e-mail transmissions is to encrypt them, but to do that both the attorney and the client must have an understanding of how to encrypt the e-mail. To avoid potential issues, the attorney may want to consider using more secure methods of communication for sending confidential information.

Another aspect to consider is that, under certain circumstances, there may be a requirement to maintain records of e-mail communications, which could be subpoenaed later in another proceeding. The attorney should take care in deciding what to send in an e-mail. If it is a document that will be filed in the public records, transmitting it via e-mail may not be a problem. If it will not be filed in the public records, a more confidential way of sending it should be considered. Also, when in negotiations or litigation, discussing strategy in an e-mail that is not encrypted may lead to a situation in which the opposing party has access to that information. Further, there is the potential, even when dealing with clients, that information put in an e-mail may be misunderstood. As with any other form of communication, every e-mail should be reviewed and carefully considered before transmittal.

Similarly, with the widespread use of cell phones and smartphones, texting has become a convenient way to communicate. The same cautions that apply to e-mail also apply to texting.

Information left in messages on voice mail may be accessible by others. Minimizing the amount of detailed information that is left on voice mail and speaking with the client directly will help protect sensitive or confidential information.

Cellular and cordless telephones are not completely secure, and it is possible for conversations to be intercepted. The attorney should discuss with the client the advisability of discussing confidential information using cellular or cordless telephones.

Securing Data and Client Information

The widespread use of portable media, such as flash drives, CD-ROMs, and DVDs, creates potential risks for compromising confidential information. Also, with common word processors, metadata is created that the user does not see. This metadata, which includes all the changes and alterations made to a document, can easily be read by anyone with a simple knowledge of the word processing program. For example, such changes to a document as increasing or decreasing a sales price in an offer can be recaptured from the metadata, which could potentially have an effect on negotiations with the opposing party. This can be prevented by removing the metadata from the document before it is transmitted. Documents can be saved without metadata by choosing that option in the word processing program or by converting the document to a more standard format, such as a PDF.

Although the Internet can be a great benefit to the legal profession, its use raises concerns unique to this profession in two ways. First, attorneys are obligated to maintain client confidences. Improper use of the Internet can jeopardize client confidentiality exposing the client and the attorney to liability. Second, email can be the subject of discovery requests, raising concerns about protecting attorney work-product.

Thomas H. Watkins, Austin

Attorneys have a duty to properly maintain and secure the data on their clients. Data stored on an office computer, laptop, smartphone, or any type of digital media must be protected and kept confidential. Office computers should be password protected, and encryption should be used when working with sensitive data. Cell phones should be password locked, and portable digital data should be encrypted and the media securely stored to prevent theft. When using portable digital devices, it is important to prevent data from being left on the computer. In many cases, the data can be left on the borrowed computer's hard drive as a temporary data set, which can later

be recovered. Recovery can be avoided by encrypting the data, which will prevent its being transferred to the borrowed computer.

Losing data may also make the attorney vulnerable to action by the client or other aggrieved parties. To prevent the loss of data, a backup should always be kept. This can be accomplished by using a removable device attached to the computer, such as a flash drive, which is then stored off-site in a secure location, or by using backup services via the Internet.

No one has ever invented a more powerful information processor than the human brain. No one will ever come close. So there is no substitute for the undivided attention of a brilliant lawyer's mind focused on a client's problem. The rest is just sharper sound, brighter colors, and labor-saving devices.

William J. Chriss, Austin

CHAPTER 6

Advertising

Attorney advertisements are governed by the Texas Disciplinary Rules of Professional Conduct. Advertisements that are not in compliance with the rules may subject the attorney to disciplinary procedures by the State Bar. Attorneys may seek an advisory opinion on proposed advertising to determine whether it is in compliance with the rules.

It is unconstitutional to prohibit attorneys from advertising prices charged for uncontested divorces, simple adoptions, uncontested personal bankruptcies, changes of name, and routine services, as long as the advertising is not false, deceptive, or misleading. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

However, certain restrictions on targeted direct-mail solicitation may be imposed by a state bar without violating the First Amendment free-speech guarantees as applied to commercial speech. “Intermediate scrutiny” is to be applied to regulation of commercial speech, and state bar associations have the right to restrict certain forms of advertising by lawyers. *Florida Bar v. Went for It, Inc.*, 515 U.S. 618 (1995).

Texas Advertising Guidelines

The following sections briefly summarize salient parts of the rules adopted by the Supreme Court of Texas relating to advertising, but attorneys planning any form of advertising or solicitation, including on Web sites, should examine the advertising rules found in the Texas Disciplinary Rules of Professional Conduct closely and direct any inquiries to the State Bar of Texas Advertising Review Committee at 800-566-4616.

Firm Names and Letterhead

The practice of law under a trade name or a name that is misleading as to the identity of the attorneys practicing under the name or under a firm name that includes names other than one or more of the attorneys in the firm is prohibited. The use of words such as professional corporation, limited liability partnership, or similar designations and abbreviations for the entity are allowed. Use of the name of a deceased or retired partner or predecessor firm is not considered misleading. A married woman is not prohibited from practicing under her maiden name. Tex. Disciplinary Rules Prof'l Conduct R. 7.01(a).

If a law firm has a multistate practice, letterhead of the firm for a Texas office must indicate which attorneys listed are not licensed to practice in Texas. Tex. Disciplinary Rules Prof'l Conduct R. 7.01(b).

If an attorney occupies a judicial, legislative, or public executive or administrative position, the firm may not include the attorney's name during any substantial period in which the attorney is not regularly and actively practicing with the firm. Tex. Disciplinary Rules Prof'l Conduct R. 7.01(c).

An attorney may not hold himself out as being a partner, shareholder, or associate of one or more other attorneys unless it is, in fact, true. Tex. Disciplinary Rules Prof'l Conduct R. 7.01(d).

While an attorney may practice under a firm name, the attorney may not advertise under a trade name or fictitious name in any communication. Tex. Disciplinary Rules Prof'l Conduct R. 7.01(e).

There is little case law focusing on the representations contained in a professional letterhead. *State Bar of Texas v. Leighton*, 956 S.W.2d 667, 670 (Tex. App.—San Antonio 1997), *pet. denied*, 964 S.W.2d 944 (Tex. 1998). However, one case holds that a lawyer commits a material misrepresentation if a letterhead is used advertising board certification when his certification has expired. *State Bar of Texas v. Faubion*, 821 S.W.2d 203, 206 (Tex. App.—Houston [14th Dist.] 1991, writ denied). According to the State Bar, a member of the College of the State Bar of Texas may advertise the membership on professional letterhead.

Communications about Services

Making or sponsoring false or misleading communications about attorneys' services or qualifications is specifically prohibited. Tex. Disciplinary Rules Prof'l Conduct R. 7.02. The following seven categories of communications are considered false and misleading:

1. Communications containing material misrepresentations of fact or law or omitting a fact necessary to prevent the statement as a whole from being materially misleading. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(1).
2. Communications that contain any reference in a public media advertisement to past successes or results obtained unless (a) the attorney served as lead counsel in the matter or was primarily responsible for the settlement or verdict, (b) the client actually received the amount involved, (c) the reference is accompanied by adequate information about the nature of the case or matter and the damages or injuries the client sustained, and (d) if the gross amount received is stated, the attorney's fees and litigation expenses withheld are also stated. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(2).
3. Communications that are likely to create an unjustified expectation about the results the attorney can achieve or that state or imply that the attorney

- can achieve results by means that violate the law or the Disciplinary Rules. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(3).
4. Communications comparing the attorney's services with other attorneys' services unless the comparison can be substantiated with objective, verifiable data. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(4).
 5. Communications stating or implying that the attorney is able to influence any tribunal, legislative body, or official improperly or on irrelevant grounds. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(5).
 6. Communications in an advertisement in the public media or in a solicitation communication that designate one or more areas of practice unless the attorney is competent to practice in those areas. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(6). (Although an attorney is not required to be board certified to advertise a specialty, certification is conclusive of an attorney's competence. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(b).)
 7. Communications that use an actor or model to portray a client of the attorney. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(7).

Prohibited Solicitations and Payments

An attorney may not contact, in person or by regulated telephone or other electronic means (not including the attorney's Web site) that will result in live, interactive communication, someone (other than a family member) who was not previously a client regarding a particular event or series of events when the attorney's objective is pecuniary gain. Tex. Disciplinary Rules Prof'l Conduct R. 7.03(a), (f). However, an attorney employed by a nonprofit organization may contact members of the organization for limited purposes. Tex. Disciplinary Rules Prof'l Conduct R. 7.03(a). Attorneys may not pay referral fees to nonattorneys, although they may pay for advertising and for the expenses of an attorney referral service. Tex. Disciplinary Rules Prof'l Conduct R. 7.03(b). Attorneys may not advance or offer to advance anything of value to a prospective client or other person, except for amounts allowed under Tex. Disciplinary Rules Prof'l Conduct R. 1.08(d) and legitimate referral fees. Tex. Disciplinary Rules Prof'l Conduct R. 7.03(c). An attorney shall not enter into an agreement to collect fees in violation of the above rules, nor may he accept referrals from an attorney referral service unless it meets the requirements of chapter 952 of the Texas Occupations Code. Tex. Disciplinary Rules Prof'l Conduct R. 7.03(d), (e); *see also* Tex. Occ. Code ch. 952.

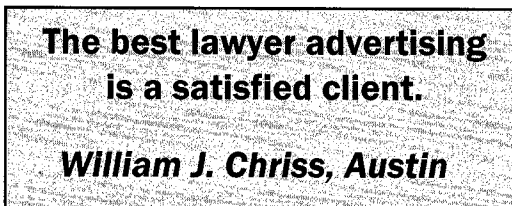
Advertisements in Public Media

Communications made through the public media are governed by rule 7.04. Except in limited circumstances, an attorney may not advertise in the public media by stating that the lawyer is a specialist. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(a). An attorney may use certain designations if he is admitted to practice before

the United States Patent Office or is engaged in trademark practice. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(a)(1).

An attorney may allow his name to be included in an approved lawyer referral service according to the area of law in which he accepts referrals. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(a)(2).

An attorney may also publish announcements in legal directories and newspapers indicating his availability to practice in a particular area, as long as the information is not false or misleading. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(a)(3).



An attorney who advertises in the public media must publish or broadcast the name of at least one attorney who is responsible for the content of the advertisement. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(b)(1). Attorneys may also advertise that they are, for example, "Board Certified, Family Law—Texas Board of Legal Specialization" if in fact they are so recognized by the Texas Board of Legal Specialization. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(b)(2)(i). Attorneys may include statements that they are members of an organization the name of which implies that its members possess special competence only if the organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the bar. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(b)(2)(ii). An infomercial or comparable presentation must state that it is an advertisement both verbally and in writing at both the beginning and the end and in writing during any portion that explains how to contact an attorney or firm. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(b)(3). The statements required by rule 7.04(b) must be displayed conspicuously and in easily understood language. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.04(c).

Attorneys may advertise their services in the public media either directly or through a public relations firm. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(d). All advertisements must be reviewed and approved in writing by the lawyer or another lawyer in the firm. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(e). Copies of advertisements and a record of where they were used must be retained for four years after their last use. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(f).

In advertisements in the public media, a person who portrays an attorney whose services are being advertised or narrates the advertisement as if he were such an attorney must in fact be the attorney whose services are being advertised. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(g).

If contingent fees are advertised, the advertisement must state whether the client will be required to pay court costs and whether the client will be responsible for other

expenses. If specific percentages are disclosed, the advertisement must state whether the percentage is calculated before or after the expenses are deducted from the recovery. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(h).

If a fee or range of fees is advertised, the attorney is expected to honor those prices for the period during which the advertisement is expected to be in circulation or to be effective or for the time stated in the advertisement. However, quoted prices are not expected to be honored for longer than one year. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(i).

The use of false or misleading slogans or jingles in the public media is prohibited. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(m).

The geographic location of the attorney's principal office must be disclosed. No other office may be advertised unless that other office is staffed by an attorney at least three days a week or the advertisement states the days and times an attorney will be at the office or that meetings with attorneys will be by appointment only. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(j).

If the rules require that specific items of information accompany communications about an attorney's services, the required items must be presented in the same manner as the communication and with equal prominence. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(q).

Advertisements on the Internet must display the statements and disclosures required by rule 7.04. Tex. Disciplinary Rules Prof'l Conduct R. 7.04(r).

Additional rules apply to cooperative advertising by attorneys from different firms, referral services, and payments for advertising made by another attorney. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.04(k), (l), (n)–(p).

Prohibited Written, Electronic, or Digital Solicitations

An attorney is prohibited from sending or transmitting certain written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications to a prospective client for the purpose of obtaining professional employment. The following communications are prohibited: those that involve coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment; those that contain information forbidden by Tex. Disciplinary Rules Prof'l Conduct R. 7.02; those that fail to satisfy the requirements of certain parts of Tex. Disciplinary Rules Prof'l Conduct R. 7.04 that would apply if the communication were an advertisement in the public media; and those that contain a false, fraudulent, misleading, deceptive, or unfair statement or claim. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.05(a). The format of a written, electronic, or digital solicitation communication is governed by rule 7.05(b), and requirements for audio, audio-visual, digital media, recorded telephone message, and other electronic communications are governed by rule 7.05(c). *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.05(b), (c).

All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications must be reviewed by the attorney and signed or

approved in writing by the attorney or by another attorney in the firm. Tex. Disciplinary Rules Prof'l Conduct R. 7.05(d). A copy of each such communication and the dates and places it was sent must be retained for four years. Tex. Disciplinary Rules Prof'l Conduct R. 7.05(e).

The advertising rules can be confusing, but the basic principle underlying them is pretty clear—lawyer ads cannot be false, deceptive or misleading in any respect. Be honest and factually complete and avoid exaggeration or shading the truth.

Jonathan E. Smaby, Austin

Communications to family members or to preexisting clients, communications made at the request of the prospective client, communications made without concern for a specific past occurrence or event or series of past occurrences or events and not concerned with a specific legal problem of which the attorney is aware, and communications not motivated by the desire for employment or the possibility of pecuniary gain are exempt from the provisions of rule 7.05(b). Tex. Disciplinary Rules Prof'l Conduct R. 7.05(f).

Prohibited Employment

An attorney is generally prohibited from accepting or continuing employment if the employment was procured by conduct prohibited by the advertising rules, certain criminal conduct, or barratry. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.06.

Filing Requirements

There is a specific procedure for preapproval of advertising by the Advertising Review Committee of the State Bar of Texas. A copy of the written, audio, audio-visual, digital, or other electronic communications, including a representative sample of the envelope or other packaging to be used, together with an application form and a filing fee, must be submitted no later than the sending of the communication. Tex. Disciplinary Rules Prof'l Conduct R. 7.07(a). A copy of an advertisement in the public media in the form in which it will appear—for example, video, print copy, audiotape—the production script and other information, the time and locations of dissemination or proposed dissemination, a completed application form, and a filing fee must be submitted. Tex. Disciplinary Rules Prof'l Conduct R. 7.07(b). Requirements for filing

with regard to a Web site are prescribed in rule 7.07(c). Except in limited circumstances, information concerning Web sites must be filed no later than its first posting on the Internet or other comparable network. “Web site” is defined to mean a single or multiple page file, posted on a computer server and describing the lawyer or law firm’s practice or qualifications. *See* Tex. Disciplinary Rules Prof’l Conduct R. 7.07(c).

Advisory Opinions

An attorney may seek an advance advisory opinion about compliance of a proposed solicitation not less than thirty days before its dissemination. An opinion of noncompliance is not binding in a disciplinary proceeding, but a finding of compliance is binding as to all materials submitted for preapproval if the information received in connection with the solicitation is true and not misleading. The finding of compliance is admissible evidence if offered by a party. *Tex. Disciplinary Rules Prof’l Conduct R. 7.07(d).*

Certain types of communications are exempt from the approval process. These advertisements, if they contain no false or misleading information, include those providing basic information, such as the name, address, electronic address, telephone numbers, office and telephone service hours, and fax numbers of the attorney or attorneys in a firm, with a designation such as “attorney” or “law firm”; fields of specialization and concentration or practice limitation; dates of admission; foreign language ability; acceptance of credit cards; identification with group prepaid legal plans; and any fee for initial consultation or fee schedule. *See* Tex. Disciplinary Rules Prof’l Conduct R. 7.07(e).

Jurisdictional Guidelines

Rule 8.05 designates who will be subject to discipline by the State Bar of Texas for violation of the Texas advertising guidelines. In certain cases, an attorney admitted in Texas may be disciplined for advertisements made in other jurisdictions. *Tex. Disciplinary Rules Prof’l Conduct R. 8.05.*

CHAPTER 7

Social Media

This chapter is based on material published in the March 2010 issue of the Texas Bar Journal.

“Social media” is an umbrella term for social interaction using technology (such as the Internet or cell phones) with any combination of words, pictures, video, or audio. With today’s social media, Web sites are interactive and users can communicate, collaborate, and socialize with the Web host and each other. Users can share pictures, video, music, articles, or other user-generated content.

Commonly Used Social Media

Blogs

A blog is an online journal that discusses opinions or reflections on various topics and usually provides a mechanism for readers to comment. Lawyers may write blogs to increase their visibility to the public, demonstrate their legal expertise, or interact with and influence leaders in the field. Blogs are easily found using Internet search engines such as Google or Yahoo because their content is updated frequently. Blogs form the core of the social media strategy of many lawyers because postings in other media often contain links to a blog for more in-depth discussion. The American Bar Association publishes a directory of law blogs at www.abajournal.com/blawgs. For featured blogs by Texas lawyers, visit www.blog.texasbar.com.

Facebook (www.Facebook.com)

Facebook, a social networking site, allows its members to post thoughts, status updates, pictures, or videos on their profiles. Members can make public comments on the “wall” or timeline of their friends—people with whom they have agreed to connect. Individual attorneys or firms can use Facebook to increase their visibility and reconnect with friends or clients. Although Facebook profiles are restricted to individual use, businesses can join Facebook by creating “pages.” Businesses can use Facebook pages to communicate with fans and can post videos, blogs, and other similar content on their page. Businesses can also see analytical data about user activity on their Facebook page.

LinkedIn (www.linkedin.com)

Although LinkedIn has a smaller membership, the site tends to be more professionally focused than Facebook. LinkedIn members can post status updates, invite people to 'link' to them, and publish blogs. LinkedIn also includes a section to post jobs and a section where members can post and answer questions. As members add connections, the benefits of LinkedIn increase. For example, if a member wants to research a company, LinkedIn can show the member which of their connections currently work or used to work there or who know someone that works there. Many lawyers generate business by renewing their relationships with old contacts as they build their LinkedIn network. By joining carefully selected LinkedIn groups, members can raise their visibility among potential clients and referral sources.

I want to humanize my practice so that even as I increase the high tech, I will strive to maintain the high touch.

James E. Brill, Houston

Twitter (www.twitter.com)

Twitter has been described as a micro-blogging site because posts cannot exceed 140 characters and the user's profile description cannot exceed 180 characters. Users can follow the tweets of a particular person or use a word search to see any tweet containing that word. Companies can use the search feature to find out what customers may be saying about them. Twitter has few barriers to following and joining conversations, and Twitterers can share information with links to blog posts or articles with more in-depth conversations. Users can also "retweet" posts to their followers that they find interesting or informative. Using Twitter, lawyers can build a reputation for expertise through their tweets and create valuable relationships with potential clients and referral sources with which they might not have otherwise connected.

Youtube (www.youtube.com)

Youtube is a video sharing Web site that allows users to upload their own videos. Many lawyers have used Youtube to advertise their services. The video titles and descriptions are searchable by key words, and viewers can rate the videos and post comments.

Texas Bar Circle (<https://texasbar.affinitycircles.com>)

Texas Bar Circle is a social media network restricted to members of the State Bar of Texas. It is similar to LinkedIn and features groups based on practice areas, geographic regions, law schools and interests outside of law. Members use the network to ask questions of other lawyers, engage in professional discussions, share resources, and develop relationships with lawyers they did not know before.

Other Legal and Social Media Sites

Google+ (www.google.com/+) allows users to integrate several social networking features on their Google profiles including video chat rooms, instant messaging, and “circles,” which allow users to organize contacts into groups for sharing content.

Legal Onramp (www.legalonramp.com) describes itself as “a collaboration system for in-house counsel and invited outside lawyers and third-party service providers.”

Martindale-Hubbell Connected (www.martindale.com/connected) is a professional networking site similar to LinkedIn that is targeted specifically to attorneys.

Avvo (www.avvo.com) provides guidance to customers seeking to hire an attorney.

JD Supra (www.jdsupra.com) is an on-line repository of legal documents, forms and articles.

LawLink (www.lawlink.com) is a social network geared toward the legal community with membership restricted to lawyers, law students, expert witnesses and law professionals.

Ethical Concerns for Lawyers Using Social Media

As social media becomes more and more prevalent, lawyers are increasingly recognizing how it can benefit their practice. However, social media can involve ethical risks that might not be readily apparent. When using social media, attorneys must be aware of these risks and make sure that their online activity is in compliance with the disciplinary rules.

Social Media as Advertising

Texas Disciplinary Rule of Professional Conduct 7.07 addresses the filing requirements for public advertisements and written, recorded, electronic, or other digital solicitations. Rule 7.07(c) requires a lawyer’s Web site to be filed, unless it is limited to certain exempt information enumerated in Rule 7.07(e). The exemptions include contact information, dates of admission to the bar, areas of practices, acceptance of credit cards, languages spoken, and other specified information. Advertise-

ments that are limited to this exempt information are sometimes known as “tombstone” ads. Tex. Disciplinary Rules Prof’l Conduct R. 7.07(c), (e). Interpretive comment 17, adopted by the State Bar Advertising Review Committee, also clarifies that “a lawyer or law firm’s listing on a web-based directory that is accessible by the public shall be exempt from the filing requirements of Rule 7.07 if it meets the requirements of 7.07(e)(1).”

Similarly, a social media profile containing only the rule 7.07(e) exempt information does not need to be filed. However, Facebook, LinkedIn, and Texas Bar Circle request educational history, and LinkedIn also requests employment history. Although those categories are not specifically exempt pursuant to rule 7.07(e), the Advertising Review Department has indicated that lawyers can include their true and factual educational background in their social media profiles without triggering the filing requirement. *See* Tex. Disciplinary Rules Prof’l Conduct R. 7.07(e). The department relies on the language in comment 8 to rule 7.02 in making this assertion. The comment states that rule 7.02’s prohibition against false or misleading communications do not prohibit communications about various listed topics (some of which are not contained in the rule 7.07(e) list), “and other truthful information that might invite the attention of those seeking legal assistance.” The department reads rules 7.02 and 7.07 together to discern the intent of the advertising rules. Tex. Disciplinary Rules Prof’l Conduct R. 7.02 cmt. 8, R. 7.07. Although lawyers may choose not to include that information in their profiles, many sites use that information to suggest people that the user may know or want to connect to. Additionally, others will also use that information to find people and to help distinguish people with similar names. Without this information, attorneys will not benefit from this way of connecting with others.

Remember, it’s about the content rather than the means by which an attorney disseminates information about his legal services.

Pat Rafferty, Dallas

The comments to the disciplinary rules include other indications that the advertising rules were not intended to regulate the kind of ordinary information included in a social media profile. Comment 6 to rule 7.04, which sets forth requirements relating to advertisements, references basic factual information about a lawyer found in a tombstone ad and asserts that “the content of such advertisements is not the kind of information intended to be regulated by rule 7.04(b). Further, the authoritative comment 6 to rule 7.07 indicates that “communications need not be filed at all if there were not prepared to secure paid professional employment.” *See* Tex. Disciplinary Rules Prof’l Conduct R. 7.04 cmt. 6, R. 7.07 cmt. 6. Using social media to build and enhance relationships and to engage in discussions about topics of interest can be distinguished from advertisement or solicitation. However, if the profile includes lan-

guage that indicates a solicitation for professional employment and has the potential to be misleading, the profile would be subject to regulation. Attorneys who choose to can file their profiles with the Advertising Review Department in accordance with rule 7.07. If a lawyer submits an advertisement or a solicitation communication for pre-approval, a finding of compliance is binding in the lawyer's favor. Tex. Disciplinary Rules Prof'l Conduct R. 7.07(d).

In contrast with other social media, Texas Bar Circle is restricted to members of the State Bar of Texas. Rule 7.04(a)(3) permits lawyers to distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) their availability and other information traditionally included in such publications. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.04(a)(3). Therefore, lawyers have more latitude on Texas Bar Circle than on other social media.

A lawyer's blog is also not subject to the filing requirements. Blogs generally consist of commentary or educational information, not advertisements and solicitations, and therefore do not trigger the filing requirement. Comment 6 to rule 7.07 references the intention of the advertising rules to "protect the first amendment rights of lawyers while ensuring the right of the public to be free from misleading advertising and the right of the Texas legal profession to maintain its integrity." Tex. Disciplinary Rules Prof'l Conduct R. 7.07 cmt. 6. Comment 1 to rule 7.02 clarifies that the rules "are not intended to affect other forms of speech by lawyers, such as political advertisements or political commentary." *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.02 cmt. 1. If lawyers use blogs to communicate information about subject matter or events relating to their area of practice, the blog will be exempt from the filing requirements. However, if a lawyer chooses not to file a blog, it is important to remember the prohibitions against false, misleading, or deceptive communications are still applicable.

Unlike some states, Texas does not prohibit the use of testimonials. LinkedIn provides the option to post recommendations, which can be prescreened before they are posted for public view. Attorneys using LinkedIn to post recommendations must make sure the recommendations comply with the disciplinary rules. For example, rule 7.02(4) prohibits comparison to other lawyers' services, unless substantiated by verifiable objective data. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(4). Therefore, if a client reports that a lawyer is "the best trial lawyer in town," the testimonial will have to be revised before it can be posted. Lawyers should also avoid making reciprocal recommendations in which the lawyer agrees to post a recommendation in exchange for receiving one. Rule 7.03(b) prohibits giving anything of value to a non-lawyer for soliciting prospective clients. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.03(b).

LinkedIn profiles also have a field for "specialties." Unless a lawyer is board certified by the Texas Board of Legal Specialization, the "specialties" field should be left blank. Rule 7.04(b)(2) prohibits a statement in an advertisement that a lawyer has been designated by an organization as possessing special competence, unless the organization meets the requirement of that rule. LinkedIn does not meet the requirements of the

rule. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.04(b)(2). The area accessed through the "Answers" button on LinkedIn can also be problematic. Through this feature users can ask or respond to questions in various categories, and readers vote on the best responses posted. After a certain number of "best response" votes are accrued, LinkedIn automatically designates the user an "Expert" in that category. This "Expert" designation without board certification contravenes rule 7.04(b)(2) in an advertisement. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.04(b)(2). Although LinkedIn profiles may not be considered advertisements, avoiding answering questions in the "Answers" sections can eliminate this potential problem. The LinkedIn discussion groups, however, do not create a similar issue. There is not an "Expert" designation or "best response" feature in the discussion groups. Therefore, attorneys can demonstrate their knowledge and build relationships by answering questions in these discussion groups.

There is often a significant technology gap between older and younger generations. It's important for people who practice law to understand that gap and to understand how people communicate; it's important to consider what the best way is to communicate with both your colleagues and clients.

Martha S. Dickie, Austin

Lawyers using Youtube to post videos must be aware of whether filing is required. Filing is not required automatically for all videos posted on Youtube. The Advertising Review Department has indicated that merely including an attorney's contact information on an educational video does not constitute advertising. However, if the video goes beyond strictly educational, informational, or entertainment content to solicit business, the video will be considered advertising and must be filed.

Improper Solicitation of Clients

When using social media to interact with others, lawyers must consider the implications of rule 7.03(a), which discusses the solicitation of clients. Rule 7.03(a) forbids using "regulated telephone or other electronic contact" to solicit business arising out of a particular occurrence or event from someone who has not sought the lawyer's advice. Rule 7.03(f) defines "regulated electronic contact" to include electronic communication initiated in a live, interactive manner." *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.03(a), (f). Comment 1 to rule 7.03 specifically references chat rooms and both Facebook and Twitter can sometimes be very similar to chat room conversations. *See* Tex. Disciplinary Rules Prof'l Conduct R. 7.03 cmt. 1. For exam-

ple, in a situation where someone tweeted that she had just received a DUI, if the lawyer responds with an offer of services, this conduct may violate rule 7.03 unless the lawyer already had the requisite prior relationship with the person. However, if an attorney responds to a tweet in which someone has asked for an attorney, the same issue would not arise, because the person was seeking an attorney.

Maintaining Client Confidentiality and Avoiding Ex Parte Communication

When using any kind of social media, attorneys must be extremely aware of maintaining client confidentiality. For example, if a lawyer posts information about a client meeting on Twitter, because the date and time of the tweet is posted, there is potential for the client to be identified if someone knew with whom the lawyer was meeting that day.

Similarly, attorneys using social media must be cautious about the potential for ex parte communications. According to a public reprimand, a North Carolina judge engaged in unethical Facebook activity relating to a case before tried before him. During the child custody case, the judge “friended” defense counsel, and each of them discussed aspects of the case on Facebook, constituting ex parte communications. The plaintiff’s counsel indicated she was not on Facebook. Additionally, the judge also conducted ex parte online research about the plaintiff by searching for her on Google and visiting her Web site.

Using Social Media for Research

Social media sites can potentially be a source of useful information about a litigation party or witness. However, lawyers must be sure that any information obtained from these sites is ethically obtained. Due to privacy settings on a particular site, useful information may not be visible to the general public but will be accessible to the friends or connections of that person. Lawyers should avoid “pre-texting,” disguising their identity in order to friend or connect with the target or asking someone else to “friend” the target and then share they information they see. Although there has not been a case in Texas about “pre-texting” in social media, in March 2009, the Philadelphia Bar Association issued an opinion providing helpful guidance. The inquirer proposed to have a third party “friend” a witness on Facebook and MySpace in order to gain information to impeach the witness. The opinion cited provisions of the Pennsylvania Rules of Professional Conduct that correspond to Texas Disciplinary Rules of Professional Conduct rules 4.01, 5.03(b), and 8.04(a)(1), (a)(3). The committee said that such pretexting would involve dishonesty, fraud, deceit or misrepresentation on behalf of the lawyer, or the encouragement of such behavior, all in violation of the aforementioned rules. Philadelphia Bar Association, Professional Guidance Committee Opinion 2009-02, <http://www.philadelphiabar.org/WebObjects/PBARReadOnly.woa/Contents/WebServerResources/CMSResources/>

Opinion_2009-2.pdf. Any lawyer seeking investigative information about a party or witness through social media should consider the Philadelphia opinion and the Texas rules referenced for ethical guidance.

Lack of Candor Toward the Tribunal

Rule 3.03(a)(1) prohibits a lawyer from knowingly making a false statement of material fact to a tribunal. Tex. Disciplinary Rules Prof'l Conduct R. 3.03(a)(1). Many judges have reported incidences in which lawyers make statements in court that do not appear to align with their Facebook status updates. For example, when an attorney requested a continuance because of a death in the family, the judge noted this was inconsistent with a number of posts related to drinking and partying that the attorney had posted. Molly McDonough, "Facebooking Judge Catches Lawyer in a Lie, Sees Ethical Breaches," A.B.A. J. Law News Now, July 31, 2009, http://www.abajournal.com/news/article/facebooking_judge_catches_lawyers_in_lies_crossing_ethical_lines_abachicago/.

CHAPTER 8

Terminating Attorney-Client Relationship

The attorney-client relationship can be terminated in several ways. Depending on the circumstances, the attorney may be required to meet certain obligations before withdrawal is permitted. Regardless of whether the relationship is terminated by the attorney or the client, they are certain requirements with which the attorney must comply. Having established office practices in place for case closures can facilitate the process so that it is seamless and without complications.

A client may always terminate the attorney-client relationship. An attorney must return any unearned portion of the fee and all pertinent papers and property. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(d) & cmt. 4; Tex. Comm. on Prof'l Ethics, Op. 395 (1979). However, rule 1.15(d) specifically provides that an attorney may retain papers relating to the client to the extent permitted by other law, but only if such retention will not prejudice the client in the subject matter of the representation. *See* Tex. Comm. on Prof'l Ethics, Op. 411 (1984).

An attorney also may terminate the relationship; however, the attorney has a duty to minimize any adverse effects to the client. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(b), (d). It is a good practice for the attorney to send a disengagement letter to record the date of the termination of the attorney-client relationship. See form 27 in this book for an example of a disengagement letter.

The attorney-client relationship does not continue automatically once the purpose of the employment is completed. However, it is often difficult to determine when a matter is completed.

Sending a completion letter to record the date of the completion of employment can help to eliminate confusion once the relationship has ended. See form 28 in this book for an example of a completion letter.

Properly closing a legal matter is just as important as opening one, but more often overlooked. Have the client confirm that all work has been completed and address any concerns or complaints immediately.

Jonathan E. Smaby, Austin

Mandatory Withdrawal

Tex. Disciplinary Rules Prof'l Conduct R. 1.15(a) sets out the circumstances under which an attorney must terminate the relationship with the client. The attorney must withdraw if continued representation will result in a violation of one of the Texas Disciplinary Rules of Professional Conduct or another law or if the attorney's physical, mental, or psychological condition materially impairs the attorney's fitness to represent the client. The attorney must also withdraw when discharged. When terminating the attorney-client relationship before completing the work for which the client contracted, the attorney should review rule 1.15 to be sure that good cause for withdrawal exists.

Permissible Withdrawal

Withdrawal is permissible under the circumstances listed in Tex. Disciplinary Rules Prof'l Conduct R. 1.15(b). The rule provides that an attorney may withdraw if the client fails substantially to fulfill an obligation to the attorney, including the obligation to pay the attorney's fee as agreed, *and* a reasonable warning has been given that the attorney will withdraw unless the obligation is fulfilled. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(b)(5). See form 27 in this book for an example of a letter terminating the attorney-client relationship because of nonpayment of fees. At least one court in dicta has stated that by accepting employment an attorney impliedly represents that the attorney will see the task through to conclusion. *See Staples v. McKnight*, 763 S.W.2d 914 (Tex. App.—Dallas 1988, writ denied). By conditioning the commencement of work and continued performance on the payment of a fee, the attorney may avoid problems later.

If Matter Is in Litigation

An attorney seeking to withdraw from pending litigation must file a written motion showing good cause for the withdrawal. If another attorney is to be substituted, the motion must state—

1. the name, address, telephone number, fax number (if any), and State Bar number of the substitute attorney;
2. that the party approves the substitution; and
3. that the withdrawal is not sought for delay only.

If another attorney is not being substituted, the motion must state—

1. that a copy of the motion has been delivered to the party;
2. that the party has been notified in writing of his right to object to the motion;
3. whether the party consents to the motion;

4. the party's last known address; and
5. all pending settings and deadlines.

If the motion is granted, the withdrawing attorney must immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of withdrawal and of which he has not already notified the party. The court may impose further conditions. Notice to the party must be given either in person or by certified and regular mail sent to the party's last known address. Tex. R. Civ. P. 10.

Ethical Requirements

An attorney who withdraws from employment should give reasonable notice to the client, allowing time for employment of other counsel; surrender papers and property to which the client is entitled; and refund any advance payment of a fee that has not been earned. The attorney may keep papers relating to the client to the extent permitted by law only if the client will not be prejudiced as a result. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(d).

Death of Attorney or Client

The death of the attorney terminates the attorney-client relationship. The deceased attorney's partners cannot continue the representation without the permission of the client. The death of the client also terminates the attorney-client 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.).

Involuntary servitude was outlawed by the Thirteenth Amendment. As long as it can be accomplished with no material adverse effect on the interests of a client, a lawyer can withdraw from a representation for any reason or for no reason at all. And even if there will be material adverse impact on the client, the disciplinary rules still allow any lawyer to withdraw from any matter where the client insists on pursuing an objective the lawyer finds repugnant or imprudent or where the client has made the representation unreasonably difficult for the lawyer.

William J. Chriss, Austin

CHAPTER 9

After Attorney-Client Relationship Has Ended

Duty of Confidentiality

The duty to maintain confidentiality continues after the termination of employment. Tex. Disciplinary Rules Prof'l Conduct R. 1.09(a)(3).

Retention of Files

The disciplinary rules do not clearly address an attorney's obligations regarding the retention and destruction of client files. While Tex. Disciplinary Rules Prof'l Conduct R. 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, the rule 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.

The rules also do not address ownership of the client files. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(d) indicates that, on 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, the rule does not make clear exactly what "papers and property" belong to the client. Several courts have adopted the "end product" rule when addressing the ownership of client files, indicating that 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 Federal Land Bank v. Federal Intermediate Credit Bank*, 127 F.R.D. 473, 480 (S.D. Miss.), *aff'd in part and rev'd on other grounds*, 128 F.R.D. 182 (S.D. Miss. 1989); *Corrigan v. Armstrong*, 824 S.W.2d 92 (Mo. Ct. App. 1992). 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

and not the lawyer. See *Resolution Trust Corp. v. H—*, P.C., 128 F.R.D. 647 (N.D. Tex. 1989), in which 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 Cal-estini*, 321 F. Supp. 1313 (N.D. Cal. 1971); *In re Michigan Boiler & Engineering Co.*, 87 B.R. 465 (Bankr. E.D. Mich. 1988); *In re Kaleidoscope, Inc.*, 15 B.R. 232 (Bankr. N.D. Ga. 1981), *rev’d*, 25 B.R. 729, 742–43 (N.D. Ga. 1982).

In the absence of a clear rule, attorneys have several options for avoiding potential conflicts regarding the retention of client files. Attorneys may wish to obtain consent from the client for the destruction of client files pursuant to a record retention policy. This can either be done in the fee agreement or in the disengagement letter. See forms 1 through 4 in this book for an optional paragraph concerning retention and destruction of records. Alternatively, the attorney may choose to return the documents to the client.

Attorneys may wish to adopt a policy whereby all important materials, as well as original documents, are delivered to the client at the end of the representation. The transfer should be documented in writing.

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. This may be a good time to note whether the client has consented to the destruction of the file or if there is a need to postpone the destruction of the file because of circumstances such as a unique limitations period or the presence of court orders.

At the time the client file is slated for destruction or return to a client, the attorney should 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. 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.

CHAPTER 10

Avoiding Problems When Firms Break Up and Closing a Law Practice

Avoiding Problems When Firms Break Up

When a firm breaks up or when one or more members leave, confusion may arise over which attorneys retain which clients. To avoid such confusion, the firm should contact every client who will be affected, confirm which attorney the client wishes to retain, and preserve the agreement in writing. This procedure can avert the potential for malpractice that occurs when an attorney leaves a firm without arranging for someone to handle a file, to the legal detriment of the client.

Closing a Law Practice

Reprinted with permission of the Oregon State Bar Professional Liability Fund from the handbook, Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death by Barbara S. Fishleder. All Rights Reserved except that lawyers licensed in Texas may use the checklist (form 29 in this book) for assistance with their own law practice or to assist another attorney close his or her practice.

This information is designed to help you protect your clients' interests in the event you are suddenly rendered unable to practice law. With some advanced planning, you can ensure a smoother transition for your clients and allay potential ethical pitfalls.

Successor Attorney

If you suddenly become unable to practice law, someone will need to review your case files to ascertain if there are pending or upcoming filing dates, contact clients to return or transfer files, handle the firm's financial affairs, and deal with other issues that may need immediate attention. Due to the content contained in the files and the need to be able to spot legal issues, the best person to do this is presumably an attorney or "successor attorney."

By determining in advance who will serve as your successor attorney, you offer better protection for your clients and a faster transition out of law practice. Once you have found a suitable attorney who agrees to wind down your practice, it is important to discuss what duties the successor attorney will need to perform, the scope of his responsibility, what event will trigger the successor attorney's service, and the systems you employ in your firm to make the job easier to accomplish. Be sure to reduce your agreement to writing so the successor attorney will have the legal authority to perform the duties you have both discussed.

1. **Scope of Responsibility**

The need to establish the scope of the successor attorney's duties and obligation to you and your clients from the outset is critical. Because conflicts may arise if the successor attorney is expected to represent both your interests and those of your clients, be sure to clearly identify who the successor attorney will represent. If the successor attorney represents you, he may be prohibited from representing your clients on certain matters. If the successor attorney represents your client's interests, he may be required to disclose to the client if you have made any errors on their case.

2. **Duration and Triggering Event**

You will also want to establish what event will trigger the successor attorney to enter your practice and start winding down your business and who will determine that this event has occurred. Will it be a doctor, your spouse, the good faith belief of the successor attorney? How long will the task of wrapping up the practice take?

3. **Duties to Be Performed**

Include in your written agreement a signed consent authorizing the successor attorney to perform certain tasks, for example:

- Review your files for pending deadlines
- Obtain extensions in litigation matters
- Contact your clients about returning/transferring files
- Wind up financial affairs
- Inform the court and others who need to know of the closure of your practice
- Collect fees owed to the disabled or deceased attorney
- Return unearned fees

4. **Power of Attorney**

If you want the successor attorney to handle your firm's financial affairs, access to your bank accounts will be required. While a written agreement may be sufficient, some banks require that the successor attorney have a

power of attorney. Check with your bank to see what documents they will require in order to honor your wishes with respect to the closure of your firm. Again, you'll need to think through what sort of power of attorney you want to grant the successor attorney and how and when the power of attorney will be triggered. Will the successor attorney's power of attorney be triggered by a specific event, who will determine that the triggering event has occurred, what specific powers will be granted, and what will determine the duration?

5. Notifying Your Client

You will need to notify your clients that you have arranged for a successor attorney to wind down your practice. Since the successor attorney will have access to your client's confidential information, you need to obtain your client's consent. The easiest way to notify your clients and obtain their consent is to put a provision in your retainer and fee agreements.

6. Ethical Issues

- Confidentiality: The client must give consent to have his confidential information shared with successor attorney.
- Conflicts: The successor attorney will need to conduct a conflict check if the review of client confidential information is being conducted in order to return or transfer the file.
- Barratry: If the successor attorney is contacting your clients or wishes to represent your clients, he should be aware of potential restrictions in the Disciplinary Rules with respect to barratry or solicitation.
- Notification of Attorney's Cessation of Practice: *See* Texas Rules of Disciplinary Procedure rule 13.01.

You are not really closing your practice, you are transitioning your clients and files to a new lawyer. Choose a colleague who shares your skills, values and temperament. Your clients will miss you, but they will long remember your devotion and foresight.

Jonathan E. Smaby, Austin

Authorized Signer on the Trust Account

In order to return funds to clients and remit payment for work performed, someone will need to have access to your trust account. If you do not make arrangements, your clients may not receive their funds until a court orders access to the trust account. You may grant this authority to your successor attorney, a close family member, or your personal representative.

Office Procedures

Maintaining good office procedures will aid your successor attorney and provide increased protection for your clients.

1. **Contact List**

Keep a list of a of contact information for the people who should be notified in the event of your death or incapacity.

2. **Passwords and Account Numbers**

Create a list of passwords for computer and network log-in, email accounts, bank accounts, credit cards, and ATM cards that will need to be accessed. Give the list to a close family member, your personal representative, or the successor attorney for safe keeping.

3. **Fee Agreements**

Maintain written fee agreements for each client matter.

4. **Separate Files**

Maintain a separate file for each client matter.

5. **Trust Account**

Maintain a separate trust account and dedicated ledger for each client whose funds you hold.

6. **Keep Time and Billing Up-to-Date**

7. **Docket Control**

Keep a calendaring system with applicable deadlines.

8. **Termination Letter**

When you have closed a client matter, send a termination letter and include any original documents.

See form 29 for a checklist for an attorney who closes another attorney's office.

After all the effort to start and build your practice, why close it? Everything has a life cycle. Remember lava lamps, mood rings, and pet rocks? Add your law practice to that list.

James E. Brill, Houston

APPENDIX A

Potential Areas for Legal Liability

For a comprehensive resource on professional responsibility and ethics rules applicable to the practice of law in Texas, see State Bar of Texas, *Texas Lawyers' Professional Ethics* (4th ed. 2007).

Attorney's Fees

Approximately 25 percent of all attorney-related litigation involves fee disputes. See Jeffrey M. Smith, *The Pitfalls of Suing Clients for Fees*, 69 A.B.A. J. 776, 778 (1983). Usually a lawsuit for fees results in a compulsory counterclaim for malpractice under Texas Rule of Civil Procedure rule 97(a). See *Goggin v. Grimes*, 969 S.W.2d 135, 138 (Tex. App.—Houston [14th Dist.] 1998, no pet.); *CLS Associates, Ltd. v. AB*, 762 S.W.2d 221, 224 (Tex. App.—Dallas 1988, no writ). See the discussion about legal fees in chapter 2 of this book.

Failure to Advise Client of Legal Consequences of Acts

An Arkansas court upheld a malpractice judgment resulting from an attorney's failure in a divorce action to advise the wife of the consequences of executing a property settlement without obtaining a lien on the husband's property. She had no security for payments due under the settlement agreement, and the attorney was held liable for payments on which the husband defaulted. *Rhine v. Haley*, 378 S.W.2d 655 (Ark. 1964).

Failure to Advise Client of Conflict of Interest

An attorney representing both parties in a divorce action may be liable to one spouse if the settlement is uneven. In *Ishmael v. Millington*, 241 Cal. App. 2d 520 (1966), the husband's business attorney drew up a property settlement based solely on the husband's fraudulent assessment of the value of the property at approximately one-tenth of its true value. The wife did not see the attorney before the hearing at which the court approved the settlement. In holding the wife's subsequent malpractice suit viable, the court found that an attorney representing both spouses in a divorce has a duty to advise them of the advantage of having separate counsel and to take affirmative action to protect both parties' interests. The court noted:

The edge of danger gleams if the attorney has previously represented the husband. A husband and wife at the brink of division of their marital assets have an obvious divergence of interests. Representing the wife in an arm's length divorce, an attorney of ordinary professional skill would demand some verification of the husband's financial statement; or, at the minimum, inform the wife that the husband's statement was unconfirmed, that wives may be cheated, that prudence called for investigation and verification. Deprived of such disclosure, the wife cannot make a free and intelligent choice.

Ishmael, 241 Cal. App. 2d at 527.

Failure to Avoid Improper Entry of Judgment against Client

Allowing the entry of a judgment against a client without the client's consent may be legal malpractice. The attorney is liable for any damages imposed on the client as a result of the improperly entered judgment. *Montfort v. Jeter*, 567 S.W.2d 498, 499-500 (Tex. 1978).

An attorney who negligently failed to appear or notify the client of the divorce trial setting became liable to the client, whose spouse got custody of the children, the house, a share of the family business, and alimony based on an inflated estimate of the client's worth. *Warwick, Paul & Warwick v. Dotter*, 190 So. 2d 596 (Fla. Dist. Ct. App. 1966).

To pursue a legal malpractice action against an attorney who negligently allows a default judgment to be entered, the client must establish that he both suffered monetary loss and had a meritorious defense. *Rice v. Forestier*, 415 S.W.2d 711, 713 (Tex. Civ. App.—San Antonio 1967, writ ref'd n.r.e.).

Failure to Convey Settlement Offer to Client

An attorney must inform clients of offers of settlement made by the opposing party. See Tex. Disciplinary Rules Prof'l Conduct R. 1.02(a). There are certain exceptions. See Tex. Disciplinary Rules Prof'l Conduct R. 1.02 cmts. 2, 3.

In *Smiley v. Manchester Insurance & Indemnity Co.*, 375 N.E.2d 118 (Ill. 1978), an attorney's failure to convey a settlement agreement to his client was found to be negligence as a matter of law.

Failure to Timely Pursue Client's Claim

An attorney who negligently lets the statute of limitations run on a client's cause of action becomes liable for any amount the client could have collected from the orig-

inal defendant. *Patterson & Wallace v. Frazer*, 79 S.W. 1077, 1083 (Tex. Civ. App. 1904, no writ); *Fox v. Jones*, 14 S.W. 1007 (Tex. Civ. App. 1889, no writ). “Missing the statute of limitations is a classic example of negligence that any layperson can understand. No expert testimony is necessary in such cases.” *Mazuca & Associates v. Schumann*, 82 S.W.3d 90, 97 (Tex. App.—San Antonio 2002, pet. denied).

Inappropriate Relationships with Client

Engaging in sexual misconduct with a client has the potential to result in an extremely troublesome and complicated situation for the attorney and the client. Although there are no reported cases involving sexual misconduct with a client, sexual misconduct by a lawyer is addressed in *Kahlig v. Boyd*, 980 S.W.2d 685 (Tex. App.—San Antonio 1998, pet. denied). The client, Kahlig, brought suit against his former attorney, Boyd, based on fraud and a claim for deceptive trade practices, after the client discovered that the attorney was having an affair with Kahlig’s current wife during a custody case with a former wife. The trial court held that the attorney’s behavior did not constitute fraud or a deceptive trade practice. The court of appeals agreed, stating that “while we have determined that Boyd’s conduct does not give rise to a legal remedy under the theories presented at trial under current Texas law, substantial questions remain about the ethical propriety of Boyd’s conduct. The proper forum to determine these ethical issues is the State Bar of Texas Grievance Committee.” See *Kahlig*, 980 S.W.2d at 691. The attorney was sanctioned by the committee.

In another instance, which did involve misconduct with a client, an attorney’s fee amounting to \$3 million was forfeited because of an improper romantic relationship between the attorney and client. The trial court described the conduct as a serious breach of fiduciary duty. See *Piro & Lilly, L.L.P. v. Sarofim*, No. 01-00-00398-CV (Tex. App.—Houston [1st Dist.], April 11, 2002) (not designated for publication). There is ample authority for the forfeiture of the attorney’s fee for breach of fiduciary duty. See *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).

APPENDIX B

Ethics and Professional Conduct

Texas Disciplinary Rules of Professional Conduct

The Texas Disciplinary Rules of Professional Conduct set the standard of conduct for Texas attorneys. The rules are found in volume 3A of the Texas Government Code in title 2, subtitle G, appendix A, article X, section 9, following section 84.004 of the Code. The rules are also available online at www.legalethictexas.com. A copy can also be obtained without charge at the Office of the Chief Disciplinary Counsel for the State Bar of Texas. Contact information for the State Bar's regional offices in Austin, Dallas, Houston, and San Antonio may be found at www.texasbar.com.

These rules are mandatory and include aspirational goals that are grouped in the preamble rather than intermingled with rules within the body. Additionally, substantial commentary after each rule provides historical background and interpretational guidance.

Texas Rules of Disciplinary Procedure

The Texas Rules of Disciplinary Procedure provide the following sanctions for professional misconduct: disbarment; resignation in lieu of disbarment; indefinite disability suspension; suspension for a term certain; probation of suspension, which may be concurrent with the period of suspension, on reasonable terms appropriate under the circumstances; interim suspension; public reprimand; and private reprimand. *See* Tex. Rules Disciplinary P. R. 1.06Y, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A-1 (West 2005 & Supp. 2012). The Rules of Disciplinary Procedure may also be found online at www.legalethictexas.com.

The Texas Lawyer's Creed

On November 7, 1989, the Supreme Court of Texas and the Texas Court of Criminal Appeals adopted "The Texas Lawyer's Creed—A Mandate for Professionalism." The order of adoption and Creed may be found at the Texas Center for Legal Ethics Web site, www.legalethictexas.com. An attorney adhering to the Creed agrees to advise a client of the contents of the Creed when undertaking a representation (article II, paragraph 1). Providing the client with a copy of the Creed can also help the client to gain a better understanding of the legal system and the relationship with his

attorney. The Creed and recommended paragraphs for the disclosure about the Creed are found in the model engagement letters at forms 1 through 4 in this book.

Notice of Grievance Process

Section 81.079 of the Texas Government Code requires attorneys to notify clients of the grievance process. Notice must be provided by making grievance brochures, prepared by the State Bar and available at www.texasbar.com, available in the attorney's office, by prominently posting a sign in the attorney's office describing the process, by including the information in a written contract for services, or by providing the information in a bill for services. Tex. Gov't Code § 81.079(b).

Example paragraphs for notice regarding the grievance process are found in the model engagement letters at forms 1 through 4 in this book.

Source of Interpretation of Rules

Judicial decisions in Texas regarding ethical violations are referenced in the annotations to the Texas Disciplinary Rules of Professional Conduct.

The Committee on Professional Ethics of the Supreme Court of Texas issues opinions on the rules and the Texas Code of Professional Responsibility (the predecessor to the rules). These opinions are published in the *Texas Bar Journal*.

An attorney may also obtain informal explanations of the rules from the State Bar. A consultation with the disciplinary counsel's office may not only be informative but also probative of good faith should a question later arise. The telephone number of the attorney ethics line is 800-532-3947.

The Texas Center for Legal Ethics also maintains an online library, index, and text of all published opinions of the Committee on Professional Ethics; Texas cases dealing with ethics and professionalism; and a bibliography, at www.legalethicstexas.com. The Texas Center for Legal Ethics can be reached at 800-204-2222, ext. 1477.

Disciplinary Action

Article VIII of the Texas Disciplinary Rules of Professional Conduct (Maintaining the Integrity of the Profession) generally governs an attorney's conduct. Rule 8.04 sets out a comprehensive restatement of all forms of conduct that will subject an attorney to disciplinary action. Tex. Disciplinary Rules Prof'l Conduct R. 8.04. It includes conduct controlled by the State Bar Act and the State Bar Rules. The Disciplinary Rules of Professional Conduct govern attorneys who are admitted to practice in Texas or are specially admitted for a particular proceeding. A licensed Texas attorney's con-

duct in another state may also be the subject of a Texas grievance procedure. Tex. Disciplinary Rules Prof'l Conduct R. 8.05.

The rules do not prescribe either disciplinary procedures or penalties for a violation. Tex. Disciplinary Rules Prof'l Conduct preamble ¶ 14. Possible sanctions are found instead in the Texas Rules of Disciplinary Procedure.

Form 1

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter Detailing Basic Engagement Agreement and Fee Agreement

[Date]

[Name and address of client]

Re: [specify purpose of engagement]

[Salutation]

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

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

rates periodically and may adjust them. If such changes are necessary, you will be notified in writing [number] days before the change.

Complete disclosure about the attorney's billing practices can avoid client misunderstandings later. For additional information on legal fees and billing see chapter 2.

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

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

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

5. We require a deposit before we commence work for you. We have asked that you remit to and maintain with us during our representation a

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

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

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

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

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

10. During our discussion about handling this matter, we may have provided you with certain estimates of the fees and expenses that will be required at certain stages of our representation. Such estimates are just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which other parties require our involvement on your behalf. The reason we submit our clients' bills shortly after the services are rendered is so they will have a means of monitoring and controlling their expenses. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed. If we do not hear from you, we assume that you approve of the overall level of activity in this matter.

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

Include the following if applicable.

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

Continue with the following.

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

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

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

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

Include the following if applicable.

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

Continue with the following.

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

Sincerely yours,

[Name of attorney]

Enc.

ACCEPTED AND AGREED TO ON _____

[Name of client]

Date:

Include the following notice if notice is not otherwise provided as required by Tex. Gov't Code § 81.079. See Appendix B.

Notice to Clients

Texas law requires that all attorneys provide their clients with the following notice about the existence of the attorney grievance process: "The State Bar of Texas investigates and prosecutes professional misconduct committed

by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of Chief Disciplinary Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information."

Continue with the following.

The Texas Lawyer's Creed

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

Our Legal System

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

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

Lawyer to Client

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

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

Lawyer to Lawyer

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

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

Lawyer and Judge

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.
7. I will respect the rulings of the Court.
8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.
9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Form 2

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter Detailing Ongoing Engagement Agreement and Fee Agreement

[Date]

[Name and address of client]

Re: [specify purpose of engagement]

[Salutation]

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

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

rates periodically and may adjust them. If such changes are necessary, you will be notified in writing [number] days before the change.

Complete disclosure about the attorney's billing practices can avoid client misunderstandings later. For additional information on legal fees and billing see chapter 2.

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

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

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

5. We require a deposit before we commence work for you. We have asked that you remit to and maintain with us during our representation a

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

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

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

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

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

10. During our discussion about representing you, we may have provided you with certain estimates of the fees and expenses that will be required at certain stages of our representation. Such estimates are just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which other parties require our involvement on your behalf. The reason we submit our clients' bills shortly after the services are rendered is so they will have a means of monitoring and controlling their expenses. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed. If we do not hear from you, we assume that you approve of the overall level of activity in this matter.

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

Include the following if applicable.

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

Continue with the following.

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

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

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

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

Include the following if applicable.

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

Continue with the following.

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

Sincerely yours,

[Name of attorney]

Enc.

ACCEPTED AND AGREED TO ON _____

[Name of client]
Date:

Include the following notice if notice is not otherwise provided as required by Tex. Gov't Code § 81.079. See Appendix B.

Notice to Clients

Texas law requires that all attorneys provide their clients with the following notice about the existence of the attorney grievance process: "The State Bar of Texas investigates and prosecutes professional misconduct committed

by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of Chief Disciplinary Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information."

Continue with the following.

The Texas Lawyer's Creed

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

Our Legal System

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

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

Lawyer to Client

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

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

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

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

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

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

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

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

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

Lawyer to Lawyer

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

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

Lawyer and Judge

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Form 3

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter Detailing Basic Engagement Agreement and Fee Agreement for Simple Matters

[Date]

[Name and address of client]

Re: [specify purpose of engagement]

[Salutation]

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

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

Complete disclosure about the attorney's billing practices can avoid client misunderstandings later. For additional information on legal fees and billing see chapter 2.
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2. It is our policy to bill clients periodically for fees and out-of-pocket expenses. These bills will generally describe services performed and the expenses incurred. If we are confronted with unanticipated expenses, we may request the supplier to bill you directly for any third-party expenses.

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

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

5. You agree that we are relieved from the responsibility of performing any further work should you fail to pay any statement for fees and expenses (including bills for expenses received from third parties) or for supplemental retainers within fifteen days of their receipt. In that event, you agree

that we may move to withdraw as your counsel and that you will promptly execute any withdrawal motions to accomplish this.

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

7. — During our discussions about handling this matter, we may have provided you with certain estimates of the fees and expenses that will be required at certain stages of our representation. Such estimates are just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the difficulties we encounter during negotiations with other parties. The reason we submit our clients' bills shortly after the services are rendered is so they will have a means of monitoring and controlling their expenses. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed. If we do not hear from you, we assume that you approve of the overall level of activity in this matter.

Include the following if applicable.

8. The Supreme Court of Texas has adopted and promulgated the Texas Lawyer's Creed. Although compliance with the Creed is voluntary, we have decided to adhere to its provisions. Please review the attached Texas

Lawyer's Creed, and if you have any questions, we will be glad to discuss them with you.

Continue with the following.

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

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

11. Attorneys, like other professionals who advise on personal financial matters, are required by a federal law (the Gramm-Leach-Bliley Act) to inform their clients of their policies regarding privacy of client information. Because attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this

new law, we have always protected our clients' right to privacy. In the course of representing our clients, we receive all manner of significant personal financial information from them. As a client of the firm, you are advised that all information we receive from you will be held in confidence and not released to outside persons, except as agreed to by you or as required under applicable law. We retain records relating to professional services we provide to assist our clients with their professional needs and, in some cases, to comply with professional guidelines. To guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

Include the following if applicable.

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

Continue with the following.

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

Sincerely yours,

[Name of attorney]

Enc.

ACCEPTED AND AGREED TO ON _____.

[Name of client]

Date:

Include the following notice if notice is not otherwise provided as required by Tex. Gov't Code § 81.079. See Appendix B.

Notice to Clients

Texas law requires that all attorneys provide their clients with the following notice about the existence of the attorney grievance process: "The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of Chief Disciplinary Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information."

Include the following if applicable.

The Texas Lawyer's Creed

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

Our Legal System

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

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

Lawyer to Client

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

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

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

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

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

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

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

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

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

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

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

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

Lawyer to Lawyer

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

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

Lawyer and Judge

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Form 4

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Employment Contract

[Date]

[Name and address of client]

Re: [specify purpose of engagement]

[Salutation]

This letter is written to confirm the terms on which you have agreed to employ this firm to represent you in [specify purpose of engagement].

Our services will consist of the court appearances, telephone conferences, travel, investigative work, legal research, review of material received from all sources, drafting of pleadings and incidental correspondence, participation in settlement conferences, and other necessary preparation for your [specify purpose of engagement].

This agreement does not include presentation of this case to any appellate court or preparation of motions ancillary to this representation. If appeal

is necessary, client and attorney will consider the appeal as a separate and distinct cause of action requiring a new fee arrangement.

Include the following provision for a nonrefundable retainer if applicable.

As consideration for our acceptance of your case, you have agreed to pay the firm a nonrefundable retainer in the amount of **[number]** dollars (**[\$amount]**) to secure the availability of the principally responsible attorney named below and to compensate **[him/her]** for lost opportunities.

Continue with the following.

As **[additional]** consideration for our acceptance of your case, you have agreed to pay the firm the following amounts:

1. For professional services performed by the principally responsible attorney, you will currently be charged at the hourly rate of **[\$amount]**. For services performed by other attorneys in the firm, you will currently be charged at the hourly rate of **[\$amount]**. For services performed by legal assistants, you will currently be charged at the hourly rate of **[\$amount]**. These hourly rates may change during our representation. If such changes are necessary, you will be notified in writing **[number]** days before the change. All services, including telephone calls, are billed in **[number]**-minute increments regardless of the actual time spent.

2. You will be charged all incidental costs and expenses incurred by the firm in the prosecution of your case, including but not limited to the following: court costs; deposition expense; travel expenses; long-distance telephone calls; postage; retaining the services of other professionals, experts, and private investigative firms; document reproduction at \$[amount] per page; and telecopy transmissions at \$[amount] per page.

Select one of the following provisions for an advanced fee.

Once a month you will receive a statement from the firm for the fee charged for that billing period, together with all costs and expenses that have been incurred in your case. To provide a fund for the payment of such fees, costs, and expenses, the firm requires an advanced fee in the amount of [number] dollars (\$[amount]). The advanced fee will be placed in our trust account and drawn against from time to time to cover the unpaid fees, costs, and expenses. After the advanced fee has been consumed, an additional advanced fee may be required. Unless there is a sufficient advanced fee on deposit, you will be expected to make a payment each month, upon receipt of your statement, that is sufficient to liquidate any unpaid fees, costs, and expenses. When our representation is completed, any unused portion of the advanced fee will be refunded to you.

Or

Once a month you will receive a statement from the firm for the fee charged for that billing period, together with all costs and expenses that have

been incurred in your case. To provide a fund for the payment of such fees, costs, and expenses, the firm requires an advanced fee in the amount of [number] dollars (\$[amount]). The advanced fee will be placed in our trust account and drawn against from time to time to cover the unpaid fees, costs, and expenses. You must replenish the advanced fee immediately on receipt of each statement with a payment that is sufficient to reconstitute the original amount of the advanced fee. When our representation is completed, any unused portion of the advanced fee will be refunded to you.

Continue with the following.

All funds and obligations must be paid on receipt of a statement to the firm at [address], or such other address as we may specify.

The attorney in this firm who will be principally responsible for your case is [name].

You have also agreed to assist us in furnishing necessary witnesses to appear on reasonable notice and have agreed to comply with all of the firm's reasonable requests in connection with the preparation and presentation of your case.

While your concern for the costs involved is certainly appreciated, you must understand that it is impossible to predict accurately all that will be required to represent your legal interests in this matter, both present and future. These amounts are largely determined by the exigencies of your case and the

disposition of your opponent. Thus it is impossible to predict accurately the total amount of the fee for professional services or other costs that may be involved in representing your interests. In this regard, it is fair that you be cautioned at the outset that sometimes (and not infrequently) complexities develop in areas where they are not expected by a client. Sometimes because of extreme bitterness and hurt feelings, or because of substantial property interests, family law cases become unreasonably time-consuming. This firm has made no express or implied representations or guarantees concerning the outcome of your case or how long your case will take to complete.

Just as you are depending on our expertise and professionalism, we will depend on you to keep faith with us if complexities develop in your case where you did not expect them. Your continuing faith in this firm during what might become a prolonged period is vitally important to the maintenance of your legal rights; its importance simply cannot be over-emphasized.

Conversations between an attorney and client are protected by law and by the disciplinary rules to which attorneys are subject. No attorney can be compelled to reveal any confidential communications, except in accordance with section 261.101 of the Texas Family Code regarding child abuse, which states that if a professional (which includes your attorney and employees of your attorney) has cause to believe that a child has been abused or neglected or may be abused or neglected or that a child is a victim of an offense under section 21.11 of the Texas Penal Code, and the professional has cause to believe

that the child has been abused as defined by section 261.001 or 261.401 of the Texas Family Code, the professional shall make a report not later than the forty-eighth hour after the hour the professional first suspects that the child has been or may be abused or neglected or is a victim of an offense under section 21.11 of the Texas Penal Code. The reason for this confidentiality protection is that the experience of many hundreds of years has proved that the interests of the client are best served when the client's attorneys are fully informed of *all* the facts well in advance of any possible contest. Your candor will assist us tremendously in representing you; it is doubly protected by law and the disciplinary rules and is very much encouraged. You can rely on us to be candid with you, as well.

We will do our best to keep you advised on how the case seems to be progressing, based on information we receive from the court, from the other side, and from you. We will send you copies of all pleadings for your information.

We will do everything possible to expedite the appropriate disposition of your case consistent with the time limitations imposed by law and the protection of your present and future legal interests. There may well be some difficult decisions for you to make. It is an attorney's responsibility to advise you on the legal ramifications of the decisions, but *you* must make the actual decisions.

We have agreed that your failure to make payment on receipt of billing or to otherwise perform your obligations under our agreement will be grounds for the firm's withdrawal from your representation. We have agreed that these provisions are fair because our effort, to be successful, must be the product of our teamwork.

If the court grants this firm a judgment against your spouse for your attorney's fees, it will still be your responsibility to pay the firm in accordance with the terms of this letter contract. The firm will then give your account credit for sums collected from your spouse if, as, and when the sums are paid, less reasonable costs (including attorney's fees) incurred by the firm in collecting them. If your account is current, it may be possible, if you then prefer, for the firm to assign to you any such judgment for your own collection against your spouse.

It is our experience that the tax considerations of our clients are sophisticated and often complex. Therefore, although tax considerations are addressed in each case, this firm's services do not include tax advice, and you will be expected to obtain independent tax advice about any division or award of property in this case before entering into any settlement agreement.

If you receive real estate as part of the division of assets in this case, you have the right to have a title policy issued with regard to each such conveyance or to have a title search or abstract letter issued. This office does not issue title policies, nor do we prepare abstracts or conduct title searches related to the

conveyance of real estate or to secure obligations created in divorce documents. If you desire that we prepare any real estate documents, we rely solely on information you provide us about the ownership of property, legal descriptions, existing liens, encumbrances, or other restrictions that may affect the conveyance of title. If you wish to have a title policy issued or a title search performed or abstract prepared, please advise this office in writing and we will be happy to refer this aspect of the closing documents relating to your case to a title company. You may also consult with a title company of your choice or an abstract attorney. You will need to arrange the payment of their charges directly with the title company. Please advise this office, in writing, if you desire to have a title search, abstract letter, or title policy issued or any other research done with regard to the real estate closing documents that may need to be prepared to conclude your case.

Qualified domestic relations orders (QDROs) are orders required under federal law to effectuate a division of some retirement plans. Drafting QDROs requires special expertise and experience. We do not draft QDROs. If your case involves a QDRO, we will suggest persons we believe have these special skills. You will be expected to make a separate arrangement with the specialist and pay the fees associated with the drafting of any QDROs.

This firm reserves the right and privilege to destroy a client's file [years (not less than five)] years from the date the file is closed.

The Texas Supreme Court and Courts of Appeals have adopted the Texas Lawyer's Creed as a mandate to the legal profession in Texas. The creed requires our firm to advise you of the contents of the creed when undertaking to represent you. A copy of the Texas Lawyer's Creed is attached to this employment agreement for your review.

The Texas Government Code requires that you be advised that the State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar will provide you with information if you call 1-800-932-1900.

You hereby agree that, if you should at any time become displeased or dissatisfied with any aspect whatsoever of this firm's legal representation, or if you should at any time have any serious question concerning that representation, you will *immediately notify* this firm of that fact in writing by *certified mail, return receipt requested*.

You agree that this firm reserves the right to terminate the attorney-client relationship and withdraw from your further representation for any of the following reasons:

1. your failure to cooperate and comply fully with any reasonable request of this firm's about your case;

2. your engaging in conduct or making statements that render it unreasonably difficult for this firm to carry out the purposes of its employment;
3. your insisting that this firm engage in conduct that is contrary to our judgment and advice;
4. your failure to pay fees and costs as provided in this agreement.

Include the following if there will be an arrangement for division of the fee covered by the agreement with an attorney who is not in the firm.

The fee specified in this agreement will be divided with [**name**], an attorney who is not in this firm. The fee will be divided [in proportion to the professional services performed by each attorney/between attorneys who assume joint responsibility for the representation]. You have consented to all the terms of the arrangement, particularly (a) the identity of the attorneys or firms who will participate in the fee-sharing agreement, (b) the manner in which the fee will be divided as specified above, and (c) [the share of the fee that each attorney or firm will receive/the basis on which the division will be made].

Continue with the following.

Privacy Policy Notice: In the course of representing our clients, we receive all manner of significant personal financial information from them. As a client of the firm, you are advised that all information we receive from you

will be held in confidence and not released to outside persons, except as agreed to by you or as required under applicable law. We retain records relating to professional services that we provide so as to assist our clients with their professional needs and, in some cases, to comply with professional guidelines. To guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards. In this connection, you understand that, for convenience, from time to time we may use the Internet or other electronic mail system without encryption to communicate with you or others and that there are related privacy and security issues with this means of communication. Nevertheless, you have agreed that we may use Internet or electronic mail as an economical, convenient form of communication.

Privacy Policy Regarding Social Security Numbers: Social Security numbers will be divulged only when necessary during the course and within the scope of our employment.

- Social Security numbers are collected by the firm from various sources, including income tax returns as well as the client.
- Social Security numbers are used to identify parties for a number of purposes, including determination of wages, preparation of orders to withhold wages for child support and reports filed with the state of Texas, and obtaining information about retirement benefits.

- All information received from our clients is confidential, particularly Social Security numbers. Social Security numbers are not divulged by the firm unless authorized by the client or required in the course of representation.
- Only employees of the firm who have a need to know will have access to this personal information.

Every step is taken to protect the client's privacy. This information is kept secure within the office of the firm in file folders and file drawers, until the file information is retired and the file is removed to a locked, off-site storage facility. Client information will eventually be shredded.

This firm is privileged to have this opportunity to be of service to you. We appreciate your trust and confidence, as well as your business. If you completely approve this agreement, please date and sign the original of this letter where indicated, return it to this office, and retain the enclosed copy for your file. On receipt of this signed agreement and receipt of the requisite amounts, we will begin work on your case.

Sincerely yours,

[Name of law firm]

By _____
[Name of attorney]

ACCEPTED AND AGREED TO ON

[Name of client]

The Texas Lawyer's Creed

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

Our Legal System

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

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

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

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

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

Lawyer to Client

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

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

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

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

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

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

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

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

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

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

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

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

Lawyer to Lawyer

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

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

Lawyer and Judge

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and the administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility and will not manifest by words or conduct bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Form 5

This form is provided only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the form to the specific facts and circumstances of the particular case.

Fee Agreement for Initial Consultation

In your initial consultation, you and the attorney will identify the type of case you have, the key issues, and the options you may have under law. You and the attorney will discuss whether the [attorney/firm] will represent you, what the representation could involve, and the amount of the initial deposit that would be required.

The [attorney/firm] charges \$[amount] for an initial consultation. You may pay [**select as applicable:** in cash/by check/with a [**specify**] credit card]. You must sign this agreement and pay the initial consultation fee to the receptionist before receiving any professional services.

At the conclusion of the initial consultation, the attorney can provide you with a contract for legal services and with client information questionnaires. If you or the [attorney/firm] fail to sign this contract for legal services, an attorney-client relationship between you and the [attorney/firm] will not extend beyond the initial consultation. However, any communications you make to the attorney during the initial consultation are protected by the attorney-client privilege.

Privacy Policy Notice: Attorneys are bound by stringent professional standards of confidentiality. Therefore, we have always protected our clients' right to privacy. In the course of representing our clients, we receive all manner of significant personal financial information from them. If you become a client of the [attorney/firm], you are advised that all information we receive from you will be held in confidence and not released to outside persons, except as agreed to by you or as required under applicable law. We retain records relating to professional services that we provide so as to assist our clients with their professional needs and, in some cases, to comply with professional guidelines. To guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

Your printed name

Your Signature

Today's date: _____

Form 6

This form is provided courtesy of the Texas Young Lawyers Association.

General Client Intake Form

The purpose of an initial consultation is for the attorney to advise you, the *prospective* client what if anything, may be done for you, and what the minimum fee therefore will be. *The purpose is not to render a definitive legal opinion* as it may be impossible to fully assess a matter within the time frame allotted for a consultation or with the (information or documents) that you may be able to provide at the initial consultation.

One of the following three outcomes is possible following your consultation:

- A. You and the attorney mutually agree to the terms of representation (After a separate document called an agreement for representation is signed a copy will be provided to you).
- B. The attorney declines representation.
- C. You decide not to use the services of the attorney.

Note: The following questions will help us to understand the reason for your visit today. Your responses are protected by attorney-client privilege and will be held in strict confidence.

Name _____
Last First Middle or Maiden

Address _____
Number Street City State Zip

Phone (____) _____

If you are seeking this consultation on behalf of a business or organization,
please fill out with its information:

Name(s) _____

Prior Name(s) _____

Address _____
Number Street City State Zip

Type of Business or Organization _____

Briefly explain what you may need advice about or assistance with today:

Are there any parties involved? (Examples: a friend, an employer, a neighbor,
signor of a contract, etc. This should include parties on either side of your
issue.)

Party _____ Relationship _____

Party _____ Relationship _____

Party _____ Relationship _____

On the lines below, list the documents (papers) that you think may help us to understand the issues.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

(NOTE: Any documents you supply that are important to your matter will be photocopied, with your permission, and your originals returned to you at the conclusion of the initial interview.)

Ideally, if things turn out precisely the way you want, what would the outcome be?

Knowing that there are no guarantees, what can you accept?

Please classify your urgency in concluding this matter? (Check one)

- Critical – Personal safety or continuation of business depends on it.
- Very important – severe hardship, personal or financial inconvenience if matter is not resolved quickly.
- Important – Matter interferes with business or personal financial stability.
- Needs to be done, but no immediate hardship in the interim.
- Just thought I’d see if it was worth pursuing, but I’m not counting on anything.
- Just wanted to know what my rights are. I’ll then let you know after I think about it.

If the matter involves payment of money you feel you are owed, how long can you wait before not getting paid? _____
 (Days, Weeks, Months, Years)

Are we the first attorneys you have consulted regarding this matter?

- Yes No

If No – Why didn’t you hire the services of the other attorneys?

Have you ever been represented by an attorney before? Yes No

If Yes – Please state the circumstances

How will you pay for your attorney's fees in this matter?

Check today Cash today Contingency Fee On Account

Credit Card Credit Card No. _____ Expr. Date _____

Marital Status: Married Single Divorced Widowed Separated

Drivers License No. (last 3 digits) _____

Social Security No. (last 4 digits) _____

Are you known by any other names? Yes No

If yes, name(s) _____

(A fictitious name, a nickname, a former name, your maiden name etc.)

Where are you employed? _____

May we contact you there? Yes No

If yes, Phone No. () _____

If your mail is returned as undeliverable or telephone service terminated, please provide the name of someone (friend or relative) you believe will always know how to contact you.

Name _____ Relationship _____

Address _____ Phone No. () _____

_____ State & Zip _____

How did you learn of our office A friend Yellow Pages Bar referral
 Our Web page Former client Other _____

PLEASE READ CAREFULLY & Sign Below

Following your initial interview, if you agree to hire the attorney and the attorney agrees to represent you, you will both sign an agreement for representation. The agreement for representation will set forth the terms and conditions of representation.

If the attorney is willing to represent you and you decide not to sign an agreement of representation today, you are strongly urged to schedule a second appointment with the attorney at the earliest possible time or to immediately consult with other legal counsel to protect your rights.

NOTICE: This office does not represent you with regard to the matters set forth by you herein in this information sheet or discussed during your consultation unless and until, both you and the attorney execute a written agreement for representation.

If the attorney does not agree to represent you, this includes not representing you with regard to the matter set forth by you on this information sheet, or any other matters you may discuss with the attorney during your consultation. If your legal problem(s) involve a potential lawsuit, it is important that you realize a lawsuit must be filed within a certain period of time called a statute of limitations. Therefore, the attorney strongly urges you to immediately consult

with another attorney to protect your rights. The attorney's decision not to represent you should not be taken by you as an expression regarding the merits of your case.

Your signature acknowledges only that you received a copy of this completed information sheet and does not mean you have hired the attorney.

SIGNATURE _____ DATE ____ / ____ / ____

This portion to be completed by the attorney

- Will represent (see new case memo and agreement for representation)
- Will investigate and report (schedule a follow-up conference for ____ days)
- Representation declined—letter of declination will be sent.
- Potential Client will think about it and get back with us—no action to be taken, and party was so informed.
- Potential Client declined representation at this time.

Interviewed by _____ this ____ day of _____

NOTES:

Form 7

Client Information Sheet—Collections

File Information

Case file number: _____

Responsible attorney: _____

Forwarder Information (if applicable)

Name of forwarder: _____

Mailing address: _____

E-mail: _____

Phone: _____

Fax: _____

Forwarder's file number: _____

Creditor-Client Information

Name of creditor-client: _____

Contact person: _____

Mailing address: _____

E-mail: _____

Phone: _____

Fax: _____

Client file number: _____

Nature of Fee Arrangement: _____

Debtor Information

Name of debtor: _____

Nature of debtor (individual, corporation, etc.): _____

Business address: _____

E-mail: _____

Phone: _____

Fax: _____

Residence address: _____

Phone: _____

Debtor's attorney: _____

Mailing address: _____

E-mail: _____

Phone: _____

Fax: _____

Remarks: _____

Date Information Regarding Claim

Date claim received in law office: _____

Date cause of action accrued (for limitations): _____

Date limitations will run: _____

Nature of Claim

Describe generally: _____

Is claim secured? Yes/No

If so, describe collateral and nature of lien: _____

Amount Owed

Original principal amount: \$ _____

Principal balance as of _____ : \$ _____

Interest or finance charge as of _____ : \$ _____

Interest rate: _____

Demand Letter

Date of demand letter: _____

Date received by debtor: _____

Suit Information

Date suit filed: _____

Date citation served: _____

Answer day: _____

Style of case: _____

Cause number: _____

Court designation: _____

Address of clerk: _____

If the case is transferred on change of venue, change information above as appropriate.

Judgment Information

Date judgment signed: _____

Lien foreclosed? Yes/No

Type of judgment (default, summary, trial, etc.): _____

Principal amount of judgment: \$ _____

Costs: \$ _____

Attorney's fees: \$ _____

Prejudgment interest: \$ _____

Other: \$ _____

Total: \$ _____

Interest rate on judgment: _____

Abstract and Execution

Date abstract filed: _____

Date execution issued: _____

Writ sent to: _____

Remarks

Form 8

This form is provided courtesy of the Texas Young Lawyers Association.

Client Questionnaire—Estate Planning

I. PERSONAL AND EMPLOYMENT INFORMATION

1. **Personal**

Husband's Name: _____
(First) (Middle) (Last)

Wife's Name: _____
(First) (Middle) (Last)

Address: _____

Home Phone: _____
Husband Wife

Cell Phone: _____

E-mail Address: _____

Date of Birth: _____

Social Security No.: _____

Driver's License No.: _____

U.S. Citizen: Yes/No Yes/No

If No, Country of Citizenship? _____

Marriage Date: _____ Location: _____

2. EMPLOYMENT

Husband's Employer: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

Wife's Employer: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

II. CHILDREN

(If any child listed below is not a child of your present marriage, please place an asterisk beside that child's name and furnish any additional information on the reverse side of this sheet. Please indicate if any of your children are adopted. Please use the back of the sheet if more space is necessary.)

First Child

Second Child

Name: _____

Address: _____

Telephone: _____

Social Security No. _____

Date of Birth: _____

Spouse: _____

Children: _____

Names & Dates of Birth: _____

Third Child

Fourth Child

Name: _____

Address: _____

Telephone: _____

Social Security No.: _____

Date of Birth: _____

Spouse: _____

Children: _____

Names & Dates of Birth: _____

Fifth Child

Sixth Child

Name: _____

Address: _____

Telephone: _____

Social Security No.: _____

Date of Birth: _____

Spouse: _____

Children: _____

Names & Dates of Birth: _____

III. PROFESSIONAL ADVISORS

Accountant

Insurance Agent

Name: _____

Firm: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Financial Planner

Bank Officer

Name: _____

Firm: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Broker

Physician

Name: _____

Firm: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

IV. FIDUCIARY APPOINTMENTS

A. EXECUTORS:

Executor: This person is appointed by you to carry out the directions and requests in your will, and to dispose of your property according to your testamentary provisions. This will normally be your spouse or a close family member. Your executor has the responsibility to file your will for probate; collect assets and pay all claims, expenses and taxes; distribute your property to your heirs or trustees; and in general wind up your affairs. You may also appoint coexecutors or cotrustees; if you have a large estate or will leave substantial sums in trust, you may wish to appoint a bank or trust company as coexecutor or cotrustee.

Husband's Will

Wife's Will

1. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

2. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

3. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

B. TRUSTEES:

Trustee: This is the person you designate to administer a trust, normally the same person as your executor. Your trustee will have responsibility for the long-term management of property held in trust for beneficiaries designated by you. In a strict sense, a trustee is one who holds the legal title to property for the benefit of another, while, in a broad sense, the term is sometimes applied to anyone standing in a fiduciary or confidential relation to another, such as agent, attorney, bailee, etc.

Same as Executors

Husband's Will

Wife's Will

1. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

2. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

3. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

C. GUARDIAN(S) OF MINOR CHILDREN:

1. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

2. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

3. Name: _____

Address: _____

Phone: _____

Social Security No.: _____

Relationship: _____

Compensation

1. Executor Yes _____ No _____

If Yes, conditions: _____

2. Trustee Yes _____ No _____

If Yes, conditions: _____

V. ASSETS AND LIABILITIES

A. Assets

Community Husband's Separate Wife's Separate

1. Personal Effects _____

2. Home _____

3. Other Real Estate _____

4. Cash, Savings, CDs _____

5. Securities _____

6. Business Interests _____

7. Other Assets _____

TOTAL _____

B. Liabilities

	<u>Community</u>	<u>Husband's Separate</u>	<u>Wife's Separate</u>
1. Current Debts	_____	_____	_____
2. Loans	_____	_____	_____
3. Mortgages	_____	_____	_____
4. Income Taxes	_____	_____	_____
5. Other Debts	_____	_____	_____
TOTAL	_____	_____	_____
NET TOTAL:	_____	_____	_____

Estimated Combined Present Net Worth: _____

Estimated Total Value of Estate: _____

(Please attach any recent financial statements, if available, and copies of legal descriptions of any real property including your home.)

VI. LIFE INSURANCE

INSURED	COMPANY	POLICY (TYPE & NO.)	FACE AMOUNT	CASH VALUE	LOAN BALANCE	OWNER H W C M T O	BENEFICIARY C H E S T C O
Husband							
Wife							
Other							
TOTAL							

H = Husband W = Wife
 T = Trust O = Other
 E = Estate C = Child
 S = Spouse CH = Charity
 CM = Community

Insurance Agent: _____

Date of Valuation: _____

VII. RETIREMENT BENEFITS

PARTICIPANT	EMPLOYER	PLAN TYPE	ACCRUED BENEFIT	CASH VALUE	BENEFICIARY C H E S T C O
Husband					
Wife					
Other					
TOTAL					

T = Trust O = Other

E = Estate C = Child

S = Spouse CH = Charity

VIII. ESTIMATED INCOME FOR CURRENT YEAR

	<u>Husband</u>	<u>Wife</u>
Base Salary	_____	
Bonus & Other Compensation	_____	
Dividends & Interest	_____	
Tax-Exempt Income	_____	
Capital Gains or Losses	_____	
Other Income	_____	
TOTAL	_____	

IX. DISPOSITION OF PROPERTY

PRIMARY ESTATE BENEFICIARY:

- Spouse
- Other _____

ALTERNATE BENEFICIARIES: *(In the event the Primary Beneficiary predeceases you)*

- Heirs at law (determined by Texas law)
- Other _____

CONTINGENT BENEFICIARIES: *(In the event you are not survived by any named beneficiary)*

- Descendents
- Heirs at law (determined by Texas law)
- Charity
- Other _____

SPECIFIC BEQUESTS:

(We recommend that bequests of smaller items of personal property not be included in your will. We will provide you with a form memorandum regarding personal belongings to make your wishes known regarding smaller personal items. Also keep in mind that, in general, you each own a one-half community property interest in everything acquired during marriage in Texas; thus the will of the first spouse to die can only bequeath the one-half community interest to persons other than the spouse.)

Individual's Name

Description of Property Bequeathed

_____	_____
_____	_____
_____	_____
_____	_____

X. OTHER

1. What are your estate planning objectives? (Help children, avoid taxes, avoid probate, make charitable gifts, etc.) _____

2. Is there any reason to treat your children (or grandchildren) other than equally? _____

3. List all gifts greater than \$12,000 given to a single individual?

<u>Date of Gift</u>	<u>Donor</u>	<u>Donee</u>	<u>Value</u>	<u>Reason</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4. Have you or your spouse ever filed a gift tax return? _____

5. Are you or your spouse expecting to receive an inheritance from a parent or relative in the future? _____

6. Have you signed any prenuptial or postnuptial agreements? _____

7. Describe any prior marriages. _____

8. Do you or your spouse own any real property located outside the state of Texas? _____
9. Did you or your spouse acquire any property while a resident of any state other than Texas? _____

XI. ANCILLARY ESTATE PLANNING INSTRUMENTS

Agent: a power of attorney confers on an agent the authority to perform certain specified acts on behalf of a principal. Depending on the acts to be performed, this appointment will normally be your spouse, followed by a close family member or personal friend.

Guardian: a guardian is a person lawfully invested with the power and charged with the duty of taking care of the person and managing the property and rights of another person who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs. A guardian is also a person who legally has the care and management of the person, the estate, or both of a child during its minority.

A. STATUTORY DURABLE POWER OF ATTORNEY

The Texas legislature adopted the Uniform Durable Power of Attorney Act in 1993. The act provides a statutory form by which you may designate an agent, or attorney-in-fact, who will have the authority to act on your behalf with respect to your financial affairs and property. In the event you become dis-

abled or otherwise unable to act for yourself, your agent will be able to transfer property, convey title, etc. The document affords protection to, and is often required by, third parties such as banks and title companies.

1. HUSBAND'S AGENT:

Primary: Name: _____
Address: _____
Phone: _____
Relationship: _____

Alternate: Name: _____
Address: _____
Phone: _____
Relationship: _____

2. WIFE'S AGENT:

Primary: Name: _____
Address: _____
Phone: _____
Relationship: _____

Alternate: Name: _____
Address: _____

Phone: _____

Relationship: _____

B. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

This document grants your agent the power to make health care decisions for you if you are unable to do so. Your agent will have the authority to make a broad range of decisions concerning your medical treatment but only if your physician has certified that you lack the capacity to make such decisions yourself.

Same as Statutory Durable Power of Attorney

1. HUSBAND’S AGENT:

Primary: Name: _____

Address: _____

Phone: _____

Relationship: _____

Alternate: Name: _____

Address: _____

Phone: _____

Relationship: _____

2. WIFE'S AGENT:

Primary: Name: _____

Address: _____

Phone: _____

Relationship: _____

Alternate: Name: _____

Address: _____

Phone: _____

Relationship: _____

Form 9

This form is provided courtesy of the Texas Young Lawyers Association.

Entity Information Form

I. PRELIMINARY INFORMATION

Client's name _____

Contact person _____

Business or practice: _____

Type: _____

Purpose: _____

Commencement Date: _____

Jurisdiction of Formation: _____

II. NAME OF [entity type]

Preferred Name: _____

Second choice: _____

Third choice: _____

Date checked for availability: _____

Application for reservation of entity name required: Yes _____ No _____

Assumed name certificate: Yes ____ No ____

If yes, assumed name to be used _____

Withdraw assumed name of unincorporated business: Yes ____

No ____

Send notice to creditors for an ongoing business: Yes ____ No ____

Publish notice in newspaper for organization of an ongoing business:

Yes ____ No ____

Counties in which to file assumed name _____

File assumed name with secretary of state's office: Yes ____ No ____

III. OTHER FILING INFORMATION

Organizer's name _____

Address _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Name and address of registered agent _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Will entity conduct business or practice in other jurisdictions?

Yes ____ No ____

If yes, name of states and counties: _____

Names under which business or practice will be conducted:

Period of duration: Perpetual _____ Other _____

Entity's purposes:

General purpose clause: _____

Specific purpose clause: _____

Date filed with secretary of state: _____

IV. MEMBERS OF LIMITED LIABILITY COMPANY

Memberships Interests

Classes of interests: Yes ____ No ____

If yes, other rights and preferences: _____

Original members:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Commitment: _____

Initial Sharing Ratio: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Commitment: _____

Initial Sharing Ratio: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Commitment: _____

Initial Sharing Ratio: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Commitment: _____

Initial Sharing Ratio: _____

V. MANAGEMENT STRUCTURE

Will the company's management structure include managers?

Yes ____ No ____

Number of managers: _____

Manager's name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Manager's name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Term of managers: _____

Staggered terms (if applicable): _____

Qualifications for serving: _____

Compensation: _____

Quorum requirement for managers' meetings: _____

VI. DIRECTORS OF CORPORATION

Original Directors:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

VII. MANAGEMENT STRUCTURE

Term of directors: _____

Staggered terms (if applicable): _____

Qualifications for serving: _____

Compensation: _____

Quorum requirements for directors' meetings: _____

Officers: _____

VIII. FORMATION

Number of authorized shares of common stock: _____

Par value: \$ _____

Will preferred stock be authorized? Yes _____
If Yes, No. of Shares: _____
No _____

Directors must be shareholders? Yes _____ No _____

Restrictions on corporate purposes and powers? Yes _____ No _____

Consent of shareholders required for disposition or pledge of assets? Yes _____ No _____

Power to amend bylaws reserved solely to shareholders? Yes _____ No _____

Limited liability for directors? Yes _____ No _____

Transactions permitted with interested directors, officers, shareholders? Yes _____ No _____

Indemnification of directors and others? Yes _____ No _____

Pre-emptive rights? Yes _____ No _____

Cumulative voting? Yes _____ No _____

Shareholders permitted to act by less than unanimous written consent? Yes _____ No _____

IX. SHARE TRANSFER RESTRICTIONS

Right of first refusal? Yes _____
If Yes, No. of Shares: _____
No _____

Right of first offer? Yes _____ No _____

Buy-sell agreement? Yes _____ No _____

Involuntary disposition/repurchase
by corporation (death, divorce)? Yes _____ No _____

X. PARTNERS—GENERAL PARTNERSHIP

Partner Information:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

XI. FORMATION

Is the partnership a registered limited liability partnership? Yes ____ No ____

Partners subject to assessments for additional operating contributions? Yes ____ No ____

Partners allowed to make voluntary additional capital contributions? Yes ____ No ____

Partnership required to make distributions for payment of taxes on income allocable to partners? Yes ____ No ____

Accounting method: Cash _____ Accrual _____

Frequency of accounting reports: Annually _____
Quarterly _____
Monthly _____

Income distribution at least: Annually _____
Quarterly _____
Monthly _____

XII. PARTNERS – LIMITED PARTNERSHIP

Managing Partner Information:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

General Partner Information:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Limited Partner Information:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Initial Capital Contribution: _____

Percentage Partnership Interest: _____

XIII. FORMATION

Partners subject to assessments for additional operating contributions? Yes _____ No _____

Partners allowed to make voluntary additional capital contributions? Yes _____ No _____

Partnership required to make distributions for payment of taxes on income allocable to partners? Yes _____ No _____

Consent required for admission of new limited partner? General partner(s) _____ Limited partners _____

Accounting method: Cash _____ Accrual _____

Frequency of accounting reports: Annually _____ Quarterly _____ Monthly _____

Income distribution at least: Annually _____ Quarterly _____ Monthly _____

XIV. MEMBERS OF PROFESSIONAL ASSOCIATION

Original Members:

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Executive Committee Member: Yes ____ No ____

Number of shares purchased: ____ Consideration: ____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Executive Committee Member: Yes ____ No ____

Number of shares purchased: ____ Consideration: ____

Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Executive Committee Member: Yes ____ No ____

Number of shares purchased: ____ Consideration: ____

Name: _____

Address: _____

 Phone: (____) _____ Fax: (____) _____

E-mail: _____

Executive Committee Member: Yes ____ No ____

Number of shares purchased: ____ Consideration: ____

XV. MANAGEMENT STRUCTURE

Term of directors: _____

Staggered terms, if desired _____

Qualifications for serving _____

Compensation: _____

Quorum requirements for directors' meetings: _____

Officers: _____

XVI. FORMATION

Number of shares being issued: _____

Par value: \$ _____

Consent of members required for
 disposition or pledge of assets? Yes ____ No ____

Power to amend bylaws reserved
 solely to members? Yes ____ No ____

Limited liability for directors or executive committee members? Yes ____ No ____

Transactions permitted with interested directors, executive committee members or others? Yes ____ No ____

Indemnification of directors or executive committee members and others? Yes ____ No ____

Pre-emptive rights for members? Yes ____ No ____

Cumulative voting for members? Yes ____ No ____

Members permitted to act by less than unanimous written consent? Yes ____ No ____

XVII. ORGANIZATIONAL MEETING

Date: _____ Time: _____

Place: _____

Name of the chairman of the organizational meeting: _____

Name of the secretary of the meeting: _____

Date governing documents approved: _____

Officers elected: _____

President: _____

Vice-President: _____

Secretary: _____

Treasurer: _____

Other: _____

Order corporate book: Yes _____ No _____

Date Ordered: _____

Cost: \$ _____

XVIII. OPERATION

Principal place of business: _____

Business location: Own _____ Lease _____ Assignment of
Lease _____

Preparation of lease: _____

Name of landlord: _____

XIX. FINANCE STRUCTURE

Funding obtained through loans: _____

Name of accountant: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Name of insurance agent: _____

Address: _____

Phone: (____)_____ Fax: (____)_____

E-mail: _____

Name of financial consultant: _____

Address: _____

Phone: (____)_____ Fax: (____)_____

E-mail: _____

Name and address where bank account will be located:

Name: _____

Address: _____

Phone: (____)_____ Fax: (____)_____

E-mail: _____

Bank officer: _____

Account No.: _____

Banking resolutions to be prepared or use bank standard form:

Yes ____ No ____

Name and office of persons authorized to draw checks or make loans:

Fiscal or calendar year: _____

XX. BENEFITS PACKAGE

Health and accident plan	Yes ____	No ____
Buy-sell agreements	Yes ____	No ____
Employment or management agreement	Yes ____	No ____
Compensation agreement	Yes ____	No ____
Expense agreement	Yes ____	No ____
Restrictive covenant agreement	Yes ____	No ____
Retirement plan requested	Yes ____	No ____
Wills, estate plan or financial planning	Yes ____	No ____

XXI. PRIOR LEGAL REPRESENTATION

Names of previous attorneys: _____

Addresses: _____

Phone: (____) _____ Fax: (____) _____

E-mail: _____

Matters handled by that attorney: _____

XXII. FEES

Fee: \$ _____

Special handling fee requested: \$ _____

Regular mail: _____ Other: _____

XXIII. BUSINESS PLAN

XXIV. NOTES

Form 10

This questionnaire addresses the divorce cause of action. The schedule of marital property, form 12, should also be completed to address the division of property. If a suit affecting the parent-child relationship is part of the divorce, include the questions regarding the children that are contained in the questionnaire in form 11.

Client Name: _____

Client Questionnaire—Divorce

Please fill out this questionnaire and return it as soon as possible. It is important that you answer each question fully. It is imperative that you be candid!

You should answer all questions relevant to your case. If a question does not apply to your particular situation, please indicate by marking the question "N/A." If the answer to any question requires more space than has been provided on the form, please complete your answer on a separate sheet. Refer to the question number to which your answer applies and attach your answer to this questionnaire.

Your responses to these questions will help to organize your case and will save you money on attorney's fees in trying to gather and assemble information after the case is in progress. Since your answers are being made to an attorney, you are assured of confidentiality and are protected by the attorney-client privilege.

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sonal information. Every step is taken to protect the client's privacy. This information is kept secure within the office of the firm in file folders and file drawers, until the file information is retired and the file is removed to a locked, off-site storage facility. Client information will eventually be shredded.

Information Requested

About you:

1. Please give the following information.

Full name: _____

Date of birth: _____ Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Maiden name, if applicable: _____

2. Where are you living now, and what is your phone number?

Address: _____

City: _____ County: _____

State: _____

Zip: _____ Home phone: _____

3. Who else lives in your household?

4. At what address do you wish to receive mail from this office?

5. How do you prefer that we contact you?

Address: _____

Phone: _____ Fax: _____

Pager: _____ Mobile phone: _____

E-mail: _____

(e-mail communications may not be confidential)

6. Who referred you to this office?

7. Have you consulted or retained any other attorneys on this matter before coming to this office? _____

If so, please state who and when: _____

8. Please give the following information concerning your employment.

Employer: _____

Job title: _____

Street address: _____

City, state, zip: _____

Phone: _____ May we call you at work?

E-mail: _____ May we e-mail you at
work? _____

Monthly gross salary: _____

Annual gross salary: _____

Length of employment: _____

Education/training: _____

About your spouse:

9. Please give the following information.

Full name: _____

Date of birth: _____ Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Maiden name, if applicable: _____

10. Where is your spouse living now, and what is his or her phone number
and e-mail address? _____

Address: _____

City: _____ County: _____

State: _____

Zip: _____ Home phone: _____

Home e-mail: _____

11. Who else lives in your spouse's household?

12. Please give the following information concerning your spouse's employment.

Employer: _____

Job title: _____

Street address: _____

City, state, zip: _____

Phone: _____ Fax: _____

E-mail: _____

Monthly gross salary: _____

Annual gross salary: _____

Length of employment: _____

Education/training: _____

About your marriage and separation:

13. Please give the date and place of your marriage.

Date: _____ Place: _____

Are you now separated from your spouse? _____

If so, please state date of separation: _____

14. Have you seen a marriage counselor?

If so, please state name: _____

15. Have you and your spouse attempted reconciliation?

If not, would you like to attempt reconciliation? _____

16. What is your religious preference?

17. What is your spouse's religious preference?

18. Check as appropriate if your marital difficulties involve any of the following:

_____ drugs/alcohol

_____ financial dispute

_____ emotional abuse

_____ your infidelity

_____ confinement in
mental institution
for at least three years

_____ noncohabitation
for at least three years

____ physical violence ____ your spouse's infidelity

____ religion

____ other: _____

19. How long have you lived in Texas?

How long have you lived in the county where you now reside? _____

20. Have you or your spouse ever filed for divorce?

If so, when and where? _____

21. Does your spouse have an attorney?

If so, who? _____

22. Have you ever been married before?

If so, how many times? _____

23. Do you or your spouse have any other children for whom a duty of support is owed? _____

If so, please give the following information for each such child.

Name: _____

Sex (M/F): _____ Date of birth: _____

Age: _____

Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Disability, if any: _____

24. Where and with whom do these children live?

25. Do you pay/receive child support? _____

If so, how much? \$ _____ per _____

26. Does your spouse pay/receive child support?

If so, how much? \$ _____ per _____

27. If a divorce is granted, should the wife's maiden name be restored?

If so, what name should be used? _____

28. Have you or your spouse ever sought or been subject to a protective order? _____

29. Have you or your spouse ever contacted or been contacted by the Office of the Attorney General? _____

30. Have you or your spouse ever contacted or been contacted by child protective services? _____

31. Have you or your spouse ever been arrested for or convicted of a crime other than receiving a traffic ticket? _____

About weapons and ammunition:

32. Are there firearms or ammunition in your possession or subject to your control? _____

If so, please describe the items and state their location. _____

33. Are there firearms or ammunition in your spouse's possession or subject to your spouse's control? _____

If so, please describe the items and state their location. _____

If a suit affecting the parent-child relationship is part of the divorce action, see form 11 for relevant questions to add to this questionnaire.

Form 11

This questionnaire may be used in a divorce case with children or in a suit affecting the parent-child relationship that is independent of a divorce.

Client Name: _____

Client Questionnaire—Parent-Child Relationship Suit

Please fill out this questionnaire and return it as soon as possible. It is important that you answer each question fully. It is imperative that you be candid!

You should answer all questions relevant to your case. If a question does not apply to your particular situation, please indicate by marking the question “N/A.” If the answer to any question requires more space than has been provided on the form, please complete your answer on a separate sheet. Refer to the question number to which your answer applies and attach your answer to this questionnaire.

Your responses to these questions will help to organize your case and will save you money on attorney’s fees in trying to gather and assemble information after the case is in progress. Since your answers are being made to an attorney, you are assured of confidentiality and are protected by the attorney-client privilege.

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Attorney/Client-Privileged Information

sonal information. Every step is taken to protect the client's privacy. This information is kept secure within the office of the firm in file folders and file drawers, until the file information is retired and the file is removed to a locked, off-site storage facility. Client information will eventually be shredded.

Information Requested

About your children:

1. Please give the following information for each child.

Name: _____

Sex (M/F): _____ Date of birth: _____

Age: _____

Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Disability, if any: _____

Name: _____

Sex (M/F): _____ Date of birth: _____

Age: _____

Attorney/Client-Privileged Information

Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Disability, if any: _____

Name: _____

Sex (M/F): _____ Date of birth: _____

Age: _____

Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Disability, if any: _____

2. Is private health insurance in effect for the children? _____

If so, please give the following information.

Name of insurance company: _____

Policy number: _____

Party responsible for premium: _____

Attorney/Client-Privileged Information

Monthly cost of premium: _____

Is the insurance coverage provided through a parent's employment?

If so, which parent? _____

3. If private health insurance is not in effect for the children, please answer the following questions.

Are the children receiving Medicaid benefits under chapter 32, Human Resources Code? _____

Are the children receiving health benefits coverage under the Children's Health Insurance Program under chapter 62, Health and Safety Code? _____

If so, what is the cost of the premium? _____

Does the mother have access to private health insurance at reasonable cost to her? _____

Does the father have access to private health insurance at reasonable cost to him? _____

Has anyone applied for Medicaid benefits for the children or for coverage for the children under the Children's Health Insurance Program?

Attorney/Client-Privileged Information

If so, who applied? _____

What is the status of the application? _____

4. Will there be an agreement on custody of the children? _____

Who will the children live with primarily? _____

5. Where and with whom are the children living now? _____

6. List all property (other than furniture and clothing) owned by the children: _____

Jurisdictional information regarding children (answer questions 7.–11.

only if a party or potential party resides outside Texas):

7. Please provide a list of the places where the children have lived during the past five years and the names and present addresses of the persons with whom the children have lived during that period. _____

Attorney/Client-Privileged Information

8. If you have participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the children, identify the court, the case number, and the date of the child custody determination, if any. _____

9. If you know of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, involving you, your (ex-)spouse, or the children, identify the court, the case number, and the nature of the proceeding.

10. Please provide the name and address of any person not a party to the current proceeding who has physical custody of the children or claims rights of legal custody or physical custody of, or visitation with, the children. _____

Attorney/Client-Privileged Information

11. If you believe that the health, safety, or liberty of you or the children would be jeopardized by disclosure of your address or that of the children, please disclose the reason for that belief. _____

12. Please give the following information.

Full name: _____

Date of birth: _____ Place of birth: _____

Social Security number: _____

Driver's license number and state: _____

Maiden name, if applicable: _____

13. Where is the other parent living now, and what is his or her phone number and e-mail address?

Address: _____

City: _____ County: _____

State: _____

Zip: _____ Home phone: _____

Attorney/Client-Privileged Information

Home e-mail: _____

14. Who else lives in the other parent's household? _____

15. Please give the following information concerning the other parent's employment.

Employer: _____

Job title: _____

Street address: _____

City, state, zip: _____

Phone: _____ Fax: _____

E-mail: _____

Monthly gross salary: _____

Annual gross salary: _____

Length of employment: _____

Education/training: _____

Attorney/Client-Privileged Information

Other Parent-Child Relationship Information:

16. Have you or the other parent ever sought or been subject to a protective order? _____

17. Have you or the other parent ever contacted or been contacted by the Office of the Attorney General? _____
18. Have you or the other parent ever contacted or been contacted by child protective services? _____
19. Have you or the other parent ever been arrested for or convicted of a crime other than receiving a traffic ticket? _____

Form 12

This form should be used in conjunction with the client questionnaire—divorce, form 10, to collect information regarding the marital property.

Client Name: _____

Schedule of Marital Property

We will need the following information in preparing your divorce proceedings. Please answer all questions; if a question does not apply, please mark it “N/A.” Please do not hesitate to ask if you have any questions. If more pages are required for any category of asset, please attach additional pages.

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1. Real Estate

1.1 Home Owned:

Street address: _____

County of location: _____

General description: _____

Legal description: _____

Current fair market value: \$ _____ as of _____

Exact name of mortgage company and account number, if any:

Current balance of mortgages: \$ _____

a. First mortgage

Name of lienholder and account number: _____

Current balance of lien: \$ _____ as of _____

Monthly payment: \$ _____ Due date: _____

Interest rate: _____

b. Second lien

Name of second lienholder and account number: _____

Current balance of second lien: \$ _____ as of _____

Monthly payment: \$ _____ Due date: _____

Interest rate: _____

Current net equity in property: \$ _____

Date property was acquired: _____

Amount of purchase price: \$ _____

Down payment and source of down payment: \$ _____

Exact name on title: _____

Who lives in the house now? _____

Who wishes to live in the house after the divorce? _____

Comments: _____

1.2 Other Real Estate:

General description: _____

Location: _____

Description of improvements, if any: _____

Date improvements made: _____

Cost of improvements: \$ _____

Balance owed, if any, on cost of improvements: \$ _____

Source of money for improvements: _____

Legal description: _____

Other owners: _____

Date acquired: _____ Total cost: \$ _____

Amount of purchase price: \$ _____

Record title owner: _____

Down payment and source of down payment: \$ _____

First lienholder: _____

Address: _____

Monthly payment: \$ _____ Due date: _____

Interest Rate: _____

Balance due: \$ _____ as of _____

Second lienholder: _____

Address: _____

Monthly payment: \$ _____ Due date _____

Interest rate: _____

Balance due: \$ _____ as of _____

2. Mineral Interests

a. Name of mineral interest/lease/well: _____

Type of interest: _____

County of location: _____

Legal description: _____

Name of producer or operator: _____

Current value: \$ _____

b. Name of mineral interest/lease/well: _____

Type of interest: _____

County of location: _____

Legal description: _____

Name of producer or operator: _____

Current value: \$ _____

3. Cash and Accounts with Financial Institutions

(Include cash, traveler's checks, money orders, and accounts with commercial banks, savings and loan associations, and credit unions; exclude accounts with brokerage houses and all retirement accounts.)

3.1 Checking Accounts:

a. Name of financial institution:

Address: _____

Account officer: _____

Account number: _____

Account name: _____

Type of account: _____

Name(s) on withdrawal cards: _____

Current balance: \$ _____ as of _____

When account opened: _____

Source of funds: _____

Use of account: _____

b. Name of financial institution: _____

Address: _____

Account officer: _____

Account number: _____

Account name: _____

Type of account: _____

Name(s) on withdrawal cards: _____

Current balance: \$ _____ as of _____

When account opened: _____

Source of funds: _____

Use of account: _____

c. Name of financial institution: _____

Address: _____

Account officer: _____

Account number: _____

Account name: _____

Type of account: _____

Name(s) on withdrawal cards: _____

Current balance: \$ _____ as of _____

When account opened: _____

Source of funds: _____

Use of account: _____

3.2 Savings Accounts:

a. Name of financial institution: _____

Address: _____

Account officer: _____

Account number: _____

Account name: _____

Type of account: _____

Name(s) on withdrawal cards: _____

Current balance: \$ _____ as of _____

When account opened: _____

Source of funds: _____

Use of account: _____

Pledged: _____ To: _____

Reason: _____

b. Name of financial institution: _____

Address: _____

Account officer: _____

Account number: _____

Account name: _____

Type of account: _____

Name(s) on withdrawal cards: _____

Current balance: \$ _____ as of _____

When account opened: _____

Source of funds: _____

Use of account: _____

Pledged: _____ To: _____

Reason: _____

3.3 Certificates of Deposit:

a. Name of financial institution: _____

Address: _____

Account officer: _____

Phone: _____

C.D. in the name of: _____

Amount of C.D.: \$ _____ Interest rate: _____

When purchased: _____ When due: _____

Where is C.D. now? _____

Source of funds: _____

Pledged: _____ To: _____

Reason: _____

b. Name of financial institution: _____

Address: _____

Account officer: _____

Phone: _____

C.D. in the name of: _____

Amount of C.D.: \$ _____ Interest rate: _____

When purchased: _____ When due: _____

Where is C.D. now? _____

Source of funds: _____

Pledged: _____ To: _____

Reason: _____

4. Brokerage and Mutual Fund Accounts

a. Name of brokerage firm or mutual fund: _____

Address of brokerage firm or mutual fund: _____

Name account held in: _____

Name of account (and subaccounts, if any): _____

Account number (and numbers of subaccounts, if any): _____

Margin loan balance: \$ _____ as of _____

Value of community interest in each account (and subaccounts, if

any): \$ _____ as of _____

Tax basis of each security held: \$ _____

b. Name of brokerage firm or mutual fund: _____

Address of brokerage firm or mutual fund: _____

Name account held in: _____

Name of account (and subaccounts, if any): _____

Account number (and numbers of subaccounts, if any): _____

Margin loan balance: \$ _____ as of _____

Value of community interest in each account (and subaccounts, if any): \$ _____ as of _____

Tax basis of each security held: \$ _____

5. Publicly Traded Stocks, Bonds, and Other Securities

(Include securities not in a brokerage account, mutual fund, or retirement fund.)

5.1 Stocks:

a. Name of security: _____

Number of shares: _____

Type of security (common stock, preferred stock, bond, or other description): _____

Certificate numbers: _____

In possession of: _____

Name of exchange on which listed: _____

Pledged as collateral? ___ yes ___ no

If yes, explain terms, to whom pledged, and other details
surrounding pledge of securities as collateral: _____

Date acquired: _____

Tax basis: \$ _____

Current market value: \$ _____ as of _____

Value of community interest: \$ _____ as of _____

5.2 Bonds:

a. Name of issuer: _____

Address: _____

Serial number of bond: _____ Denomination: _____

Date acquired: _____

Cost: \$ _____ Value: \$ _____ as of _____

Value of community interest: \$ _____ as of _____

Registered owner: _____

Source of funds: _____

Interest rate: _____ Interest payable: _____

Convertible: _____ Due date: _____

Pledged: _____ To: _____

Reason: _____

6. Stock Options

(Include all exercisable, vested, and nonvested stock options regardless of any restrictions on transfer.)

a. Name of company: _____

Date of option or grant: _____

Vesting schedule: _____

Number of options: _____

Are the options exercisable? _____ Are the options registered? _____

Current stock price: \$ _____ as of _____

Strike price: \$ _____

Current net market value: \$ _____ as of _____

Value of community interest: \$ _____ as of _____

If purchased, total purchase price of option contract (including commissions): \$ _____

b. Name of company: _____

Date of option or grant: _____

Vesting schedule: _____

Number of options: _____

Are the options exercisable? _____ Are the options registered? _____

Current stock price: \$ _____ as of _____

Strike price: \$ _____

Current net market value: \$ _____ as of _____

Value of community interest: \$ _____ as of _____

If purchased, total purchase price of option contract (including commissions): \$ _____

7. Bonuses

a. Name of company: _____

Spouse earning bonus: _____

Date bonus expected to be paid: _____

Time period covered by bonus: _____

Anticipated amount of bonus: \$ _____

b. Name of company: _____

Spouse earning bonus: _____

Date bonus expected to be paid: _____

Time period covered by bonus: _____

Anticipated amount of bonus: \$ _____

8. Closely Held Business Interests

(Include sole proprietorships, professional practices, corporations, partnerships, limited liability companies and partnerships, joint ventures, and other nonpublicly-traded business entities.)

a. Name of business: _____

Address of business: _____

Type of business organization: _____

Percentage of ownership: _____

Number of shares owned (if applicable): _____

Members in business: _____

Annual income from business: \$ _____

Type of business: _____

Date business began: _____

Source of funds in business: _____

Value of interest: \$ _____ as of _____

Is there a written organizational agreement? _____

Comments: _____

9. Retirement Benefits

9.1 Defined Contribution Retirement Plans (a plan that provides for an individual account for a participant and for benefits based solely on the amount contributed to the participant's account):

a. Exact name of plan: _____

Name and address of plan administrator: _____

Employee: _____

Employer: _____

Starting date of creditable service: _____

Account name: _____

Account number: _____

Account balance as of date of marriage: \$ _____

Payee of survivor benefits: _____

Has beneficiary been designated? ___ yes ___ no

If so, identify beneficiary: _____

Current balance: \$ _____ as of _____

Value of community interest in plan: \$ _____ as of _____

Current loan balance: \$ _____ as of _____

9.2 Defined Benefit Retirement Plans (any plan that is not a defined contribution plan and that usually involves payment of benefits according to a formula):

a. Exact name of plan: _____

Name and address of plan administrator: _____

Employee: _____

Employer: _____

Starting date of creditable service: _____

Designated beneficiary: _____

Payee of survivor benefits: _____

Description of benefits: _____

Current balance: \$ _____ as of _____

Value of community interest in plan: \$ _____ as of _____

9.3 IRA/SEP:

a. Name of financial institution: _____

Account name: _____

Account number: _____

Payee of survivor benefits: _____

Designated beneficiary: _____

Current account balance: \$ _____ as of _____

Value of community interest in plan: \$ _____ as of _____

b. Name of financial institution: _____

Account name: _____

Account number: _____

Payee of survivor benefits: _____

Designated beneficiary: _____

Current account balance: \$ _____ as of _____

Value of community interest in plan: \$ _____ as of _____

9.4 Military Benefits:

a. Branch of service: _____

Name of servicemember: _____

Rank/pay grade of servicemember: _____

Starting date of creditable service: _____

Status of servicemember (active, reserve, or retired): _____

Payee of survivor benefits: _____

Description of benefits: _____

Monthly benefit payable: \$ _____

Value of community interest in plan: \$ _____ as of _____

Percentage of plan that is community: _____%

9.5 Nonqualified Plans (Not under ERISA):

a. Name of financial institution: _____

Account name: _____

Account number: _____

Account balance as of date of marriage: \$ _____

Payee of survivor benefits: _____

Has beneficiary been designated? ___ yes ___ no

If so, identify beneficiary: _____

Value of community interest in plan: \$ _____ as of _____

9.6 Government Benefits (civil service, teacher, railroad, state, and local):

a. Name of plan: _____

Account name: _____

Account number: _____

Account balance as of date of marriage: \$ _____

Has beneficiary been designated? ___ yes ___ no

If so, identify beneficiary: _____

Value of community interest in plan: \$ _____ as of _____

10. Other Deferred Compensation Benefits

(Examples include worker's compensation, disability benefits, other "special payments," and other forms of compensation.)

10.1 Husband:

a. Description of assets: _____

Value: \$ _____

10.2 Wife:

a. Description of assets: _____

Value: \$ _____

11. Insurance and Annuities**11.1 Life Insurance:**

a. Name of insurance company: _____

Policy number: _____

Name of insured: _____

Name of owner: _____

Type of insurance (term/whole/universal): _____

Amount of premiums: \$ _____ (monthly/quarterly/
semiannually)

Date of issue: _____

Face amount: \$ _____

Cash surrender value on date of marriage: \$ _____

Current cash surrender value: \$ _____

Designated beneficiary: _____

Balance of loan against policy, if any: \$ _____

b. Name of insurance company: _____

Policy number: _____

Name of insured: _____

Name of owner: _____

Type of insurance (term/whole/universal): _____

Amount of premiums: \$ _____ (monthly/quarterly/
semiannually)

Date of issue: _____

Face amount: \$ _____

Cash surrender value on date of marriage: \$ _____

Current cash surrender value: \$ _____

Designated beneficiary: _____

Balance of loan against policy, if any: \$ _____

11.2 Annuities:

a. Name of company: _____

Policy number: _____

Name of annuitant: _____

Name of owner: _____

Type of annuity: _____

Amount of premiums: \$ _____ (monthly/quarterly/
semiannually)

Date of issue: _____

Face amount: \$ _____

Designated beneficiary: _____

Value on date of marriage: \$ _____

Current value: \$ _____ as of _____

Balance of loan against policy, if any: \$ _____

Value of community interest: \$ _____ as of _____

11.3 Health Savings Accounts:

a. Institution holding account: _____

Account number: _____

Value of assets in account: \$ _____ as of _____

Name of high-deductible health plan with which the HSA is coupled: _____

11.4 Medical Savings Accounts:

a. Institution holding account: _____

Account number: _____

Value of assets in account: \$ _____ as of _____

Name of high-deductible health plan with which the MSA is coupled: _____

12. Motor Vehicles, Boats, Airplanes, Cycles, Etc.

(Include mobile homes, trailers, and recreational vehicles; exclude company-owned vehicles.)

12.1 Vehicles Owned:

a. Year: _____ Make: _____ Model: _____

Name on certificate of title: _____

In possession of: _____

Vehicle identification number: _____

Does vehicle have loan against it? ____ yes ____ no

If yes, state:

Exact name of creditor: _____

Current balance: \$ _____ as of _____

Current net equity in vehicle: \$ _____ Date acquired: _____

Source of down payment: _____

Who drives the vehicle? _____

b. Year: _____ Make: _____

Model: _____

Name on certificate of title: _____

In possession of: _____

Vehicle identification number: _____

Does vehicle have loan against it? ____ yes ____ no

If yes, state:

Exact name of creditor: _____

Current balance: \$ _____ as of _____

Current net equity in vehicle: \$ _____ Date acquired: _____

Source of down payment: _____

Who drives the vehicle? _____

c. Year: _____ Make: _____

Model: _____

Name on certificate of title: _____

In possession of: _____

Vehicle identification number: _____

Does vehicle have loan against it? ____ yes ____ no

If yes, state:

Exact name of creditor: _____

Current balance: \$ _____ as of _____

Current net equity in vehicle: \$ _____ Date acquired: _____

Source of down payment: _____

Who drives the vehicle? _____

13. Loans Receivable

(Include money owed to you or your spouse, including any expected federal or state income tax refund, but do not include receivables connected with a business.)

a. Name of debtor: _____

Debtor's relationship to you: _____

Purpose of loan: _____

Is debt evidenced in writing? ___ yes ___ no

Is debt secured? ___ yes ___ no

If so, detail security: _____

Is debt reasonably expected to be paid? ___ yes ___ no

Current loan balance: \$ _____ as of _____

Balance of any accounts receivable: \$ _____

b. Name of debtor: _____

Debtor's relationship to you: _____

Purpose of loan: _____

Is debt evidenced in writing? ___ yes ___ no

Is debt secured? ___ yes ___ no

If so, detail security: _____

Is debt reasonably expected to be paid? ___ yes ___ no

Current loan balance: \$ _____ as of _____

Balance of any accounts receivable: \$ _____

14. Household Furniture, Furnishings, and Fixtures

State your opinion of the fair market value of the household furniture, furnishings, and fixtures. Fair market value is not necessarily the cost or the replacement value. If you expect a dispute about the division of this property, you may want to attach an itemized list of major items by room. If you or your spouse will contend that any of the property was owned before your marriage or acquired during the marriage by gift or inheritance, please so indicate.

Fair market value: \$ _____

15. Electronics and Computers

15.1 In Possession of Husband:

Description	Source	Value
_____	_____	_____
_____	_____	_____

15.2 In Possession of Wife:

Description	Source	Value
_____	_____	_____
_____	_____	_____

16. Antiques, Artwork, and Collections

16.1 In Possession of Husband:

Description	Source	Value
_____	_____	_____
_____	_____	_____

16.2 In Possession of Wife:

Description	Source	Value
_____	_____	_____
_____	_____	_____

17. Miscellaneous Sporting Goods and Firearms

17.1 In Possession of Husband:

Description	Source	Value
_____	_____	_____
_____	_____	_____

17.2 In Possession of Wife:

Description	Source	Value
_____	_____	_____
_____	_____	_____

18. Jewelry and Other Personal Items

(List major items and state value.)

18.1 In Possession of Husband:

Description	Source	Value
_____	_____	_____
_____	_____	_____

18.2 In Possession of Wife:

Description	Source	Value
_____	_____	_____
_____	_____	_____

19. Livestock

(Include cattle, horses, and so forth.)

19.1 In Possession of Husband:

Description	Source	Value
_____	_____	_____

19.2 In Possession of Wife:

Description	Source	Value
_____	_____	_____
_____	_____	_____

20. Club Memberships

- a. Name of club: _____

- Name membership held in: _____

- Account number: _____

- Current value: \$ _____ as of _____

- Method of valuation: _____

21. Travel Award Benefits

- a. Name of airline: _____

- Account number: _____

- Name on account: _____

Current number of miles: _____ as of _____

Value (if any): \$ _____

22. Miscellaneous Assets

(Intellectual property, licenses, crops, farm equipment, construction equipment, tools, leases, cemetery lots, gold or silver coins not part of a collection described elsewhere in this document, estimated tax payments, tax overpayments, loss carry-forward deductions, lottery tickets/winnings, stadium bonds, stadium seat licenses, seat options, and season tickets.)

22.1 In Possession of Husband:

Description	Source	Value
_____	_____	_____
_____	_____	_____

22.2 In Possession of Wife:

Description	Source	Value
_____	_____	_____
_____	_____	_____

23. Safe-Deposit Boxes

a. Name of financial institution or other depository: _____

Box number: _____

Names of persons who have access to contents: _____

Items in safe-deposit box: _____

b. Name of financial institution or other depository: _____

Box number: _____

Names of persons who have access to contents: _____

Items in safe-deposit box: _____

24. Storage Facilities

a. Name of facility: _____

Address of facility: _____

Unit number: _____

Length of lease: _____

Terms of lease: _____

Names of persons who have access to contents: _____

Items in storage unit: _____

b. Name of facility: _____

Address of facility: _____

Unit number: _____

Length of lease: _____

Terms of lease: _____

Names of persons who have access to contents: _____

Items in storage unit: _____

25. Community Claim for Reimbursement

(Against Husband's or Wife's separate estate.)

See section entitled "Reimbursement" at the end of this document before completing 25.1 and 25.2.

25.1 Reimbursement Claim against Husband's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

25.2 Reimbursement Claim against Wife's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

26. Contingent Assets

(For example, lawsuits by either party against a third party.)

Nature of claim: _____

Amount of claim: _____

Legal representative: _____

Address: _____

Cause number: _____

Court where case is pending: _____

Name of opposing attorney: _____

Address: _____

27. Community Liabilities

27.1 Credit Cards and Charge Accounts:

a. Name of creditor: _____

Account number: _____

Name(s) on account: _____

Current balance: \$ _____ as of _____

Balance as of date of separation: \$ _____

Who charged what on this account? _____

Who will be responsible after divorce? _____

b. Name of creditor: _____

Account number: _____

Name(s) on account: _____

Current balance: \$ _____ as of _____

Balance as of date of separation: \$ _____

Who charged what on this account? _____

Who will be responsible after divorce? _____

c. Name of creditor: _____

Account number: _____

Name(s) on account: _____

Current balance: \$ _____ as of _____

Balance as of date of separation: \$ _____

Who charged what on this account? _____

Who will be responsible after divorce? _____

d. Name of creditor: _____

Account number: _____

Name(s) on account: _____

Current balance: \$ _____ as of _____

Balance as of date of separation: \$ _____

Who charged what on this account? _____

Who will be responsible after divorce? _____

27.2 Federal, State, and Local Tax Liability:

Amount owed in any previous tax year (describe liability, such as federal income tax, property taxes): \$ _____

Amount owed for current year: \$ _____

27.3 Attorney's Fees in This Case:

a. Husband: \$ _____ as of _____

b. Wife: \$ _____ as of _____

27.4 Other Professional Fees in This Case:

a. Husband: \$ _____ as of _____

b. Wife: \$ _____ as of _____

27.5 Other Liabilities Not Otherwise Listed Elsewhere in This Document:

Name of creditor: _____

Name on account: _____

Account number: _____

Is loan evidenced in writing? _____

Margin account balances: _____

Party incurring liability: _____

Party actually signing: _____

Current balance: \$ _____ as of _____

Security, if any: _____

See section entitled "Reimbursement" at the end of this document before completing 27.6.

27.6 Reimbursement Claims against Community Estate:

Reimbursement claim by husband's separate estate against community estate: _____

Description of basis of claim: _____

Amount claimed: \$ _____

Reimbursement claim by wife's separate estate against community estate: _____

Description of basis of claim: _____

Amount claimed: \$ _____

27.7 Pledges:

Name of recipient: _____

Address of recipient: _____

Date of pledge: _____

Total amount of pledge: \$ _____

Is pledge payable in installments? _____

If payable in installments, date each installment payment is due: _____

If payable in installments, amount of each installment: \$ _____

27.8 Contingent Liabilities (for example, lawsuit against either party, guaranty either party may have signed):

Name of creditor: _____

Name of person primarily liable: _____

Amount of contingent liability: \$ _____

Nature of contingency: _____

28. Separate Assets of Husband**28.1 Assets:**

a. Description of asset: _____

Date property acquired: _____

How acquired (for example, by gift, by devise, by descent, or
owned before marriage): _____

Value: \$ _____ as of _____

See section entitled "Reimbursement" at the end of this document before completing 28.2 and 28.3.

28.2 Husband's Separate Reimbursement Claim against Community Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

28.3 Husband's Separate Reimbursement Claim against Wife's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

29. Liabilities of Husband's Separate Estate

29.1 Liabilities:

a. Description of liability: _____

Date of liability: _____

How liability acquired: _____

Amount of liability: \$ _____ as of _____

See section entitled "Reimbursement" at the end of this document before completing 29.2 and 29.3.

29.2 Wife's Separate Reimbursement Claim against Husband's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

29.3 Community Reimbursement Claim against Husband's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

30. Separate Assets of Wife

30.1 Assets:

a. Description of asset: _____

Date property acquired: _____

How acquired (for example, by gift, by devise, by descent, or owned before marriage): _____

Value: \$ _____ as of _____

See section entitled "Reimbursement" at the end of this document before completing 30.2 and 30.3.

30.2 Wife's Separate Reimbursement Claim against Community

Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

30.3 Wife's Separate Reimbursement Claim against Husband's

Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

31. Liabilities of Wife's Separate Estate

31.1 Liabilities:

a. Description of liability: _____

Date of liability: _____

How liability acquired: _____

Amount of liability: \$ _____ as of _____

See section entitled "Reimbursement" at the end of this document before completing 31.2 and 31.3.

31.2 Husband's Separate Reimbursement Claim against Wife's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

31.3 Community Reimbursement Claim against Wife's Separate Estate:

Description of basis of claim: _____

Amount claimed: \$ _____

32. Children's Property

32.1 Custodial Account under Texas Uniform Transfers to Minors Act:

a. Name of financial institution: _____

Name of account: _____

Account number: _____

Amount on deposit: \$ _____ as of _____

Name of minor for whom funds were deposited: _____

Name of custodian: _____

32.2 529 Plans:

a. Institution or entity administering the plan: _____

Designated beneficiary: _____

Is the plan a prepaid plan or savings plan? _____

Value of assets in the plan: \$ _____ as of _____

32.3 Other Property:

33. Assets Held by Either Party for Benefit of Another

a. Name(s) of person(s) holding assets: _____

Description of assets: _____

Name and title of fiduciary (for example, executor or trustee): _____

Name of owner of beneficial interest: _____

Value of assets: \$ _____ as of _____

34. Assets Held for Benefit of Either Party as Beneficiary

a. Name(s) of person(s) holding assets: _____

Description of assets: _____

Name and title of fiduciary (for example, executor or trustee): _____

Name of owner of beneficial interest: _____

Value of assets: \$ _____ as of _____

Reimbursement

Texas law recognizes three marital estates: the community estate, owned by the spouses together; the husband's separate estate; and the wife's

separate estate. A spouse's separate estate consists of (1) the property owned or claimed by the spouse before marriage; (2) the property acquired by the spouse during marriage through gift, will, or inheritance; (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage; and (4) the property set aside to the spouse by an agreement between the spouses. The community estate consists of all other property, other than separate property, acquired by either spouse during marriage.

If any of the following has happened in your case, please circle the appropriate numbers and consult with your attorney on how to proceed, what information and documents you will need, and how to complete the items on this schedule that correspond to the numbers:

25.1, 25.2, 29.3, 31.3 Has the community estate made any payments on the unsecured liabilities of your separate estate or your spouse's separate estate?

25.1, 25.2, 29.2, 31.3 Has the community estate made any payments on the secured liabilities of your separate estate or your spouse's separate estate?

25.1, 25.2, 29.3, 31.3 Has the community estate been used to make capital improvements to your separate estate or to your spouse's separate estate other than by incurring debt?

25.1, 25.2, 29.3, 31.3 Has either spouse received inadequate compensation for the time, toil, talent, and effort spent working for a separate-property business owned by the spouse that is under the spouse's control and direction?

27.6, 28.2, 30.2 Has your separate estate or your spouse's separate estate made any payments on the unsecured liabilities of the community estate?

27.6, 28.2, 30.2 Has your separate estate or your spouse's separate estate made any payments on the secured liabilities of the community estate?

27.6, 28.2, 30.2 Has your separate estate or your spouse's separate estate been used to make capital improvements to the community estate other than by incurring debt?

28.3, 31.2 Has the husband's separate estate made any payments on the unsecured liabilities of the wife's separate estate?

28.3, 31.2 Has the husband's separate estate made any payments on the secured liabilities of the wife's separate estate?

28.3, 31.2 Has the husband's separate estate been used to make capital improvements to the wife's separate estate other than by incurring debt?

29.2, 30.3 Has the wife's separate estate made any payments on the unsecured liabilities of the husband's separate estate?

29.2, 30.3 Has the wife's separate estate made any payments on the secured liabilities of the husband's separate estate?

29.2, 30.3 Has the wife's separate estate been used to make capital improvements to the husband's separate estate other than by incurring debt?

Form 13

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter Declining Representation

[Date]

[Name and address of potential client]

Re: [state nature of representation]

[Salutation]

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

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

See chapter 1 concerning advising a potential client.

Include the following if applicable.

I strongly recommend that you contact another attorney who is familiar with [subject matter] transactions.

Continue with the following.

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

Include the following if applicable.

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

Continue with the following.

Sincerely yours,

[Name of attorney]

Enc.

Include lines for potential client to sign and date if copy of letter is to be returned.

Form 14

**Letter to Client Confirming Request to Take No Action
on Case**

[Date]

[Name and address of client]

Re: [style of case]

[Salutation]

This letter confirms our conversation of [date] in which you requested that I take no further action in the referenced cause of action. Accordingly, until I receive other instructions from you, I will do no additional work on this matter.

Sincerely yours,

[Name of attorney]

Form 15

**Letter to Client Regarding Informal Settlement
in Divorce Proceedings**

[Date]

[Name and address of client]

Re: [style of case]

[Salutation]

Please allow this letter to serve as notice to you that the parties to a divorce case may agree to informal settlement conferences without their lawyers present. If you feel safe, and if you feel that you and your spouse can speak in a civil manner with each other, maintain your composure, and remain respectful, I encourage your involvement in settling your case with your spouse. However, I strongly *advise against your signing any document* your spouse might produce detailing your agreement without consulting me first.

In short, to allow me to properly represent you, *please do not sign an informal settlement agreement* before you allow me an opportunity to review the document. If you were to sign an informal settlement agreement with your spouse that met specific statutory language requirements, you could very well short-circuit your own case and be bound to an agreement that might not be in your best interest.

Sincerely yours,

[Name of attorney]

I acknowledge the advice given.

[Name of client]

Form 16

**Letter to Client Regarding Inadvertent Agreements
in Divorce Proceedings**

[Date]

[Name and address of client]

Re: [style of case]

[Salutation]

For your protection, I want to make you aware of the following information so that you may avoid entering into a *binding* agreement unintentionally.

Rule 11 of the Texas Rules of Civil Procedure provides that an agreement that is (1) *in writing*, (2) *signed*, and (3) *filed with the court* may be enforced as a binding agreement, resolving the issues contained in that written document and precluding further discussion or litigation regarding those issues.

This description would specifically include any document, handwritten or otherwise, that you and your spouse sign that purports to contain settlement terms. Further, recent decisions of the Supreme Court of Texas greatly increase the likelihood that this sort of informal document could, regardless of your intent, be deemed a final and binding settlement by the court.

Additionally, if you choose to communicate by e-mail with a party to the lawsuit or others, you may say something that could form the basis of a contract. When communicating by e-mail it is often difficult to avoid making admissions or otherwise including something that you will later regret.

I therefore advise that you *do not sign any document* unless and until it has been reviewed by your attorney and you have been advised that it is appropriate to sign. Further, if you are going to communicate by e-mail with your spouse, you should choose your words very carefully and with the understanding that they may cause you problems later.

If you have any questions regarding this matter, please feel free to ask.

Sincerely yours,

[Name of attorney]

I acknowledge the advice given.

[Name of client]

Form 17

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Letter Disclosing and Requesting Waiver of Potential
Conflict with Current Client**

[Date]

[Name and address of prospective client]

Re: [describe transaction]

[Salutation]

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

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

sue the bank, our firm would not be able to represent you. Of course, we would not represent the bank in any matter adverse to you.]

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

Sincerely yours,

[Name of attorney]

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

[Name of prospective client]

Date:

Form 18

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Letter Disclosing and Requesting Waiver of Potential
Conflict for Multiple Representation of Title Company
and Third Party**

[Date]

[Name and address of prospective client]

Re: [describe transaction]

[Salutation]

I am pleased that you are considering employing our firm in connection with the above-referenced transaction. Although it is not common for a lawyer to represent more than one party in a transaction, dual representation is permitted by professional ethics guidelines as long as two conditions are met.

First, the lawyer must conclude, after a good-faith self-evaluation, that the lawyer can adequately represent the interests of each client. The multiple representation should not adversely affect the attorney's independent professional judgment on behalf of any client. Second, all clients must consent to the multiple representation after full disclosure is given by the lawyer.

The first condition has been satisfied because I believe that this firm can adequately represent each of you (although I hope you understand that we must reserve the right to withdraw from this dual representation if later events cause me in good faith to reach a different conclusion). This letter is intended to fulfill the second requirement mentioned above, that of disclosure and consent. Accordingly, I will review some of the possible effects that dual representation may have on you.

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

Scope of employment. I am being hired solely to advise you on and document this real estate transaction. I am not responsible for and will not advise you on other transactions, nor will I give either of you any kind of tax advice with respect to this transaction. [**Include additional disclaimers appropriate to the facts.**]

Judgment calls. In all real estate closings, a seller or buyer must decide which title matters materially affect title to the property. These decisions are often routine; however, on occasion they require my exercising professional judgment in representing your sometimes competing interests.

[Describe examples of possible judgment calls appropriate to the facts.]

Describe any specific conflicts possible in this transaction.

There are of course other potential problems that might develop. Although I assure you that I will try to act as fairly as possible in judgment-call matters, it is certainly possible that one of you may not concur with my judgment.

Confidential information. During the course of any representation a lawyer generally becomes aware of confidential information regarding the client. The confidential information may be a potential cloud on the title that one party does not want revealed to the other party. Another possible confidential matter may be the financial capacity of a party, which bears on the likelihood of that party's performance of its obligations.

Although I assure you that I will try to act discreetly within the bounds of fair dealing, it is certainly possible that either or both of you would prefer to eliminate any possibility of having your confidential information known by an attorney who is also representing the other party. Furthermore, neither of you will be protected by the attorney-client privilege concerning any information

disclosed to me or another lawyer in this firm during our representation. The general rule is that, as between commonly represented clients, the privilege does not attach. Thus, confidential information that would be protected by the attorney-client privilege if we represented only one of you can be disclosed to the other party.

Of course, I would have declined the dual representation before now if I had not already concluded that I can adequately represent both of you in this transaction; however, I also understand that you may feel differently. Therefore, I would appreciate your giving careful thought to the matters discussed in this letter. If you consent to the multiple representation, please sign in the space below and return this letter to me. You should keep a copy of this letter for your records. I will be happy to answer any questions you might have.

Sincerely yours,

[Name of attorney]

I understand this disclosure and I consent to the proposed multiple representation.

[Name of prospective client]

Date:

Send letter to each prospective client for signature.

Form 19

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Letter Disclosing and Requesting Waiver of Potential
Conflict with Former Client**

[Date]

[Name and address of former client]

Re: [describe transaction]

[Salutation]

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

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

As this is a very serious matter and you may be compromising certain rights that you have under the Texas Disciplinary Rules of Professional Conduct, I suggest that you seek independent counsel in this matter before con-

sending to our representation of [**name of prospective client**]. Please give careful thought to the matters discussed in this letter and respond in the space below.

Sincerely yours,

[**Name of attorney**]

- I consent to the representation [**include if applicable**: subject to the following limitation: [**describe any limitation on representation to be imposed**]].

- I do not consent to the representation.

[**Name of former client**]

Date:

Form 20

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Letter Disclosing Potential Risks and Requesting
Consent of Individual Partners to Representation of
Partnership**

[Date]

[Names and addresses of all partners]

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

[Salutation]

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

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

Concerning the representation of an entity, such as a corporation, partnership, joint venture, trust, or association, rule 1.12 of the Texas Disciplinary Rules of Professional Conduct provides, in part, as follows:

A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents . . . the lawyer shall proceed as reasonably necessary in the best interest of the organization. . . .

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

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

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

1. This law firm has represented one or more of the partners in matters unrelated to the partnership. These partners, for whom unrelated legal counsel has been furnished, include **[name[s] of partner[s]]**. Each of these partners is requested to execute a form consenting to this law firm's serving as counsel to the partnership, because of potential conflicts of interest. At this time, we do not believe that our prior representation of individual partners will impair our independent professional judgment on behalf of the partnership. However, if we determine that, because of differences between the partnership and the partners, we can no longer represent the partnership impartially or if a conflict arises during our representation of the partnership, we will inform you of such conflict, and we must then withdraw from representation. If this occurs, we will no longer be able to represent any party to the conflict. Should we determine that this law firm must withdraw from the representation, we will, if you wish, assist the partnership in obtaining new counsel. The partnership would, of course, be responsible for payment of all accrued legal fees and any outstanding expenses. Likewise, we would return any unused portion of any advances that had been made. The need to obtain substitute counsel may involve additional legal fees and expenses.

2. Representation of any entity automatically involves potential conflicts, because entities are nothing more than the joining of individuals or other

entities with differing needs for what is initially perceived to be a common objective. Each individual should understand that when there is such diversity of interests, the lawyer for the organization cannot provide legal representation for constituent individuals and that discussions between the lawyer for the organization and an individual may not be privileged insofar as that individual is concerned.

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

Sincerely yours,

[Name of attorney]

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

[Name of partner]

Date:

Repeat signature blocks as necessary.

Form 21

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Letter Disclosing Potential Risks and Requesting
Consent to Representation of Corporate Entity**

[Date]

[Names and addresses of all shareholders]

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

[Salutation]

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

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

risks involved in the multiple representation. Further, if at any time during the representation it is determined that because of differences between the joint clients a lawyer can no longer represent each of them impartially, then the lawyer must withdraw from representing all the clients.

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

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

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

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

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

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

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

Sincerely yours,

[Name of attorney]

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

[Name of shareholder]

Date:

Repeat signature blocks as necessary.

Form 22

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter Requesting Consent to Intermediary and Outlining Fee Agreement

[Date]

[Names and addresses]

Re: [describe transaction]

[Salutation]

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

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

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

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

If I determine that intermediation is no longer appropriate I will so inform you, and I must then withdraw from representation. If this occurs, I will

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

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

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

Sincerely yours,

[Name of attorney]

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

[Name of client]

Date:

[Name of client]

Date:

Form 23

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter to Client Advising against Settlement

[Date]

[Name and address of client]

Re: [style of case]

[Salutation]

A settlement proposal has been received in this matter and previously communicated to you. The decision to settle and under what terms is yours alone. My obligation is to inform you of alternatives to settlement so that you may make an informed decision.

If a settlement cannot be reached in your case, it must be presented to the court for determination. The decision made by the court will be binding, subject to the right of appeal. The court's ruling may be different from any proposed settlement, and there can be no guarantee that the court's decision will be more favorable.

I cannot recommend that you accept the proposed settlement. The settlement proposal is unacceptable for several reasons. [**Optional: enumerate items unacceptable in the offer.**] I believe the proper way to resolve your case is by further negotiations or trial.

Notwithstanding this advice, you have indicated your desire to accept the settlement offer and I will respect your decision and will begin work on the settlement documents. I am asking that you sign a copy of this letter to confirm the legal advice I have given.

Sincerely yours,

[Name of attorney]

I acknowledge the advice given and wish to proceed with settlement of my case against the advice of my attorney.

[Name of client]

Form 24

[Insert caption.]

Notice of Current Address of [party designation]

To the Clerk of the Court:

[Name], [party designation], provides this notice of [his/her] current address in accordance with section 30.015 of the Texas Civil Practice and Remedies Code.

[Name]'s current address is [address, city, state].

This notice is an [original/amended] notice.

[Name]

Or

[Name]

State Bar No.:

Attorney for [party designation]

[Address]

[Telephone]

[Telecopier]

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on [date].

[Name]
Attorney for [party designation]

Form 25

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Letter Requesting Client's Consent to Business Relationship
with Attorney**

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

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

Nevertheless, I think it is important that you consider the advisability of having me, your lawyer, as a business partner. Under rule 1.08(a) of the Texas Disciplinary Rules of Professional Conduct, a lawyer cannot enter into a business venture with a client unless (1) the transaction and terms on which the lawyer acquires an interest are fair and reasonable to the client, (2) these terms are fully disclosed to the client, (3) the client is given a reasonable opportunity

to seek independent counsel, and (4) the client agrees in writing to the relationship. This rule protects the client from possible conflicts of interest that may occur if counsel is involved in the venture.

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

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

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

Sincerely yours,

[Name of attorney]

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

ACCEPTED:

[Name of client]

Date:

Form 26

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

**Nonrepresentation Letter When Representing Lender
or Title Company**

[Date]

[Names and addresses of buyer and seller]

Re: [describe transaction]

[Salutation]

I have represented [name of lender or title company] in the preparation of legal documents for use in closing the above-referenced transaction.

While I have acted solely on behalf of [name of lender or title company], [name], the buyer, and [name], the seller, acknowledge that the legal fees incurred in preparing the legal documents will be paid by the buyer or the seller even though I have not in any manner undertaken to assist or render legal advice to the buyer or the seller, except in the preparation of the legal documents. 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/title company] and that you understand that I am not your attorney.

Sincerely yours,

[Name of attorney]

Buyer:

[Name of buyer]

Date:

Seller:

[Name of seller]

Date:

Form 27

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter Terminating Attorney-Client Relationship

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

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

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

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

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

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

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

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

Sincerely yours,

[Name of attorney]

Form 28

This letter is furnished only as a basic example and should not be used as a standard form. The attorney must be careful to tailor the details of the letter to the specific facts and circumstances of the particular case.

Letter for Completion of Attorney-Client Relationship

[Date]

[Name and address of client]

Re: [describe transaction]

[Salutation]

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

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

Describe any actions that the client may need to follow up on.

Include the following if applicable.

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

Continue with the following.

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

Sincerely yours,

[Name of attorney]

Form 29

This portion of the handbook was adapted from the Oregon State Bar Professional Liability Fund handbook *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, Copyright 2011. All rights are reserved except that members of the State Bar of Texas may use this material for assistance with their own law practice or to help another attorney close his or her office. Judges, relatives of attorneys, attorney staff, and members of the public may also use this material to maintain or close a practice or to facilitate the transition to new counsel when a Texas attorney is no longer able to practice law. This material may be reproduced for classroom instruction or for use by a not-for-profit organization, provided that such use is for informational, noncommercial purposes only and any reproduction of this material acknowledges original publication of the handbook by the Oregon State Bar Professional Liability Fund and notes if the material was adapted with permission of the Oregon State Bar Professional Liability Fund.

**Checklist for an Attorney Who Closes Another
Attorney's Office**

This checklist is intended as a guideline only as circumstances surrounding the closing of a law office vary.

1. Check the attorney's calendars to look for case deadlines.
2. Search the attorney's office to look for documents that need to be filed.
3. Open and review all unopened mail, especially certified mail, and file it.
4. Review electronic sources to ensure that the client file is complete and up to date. Review the firm's electronic records for client-related material, including such things as e-mail communications, instant messages, or

- other documents generated during the course of the case, especially those communications that indicate pending deadlines.
5. Look for an office procedure manual. Determine whether anyone has access to a list of clients with active files.
 6. Review active client files to determine which cases need to be dealt with first.
 7. Make sure that any case with a statute of limitations running, or that is set for hearing or trial, are handled immediately. Look for cases with discovery settings. It is important to handle these cases immediately.
 8. Contact the client for matters that are urgent or set for the near future. Ask the client for permission to reset. As an attorney assisting with closing down the practice, make sure these scheduling arrangements do not pose a conflict of interest for you and/or your clients.
 9. Contact courts and opposing counsel immediately for files that require court appearances or have discovery pending. Obtain resets of hearings or extensions when necessary. Confirm extensions and resets in writing.
 - 10. Send clients who have active files a letter explaining that the law office is being closed and instructing them to retain a new attorney. Inform the clients about time limitations and time frames important to their cases.**

11. If the client wishes for the file to be sent to new counsel, have the client sign an authorization for the **original** file to be released to the new attorney.
12. If the client is obtaining a new attorney and the case is pending in court, be certain that a Substitution of Attorney is filed.
13. If the client wants to pick up their file, inform the client of days and times when they can pick up their **original** file.
14. The law firm may want to keep a copy of the file. If so, the file should be copied at the law firm's expense.
15. Try to ensure that a phone number is available for the clients to either speak with someone about their file or so that the client can leave a message.
16. Texas Disciplinary Rule of Professional Conduct 1.14(a) provides, in part, that "Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."
17. The office may want to make concerted efforts to contact closed file clients when those closed cases: 1) involve a minor; 2) involve signed original wills; 3) involve contracts or other agreements that are still being paid

off at the end of five years; 4) in which a judgment should be renewed; 5) support and custody files in which the children are minors or the support obligation continues; 6) corporate books and records; 7) adoption files; 8) intellectual property files; and 9) any other file in which it appears the client's or attorney's interest may be ongoing.

18. If a client determines he/she does not want the closed file, obtain a signed release giving the client's permission to destroy the file.
19. When it is determined that a client file can be destroyed, the file should be shredded or otherwise appropriately destroyed.
20. If you have authorization to handle the Attorney's financial matters, look around the office for checks or other funds that have not been deposited. Determine whether funds should be deposited or returned to the clients, as some funds may not have been earned.
21. Prepare a final billing statement showing any outstanding fees due.
22. Prepare an accounting for any client who has money being held in trust.
23. Obtain instructions from clients concerning any funds belonging to them that are being held in trust. Unearned trust account funds should be either returned to the clients or forwarded to their new attorneys.
24. If you are authorized to do so, handle financial matters, and pay business expenses.

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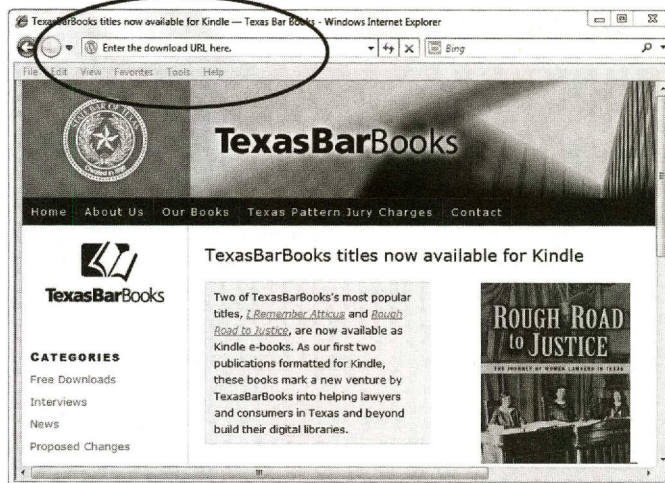
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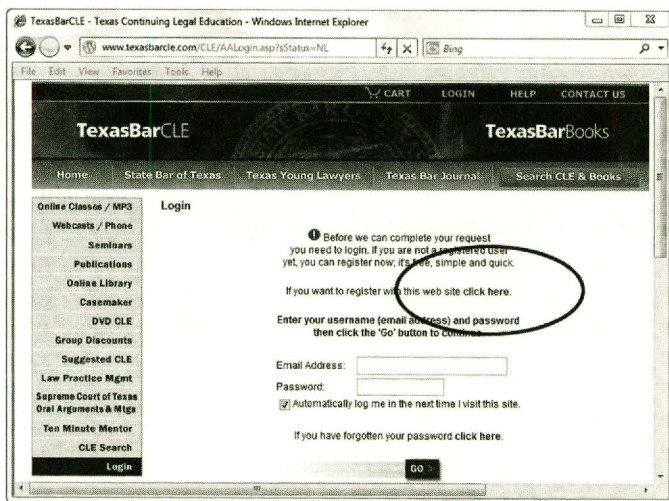
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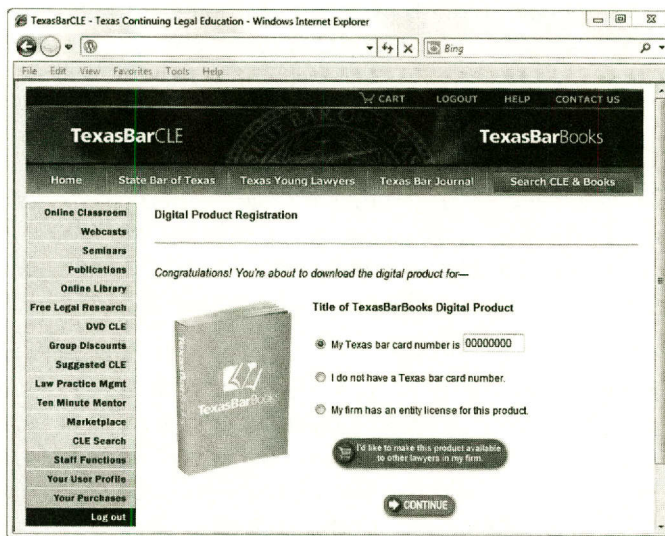
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