

## **Chapter 3**

### **Fees, Billing and Trust Accounts**

Additional Resources

Flat Fee Agreement

Contingency Fee Agreement

Hourly Fee Agreement with Advance  
Deposit

Hourly Fee Agreement with Advance  
Deposit (Domestic)

Sample Invoice

Sample Settlement Statement

Approval and Receipt

Gilsbar Money Management Map

# **FEES, BILLING**

## and Trust Accounts

# Chapter 3

## Fees, Billing and Trust Accounts

The most important aspect of the attorney-client relationship is COMMUNICATION. And nowhere is communication more important than in dealing with legal fees and the attorney-client fee agreement. From the moment that the attorney-client relationship commences, the client *must* be made aware, preferably in writing, of:

- The scope of the representation.
- The type of fee arrangement (hourly? contingency? flat fee?).
- The amount of any advance deposit that is necessary and how it will be drawn against.
- The billing cycle and when payment is expected.
- The amount that it is likely to cost the client.
- In the case of an hourly rate, the exact amount of the hourly rate and, if possible, an estimate of the hours necessary to handle the matter.
- In the case of a flat fee, exactly what will and will not be covered by the flat fee.
- In the case of a contingency fee, the percentage that will be charged by the lawyer and any other deductions that will come out of the recovery in terms reasonably understood by the client.
- The charges for identifiable direct costs/expenses, such as photocopies, long distance calls, and computer research.
- The additional expenses that will or are likely to be incurred on behalf of the client. This should be projected at the commencement of the relationship, if possible. As incurred, the exact amount of the expenses should be reported to and authorized by the client, even in contingency fee contract situations where costs are being advanced by the lawyer.
- Any changes in the basis or rate of the fee or expenses.

After the attorney-client relationship has commenced, the client should be informed preferably in writing of the status of the case on a periodic, preferably monthly, basis and the work being done to earn the fee.

Rule 1.5 of the Rules of Professional Conduct governs fees. It is long and complicated, but starts with an easy-to-understand and basic premise: ***a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.*** This means that the work and effort expended by you on the client's behalf should match the fee and expenses charged by an *objective* standard. The factors determining whether a fee is reasonable are set forth in Rule 1.5(a).

Thus, even in contingency fee or flat fee matters, you should be sure that the file reflects the work that you have done. Keeping time records is the surest way to do that, as is keeping notes and documentation of your work. If you have spent the afternoon at the library, be sure the research makes it into the file. If you talked to someone on the phone, make a memo to the file. Not only will your efficiency be increased by this recordkeeping, but you will be protecting yourself from client complaints and dissatisfaction.

# TYPES OF FEE ARRANGEMENTS

## Contingent Fee Arrangements

According to Rule 1.5(c), a contingent fee arrangement *must* be in writing, and the writing *must* be signed by the client. The writing *must* provide:

- The method by which the fee is to be determined, including the percentage or percentages that will accrue to the lawyer in the event of settlement, trial or appeal;
- The litigation and other expenses that are to be deducted from the recovery;
- Whether the expenses are to be deducted before or after the contingent fee is calculated; and
- Any expenses for which the client will be liable, whether or not the client is the prevailing party.

A copy of the contract must be given to the client at the time of the agreement. If financial assistance is provided to a client, a copy of Rules 1.8(e) must be given to the client as per Rule 1.4(c).

Contingency fee agreements are specifically prohibited in most domestic relations cases and all criminal matters. They are most commonly utilized in plaintiff personal injury matters, where the courts view the client as unsophisticated and vulnerable. Accordingly, you should explain all the provisions of the contingency fee contract to the client and be sure that she understands the contract. A sample form for a contingency fee contract is included in this chapter.

The entire amount of proceeds of settlements or judgments received by you on behalf of your client, if handled on a contingency fee basis, must be deposited into the trust account and disbursed only in accordance with Rule 1.15 and the contingency fee contract.

Rule 1.5(c) requires that, upon conclusion of a contingent fee matter, you provide the client with a written statement indicating the outcome of the matter and, if there is a recovery, showing the remittance to the client and an itemization of the fees and expenses incurred. If the client has agreed to pay expenses such as court reporters, investigators, health care providers, experts, or others, Rule 1.15(d) requires that those funds be promptly paid from the proceeds of settlement or judgment. Also, you must pay any other person with a claim against the settlement or judgment fund if (a) you have actual knowledge of that person's interest; and (b) the claim is (1) recognized by a statutory lien or privilege; (2) recognized in a final judgment addressing disposition of the claim; or (3) contained in a written agreement (executed by the client or by you on behalf of the client) guaranteeing payment out of those funds or property.<sup>1</sup>

If you come into possession of funds or property in which both you and another person (such as a lawyer who previously represented your client in the same matter) claim interests, you must keep the property separate until there is an accounting and severance of both persons' interests. If the amount of both persons' interests is or becomes disputed, then you must keep separate the portion in dispute until the dispute is resolved pursuant to Rule 1.15(e).

Often lawyers who enter into contingent fee contracts with their clients do not feel the need to send an engagement letter also. Unfortunately, most contingent fee contracts do not cover all of the issues that are addressed in an engagement letter. A sample contingent fee contract is included, but it does not necessarily provide the client with a complete outline of the scope of representation, conflicts of interest, and a plan for communication. Accordingly, even the contingent fee arrangements should begin with both the contract and a letter which outlines what you plan to do and how you plan to communicate about it.<sup>2</sup>

<sup>1</sup> The foregoing discussion pertains to disbursement of funds obtained pursuant to a contingent fee contract. There are special rules which apply to funds or property in which the client and/or third persons have an interest. These rules are discussed more fully in Property Belonging to Third Persons, *infra*.

<sup>2</sup> There is a conflict between the statute governing contingent fee contracts, La. Rev. Stat. § 37:218, on the one hand, and the Rules of Professional Conduct and prevailing Louisiana jurisprudence, on the other hand. La. Rev. Stat. § 37:218 states that a contingent fee contract may stipulate that neither the attorney nor the client may, without the other's written consent, settle, compromise, release, discontinue, or otherwise dispose of the suit or claim. According to the statute, any settlement, compromise, discontinuance, or other disposition of the suit or claim by either the attorney or the client, without the other's written consent, is null and void; and the suit or claim shall be proceeded with as if no such settlement or disposition has been made. This provision of the statute is in direct contravention to Rule 1.2 of the Rules of Professional Conduct, as well as the Supreme Court's decision in *Hayes v. Saucier Dairy Products*, 373 So. 2d 102 (La. 1978), and *LSBA v. Edwins*, 329 So. 2d 437 (La. 1976). In *Hayes*, the Supreme Court interpreted La. Rev. Stat. § 37:218 as merely establishing a privilege guaranteeing payment of a fully-earned contingent fee to an attorney discharged without cause. However, the Supreme Court recognized that the statute could not and does not prevent the client from discharging his attorney, with or without cause, at any time, pursuant to Rule 1.2. The *Hayes* Court also reaffirmed its exclusive authority conferred by the Louisiana Constitution to regulate the practice of law (first recognized in *Edwins*), confirmed that the Rules of Professional Conduct have the force and effect of substantive law, and declared that only legislative enactments which aid its inherent powers to regulate attorneys' practices will be approved by the Court. Therefore, the clause in La. Rev. Stat. § 37:218 which purports to nullify any settlement reached by the client without the attorney's approval is perhaps unenforceable.

## Fee Disputes

You should have a plan or standard practice for handling fee disputes when they arise. It is wise to specify the method of resolving the fee dispute in the engagement letter or the contract. The authors recommend that you include an agreement whereby any fee disputes will be handled by the Legal Fee Dispute Resolution Program, a quick and inexpensive program administered by the Louisiana State Bar Association, subject to the discussion below. (See LSBA Fee Dispute Program.)

The Supreme Court, in *Hodges v. Reasonover*, 2012-0043 (La. 7/2/12), 103 So. 3d 1069, has held that a binding arbitration clause between an attorney and client does not violate the Rules of Professional Conduct, provided that the clause does not limit the attorney's substantive liability, provides for a neutral decision maker, and is otherwise fair and reasonable to the client. As the client must give informed consent, as defined in Rule 1.0(e), the attorney has the obligation to fully explain to the client the possible consequences of entering into an arbitration clause, including the legal rights the client gives up by agreeing to binding arbitration. Without clear and explicit disclosure of the consequences of a binding arbitration clause, according to the *Hodges* Court, the client's consent is not truly "informed." At a minimum, the attorney must disclose the following legal effects of binding arbitration, assuming they are applicable:

- Waiver of the right to a jury trial;
- Waiver of the right to an appeal;
- Waiver of the right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- The fact that arbitration may involve substantial upfront costs compared to litigation;
- The explicit nature of claims covered by the arbitration clause, such as fee disputes or malpractice claims;
- The fact that the arbitration clause does not impinge upon the client's right to make a disciplinary complaint to the appropriate authorities; and
- The fact that the client has the opportunity to speak with independent counsel before signing the contract.

Remember that there is no such thing as a non-refundable fee. All fees must be reasonably earned. Any funds reasonably in dispute must be placed in the client trust account for safekeeping pending resolution of the fee dispute.

Fee disputes often can be handled as a part of the ongoing communication between the client and the lawyer. A client's inquiries about billing always should be answered promptly and with complete explanations and documentation. Reciprocally, your relationship with the client ought to be such that you can make direct and frank inquiries about when and how payment is to be expected. Such inquiries should be made at the commencement of the representation and continued throughout, so that the client does not get too far behind in payment. Many malpractice claims are the result of dissatisfaction over billing; you can avoid dissatisfaction by practicing good communication skills.

Sometimes lawyers are not precise about the terminology they use when referring to forms of fees or fee payments. That can lead to confusion about when and how client funds can be used by the lawyer. Rule 1.5(f) specifies which payments from clients can be spent by the lawyer immediately upon their receipt, still subject to being earned or refunded, and which payments must be put in trust because they remain client funds until earned.

## Retainers, Advance Deposits, and Hourly Fee Agreements

Sometimes lawyers mistakenly call "advance deposits" by the name "retainer." The difference is important, because the money received from the client must be handled differently in the two situations. Advance deposit fee arrangements are governed by Rule 1.5(f)(3).

A true *retainer* is an amount paid by a client on an agreed-upon basis in order to keep a lawyer generally available to the client. When paid, the money may be deposited into the operating account, can be used by the lawyer, subject to possible refund if a dispute arises.

An *advance deposit*, however, is money which the client puts on deposit with the lawyer in order to ensure that future work can and will be paid for. When paid, the money still belongs to the client and must be deposited in the attorney's trust account. The lawyer may only use the money as she works or incurs reasonable expenses and bills for them. At agreed-upon intervals, the lawyer may withdraw a portion of the advance deposit to pay a fee/expense invoice. She may do so without obtaining the prior permission of the client, but she is obliged to make periodic accountings to the client.

Detailed trust account records must be kept. Withdrawals should not be made from the trust account without issuing an invoice to the client, along with notification that money will be or has been withdrawn from the trust account to pay the invoice. The client should be updated on the status of the advance deposit on a periodic basis - ideally monthly.

Hourly fee agreements are often used when it is difficult to determine the amount of time necessary to pursue the legal matter. Detailed records should be kept as to the time spent on the matter, and the client should be invoiced at regular intervals, preferably monthly. Sample hourly fee agreements are included.

## Flat Fee, Fixed Fee, or Minimum Fee Agreements

A lawyer may sell her future services for a specified price. For example, you may charge a set amount for handling a divorce or a DWI defense. You may require that the flat fee be paid before you begin to work on the case. The only requirement is that the fee not be “unreasonable” within the framework of Rule 1.5(a). You may still have to justify the amount charged, so time records remain important even in flat fee situations. A sample of a “flat fee” arrangement is included.

A hybrid of fixed or flat fee billing is a “minimum fee” agreement. Generally, this sort of arrangement occurs when the lawyer and the client agree that a matter will be handled until a particular point in the proceeding, or a particular date, or a particular event, for a set fee, fixed or flat. If the matter is resolved by the pre-arranged point, then no additional amount is due from the client. If, on the other hand, the matter is not resolved by that point, then the client is charged (usually hourly) an additional amount for any additional work.

Rule 1.5(f)(2) provides that a flat fee or minimum fee becomes the property of the lawyer when paid and may be deposited into the operating account. The caveat, however, found under subsection (f)(5), is that you must ***immediately refund any amount of an unearned fee when a fee dispute arises***. If there is a disagreement as to what amount of the fee is unearned, you must ***immediately refund to the client the amount, if any, that you and the client agree has not been earned and deposit any and all other amounts in dispute into your trust account*** pending resolution of the dispute. You are specifically prohibited from using retention of the disputed portion of the funds to coerce the client into accepting your contention as to the amount of the fee that is earned.

As a practical matter, you may take and use any fee that is fixed, flat, or minimum. However, you should do so only if you have the ability to deposit an equivalent amount immediately in trust should a dispute arise. Should the lawyer be discharged prior to completion, the unearned portion of the fee should be promptly returned. Retaining the unearned portion after discharge would be unreasonable under Rule 1.5(a) and may subject the lawyer to discipline.

Ideally, attorneys in flat fee arrangements should obtain their client's informal consent to the scope of the representation in writing, signed by the client, which directly addresses what particular services the lawyer is agreeing to perform.

## True Retainers

Rule 1.5(f)(1) defines the old-fashioned “true retainer.” This is a sum of money paid by a client in order to ensure the lawyer's general availability to the client, such as serving as a bank's general counsel. The fee is not necessarily related to any particular matter or litigation. When paid, this fee becomes the property of the lawyer and may be deposited into the operating account and spent.

The “true retainer” relationship is somewhat unusual in this day and age. If you enter into such an agreement with the client, you must be sure to clarify, in writing, what services are to be expected in exchange for the general availability retainer and when “retainer” work ceases and “hourly” work commences. (As “true retainers” are rare, an example has not been provided in this Practice Aid Guide). Any hourly work should also be separately formalized with an engagement letter or contract signed by you and your client.

## Division of Fees Among Lawyers

A division of fees between lawyers who are not in the same firm may be made only if:

- (1) The client agrees in writing to the representation by all of the lawyers involved and is advised in writing as to the share of the fee that each lawyer will receive;
- (2) The total fee is reasonable; and
- (3) Each lawyer renders meaningful legal services for the client in the matter. (See Rule 1.5(e).)

## Other Points

- Be sure to obtain the client's signature on the contract and obtain any advance deposit *before* commencing the representation.
- Be sure any contract includes details about who will perform the services: you, your partner, an associate, a paralegal, or all of the above.
- Be sure any arrangements to advance costs are carefully spelled out, are understood by the client, and comply with the Rules of Professional Conduct.
- Be sure any potential conflicts of interest are spelled out in the contract and are consented to in writing, signed by the client. Remember that some conflicts cannot be addressed by client consent. (See Rules 1.7 and 1.13.)
- Make sure to detail who is responsible for payment of the fee. If a family member or friend is responsible for paying the client's fee, then get her signature on the contract. But regardless of who pays the fee, remember that your client is the one who makes the decisions about her case. (See Rule 1.8(f).)
- Be sure to specify when payment is due.
- Specify when termination of the contract is acceptable, such as failure to pay the fee, non-cooperation of the client, or other good cause per Rule 1.16(b).

## Funds Advanced for Costs

An advance deposit by the client to the lawyer for payment of costs and expenses remains the property of the client and must be placed in the attorney's trust account until costs and expenses are actually incurred. You may expend these funds as costs and expenses accrue, without specific authorization from the client. However, you must render to the client a periodic accounting for these funds as is reasonable under the circumstances, for example, a bill or invoice.

You must determine that sufficient funds for each particular client are on deposit in the trust account *prior to* each and every withdrawal. Therefore, you should either verify that client's trust account balance prior to writing the check, or write the check out of the operating account and transfer the funds out of the client's trust balance, if adequate funds are on deposit. If adequate funds are not on deposit in trust to cover the check, then you must obtain another advance from the client for the difference or advance the difference from your own funds.

For example, XYZ has advanced \$500 toward costs to Lawyer. Last month, Lawyer spent \$300 on investigative fees and deducted that amount from the deposit. This month, Lawyer is filing suit on XYZ's behalf. The filing and service fees will total \$250. Because this amount exceeds XYZ's trust balance of \$200, Lawyer could write the check out of her operating account and bill XYZ for the \$50 difference. However, Lawyer may withdraw the \$200 trust balance to partially reimburse her operating account. Upon receipt of the remaining \$50 from the client, Lawyer may deposit those funds directly into her operating account. Alternatively, lawyer could write a \$200 check for suit from the trust account and write a \$50 check from her operating account, billing XYZ for that \$50.



## Funds Advanced to the Client by the Lawyer

The question of cost advances on behalf of clients used to be a particularly difficult one in Louisiana. For years, many considered it unethical and improper to provide financial assistance to clients. The decision in *Louisiana State Bar Association v. Edwins*, 329 So. 2d 437 (La. 1976), qualified the general rule and allowed financial assistance under certain circumstances. The Rules of Professional Conduct were amended in 2006 to settle the question.

Rule 1.4(c) provides that a lawyer who gives any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e). Rule 1.8(e) is very lengthy, detailed and specific. Please read it carefully and understand it fully before rendering financial assistance to a client. A call to LSBA Ethics Counsel may be helpful if you are unclear regarding its meaning and limitations.

## Other Important Information About Trust Accounts and Handling of Client Funds

- All lawyers who will take possession of any money belonging to a client, no matter how insignificant the amount, are required to maintain a trust account in a bank or other financial institution in the state in which her office is located. Only attorneys who never handle client funds, such as government or corporate attorneys, are not required to maintain a trust account.
- Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.
- Commingling of your funds with those of your client is a serious disciplinary violation.
- There is only one exception to the commingling rule: you may deposit a nominal amount of your own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose. If possible, have the bank tie the trust account to your operating account and sweep the service charges from your operating account.
- Although there is a one-year/three-year prescriptive/peremptive period, set forth in La. Rev. Stat. § 9:5605, for legal malpractice actions by the client against an attorney, there is a limited 10-year prescriptive period applicable to the filing of a disciplinary complaint where the mental element is merely negligence. There is no prescriptive period applicable to the filing of a complaint against an attorney accused of fraudulent conduct or where the mental element was “knowing” or “intentional”.
- Funds in a trust account must be subject to withdrawal upon request and without delay.
- Best practice is to pay the client first, then any third parties (court reporters, health care providers, etc.), then yourself. Never withdraw your fees until after the client has received her share and approved all disbursements. However, you should then always pay yourself promptly to avoid commingling your funds with those of other clients.
- Also, upon termination of representation, you must refund any advance payment of the legal fee, costs or expenses that have not been earned or incurred.
- You must keep complete records of client funds and other client property and must preserve those records for a period of **five years** after termination of the representation.
- Do not be tempted to “borrow” a client’s funds, no matter how nominal or for how short a period of time. This is a disciplinary violation, even if repaid within the next hour. The possible consequences are not worth the risk.
- Issuance of NSF checks drawn on a lawyer’s trust account creates a suggestion of conversion of client funds.
- A draft or check deposited into a lawyer’s trust account should clear the account on which it is drawn prior to any disbursements of the trust funds. The risk that a draft may not clear should not be borne by other clients. For a lawyer to take advantage of a “float” of funds in her trust account belonging to other clients constitutes conversion of the other clients’ funds.
- All trust account checks must be personally signed by a lawyer.
- A non-lawyer should handle and distribute clients’ money only under close supervision.
- Note that all bank overdrafts are reported to the Office of Disciplinary Counsel, subject to Rule XIX, Section 23.D.
- Lawyers are not permitted to use debit cards for their trust accounts or issue checks payable to cash. See Rule 1.15(f).

## Property Belonging to the Client and/or Third Persons

Funds or property coming into your possession in which the client and/or a third person claim an interest are subject to special rules, as are funds or property in which both you and a third person claim an interest in the course of representation. The former situation is governed by Rule 1.15(d); the latter is governed by Rule 1.15(e).

### Funds in Which Your Client and/or a Third Person Claim an Interest

Upon receiving funds or other property in which a client and/or a third person has an interest, you have five distinct obligations to the client and/or third person:

- **Segregation.** You must keep the funds or other property separate from your funds or property. Funds must be kept in a client trust account maintained in Louisiana or the state where your office is located, or may be kept elsewhere if the client or third person consents. Other types of property must be identified as such and appropriately safeguarded.
- **Notification.** You must promptly notify the client and/or third person of receipt of the funds or other property. However, you should also notify the client or third person that the funds will not be available for disbursement until the check actually clears the bank, which normally occurs within three (3) to five (5) business days following its deposit into your trust account.
- **Delivery.** You must promptly deliver to the client and/or third person any funds or other property to which they may be entitled.
- **Accounting.** Upon request by the client or third person, you must promptly render a full accounting regarding the funds or property.
- **Recordkeeping.** You must keep complete records of account funds and other property for five years after termination of the representation.

However, the obligations to a third person (as opposed to your client)<sup>1</sup> are defined by Rule 1.15(d) as:

- First, you must have actual knowledge of the third person's interest.
- Second, the third person's interest must arise by virtue of one of the following:
  - (1) A statutory lien or privilege;
  - (2) A final judgment addressing disposition of the funds or property; or
  - (3) A written agreement by the client or by you on the client's behalf guaranteeing payment out of those funds or property.

### Property in Which Both You and Another Person Claim Interests

When you come into possession of property during a representation in which two or more persons (one of whom may be you) claim competing interests, you must keep the property separate until the dispute is resolved. You must promptly distribute all portions of the property as to which the interests are not in dispute.

A common situation in which this scenario arises is when the client discharges a lawyer and retains another lawyer, both of whom have an interest in a contingent fee. We recommend the use of informal dispute resolution methods, such as the Louisiana State Bar Association Legal Fee Dispute Resolution Program and mediation, as the most efficient and economical ways to handle these issues.

### Interest on Lawyer Trust Accounts (IOLTA)

The IOLTA program is a mandatory program requiring participation by most attorneys and law firms. The program requires that a lawyer's IOLTA trust account be interest-bearing and used for any clients' funds which are either nominal in amount or to be held for a short period of time. Neither the lawyer nor the client has access to the earnings from IOLTA accounts. Rather, the Louisiana Bar Foundation administers these funds for the benefit of numerous law-related causes. You may be exempted from the IOLTA program at the discretion of the program administrator by certifying that participation would be economically impractical or if you do not ever handle any client funds (*i.e.*, corporate counsel or assistant district attorney). Even if exempted from the requirement of IOLTA participation, any lawyer who holds any property of clients or third persons must still keep them separate from her own funds in a client trust account. See Rule 1.15(f) for detailed IOLTA rules.

<sup>1</sup> See LSBA Public Ethics Opinion 05-RPCC-004 [www.lsba.org/MemberServices/ethicsadvisoryopinions.asp](http://www.lsba.org/MemberServices/ethicsadvisoryopinions.asp)



## When A Separate Trust Account May Be Required

In certain cases, where the amount of funds is not nominal and the funds are to be held for a longer period of time, you may open a separate interest-bearing, non-IOLTA trust account for that client's funds so that the client may earn and receive interest. The factors that decide what amount of client's funds is "nominal" are:

- The amount of the deposit, keeping in mind that the deposit should be made into an account which is fully federally insured in the event of failure;
- The amount of interest which would reasonably be expected to be earned during the deposit period;
- Your cost to establish and administer the account, including the cost of preparing any required tax reports for interest accruing to a client's benefit (*i.e.*, Forms 1099); and
- The capability of financial institutions to calculate and pay interest to individual clients.

You may assume that \$50 is a reasonable estimate of the minimum amount of interest that a segregated trust account for an individual client must generate to be practical in light of the costs involved in earning or accounting for any such income. In the end, your "sound judgment" determines whether the funds could be invested to provide a positive net return to the client.

## Ledgers and Billing

Even if you have a rock-solid written fee agreement with your client, it means little without the proper office procedures to back it up. Therefore, simple and efficient timekeeping and billing systems must be implemented. Most clients appreciate detailed invoices showing that the lawyer has performed services on the case. Included in this Guide are simple forms for: documenting expenses (ledger sheet); and billing and invoicing the client.

You should keep track of the hours spent in all your legal matters, even if the contract isn't hourly. This will bolster any claim or defense in case a fee dispute or malpractice suit arises. Bill as frequently and as promptly as is practical. This will avoid the client's feeling "ambushed" at the end of a case by receiving a large bill and will promote better communication in the representation.

## Accepting Credit Cards for Payment of Fees and Costs

According to LSBA Public Ethics Advisory Opinion 12-RPCC-019, a lawyer may accept credit cards in payment for legal services rendered or advanced for fees and/or costs as long as the lawyer abides by the applicable Louisiana Rules of Professional Conduct, including those pertaining to proper communication with the client, fees and expense charges, confidentiality, and the safekeeping of property. Any merchant agreement between the lawyer and credit card vendor must allow a lawyer to be compliant with the appropriate Rules.

In general, before contracting with a vendor or credit card company to allow your firm to accept credit cards, study the merchant agreement carefully to make sure there are no obligations which would require you to violate the Rules, and communicate to the client any special fee arrangements which may be required by his use of a credit card.

In doing so, consider the following:

- Do you intend to charge the clients for the "transaction fee" associated with the use of the credit card? If so, have you obtained the necessary informed consent to do so?
- Does the credit card merchant require disclosures of any confidential information to process the charge; and if so, has the client provided informed consent as to that disclosure?
- Have you considered whether to link the credit card merchant agreement to an operating account or a trust account, given that the funds may be required to be held in trust?
- If you elect to link the credit card to a trust account, have you provided that any "charge backs" must only come from the operating account to avoid unintentional conversion of other clients' funds in the trust account?

Because the credit merchant agreement is a special circumstance requiring the client's informed consent, you should communicate with the client, preferably in writing, the obligations of the client and lawyer under the merchant agreement.<sup>2</sup>

If you treat this transaction fee as an overhead expense, you must make arrangements to treat the net remittance received from the credit card company, after deduction of its fee, as a remittance in satisfaction of the entire amount charged to the client's credit card. If you intend that the client still must pay the difference between the original charge amount and the remittance received, which is the "transaction fee," then you must be certain to comply with Rule 1.8(e)(3) and obtain the client's informed consent for such a charge.

For example, if the client uses a credit card to pay a \$500 advance deposit subject to a 2% transaction fee, which you treat as an overhead expense, that transaction fee should be deducted from your operating account in order that the client receives the full \$500 trust balance as a result of the credit card transaction. However, if you intend for the client to bear the expense of the transaction fee, with the client's informed consent, you could reflect that the original trust balance of \$500 has been reduced to \$490 to account for the transaction fee. Be aware, though, that some credit card vendors prohibit the lawyer from passing such transaction fees along to the client, in which case this option is not available to you, and you must elect to treat the transaction fee as an overhead expense. Likewise, if the credit card company only charges a monthly charge for a credit card processing machine, rather than charging a fee per transaction, then the monthly charge is a non-recoverable overhead cost which may not be passed on to the client.

If you are unable to negotiate with the credit card company an agreement to use generic service descriptions, such as "services rendered," then you must comply with Rule 1.6(a) by advising the client of the required disclosures and obtaining the client's informed consent. You should also advise the client that if there is a dispute regarding charges among the client, you and the credit card company, confidential information may not be protected due to exceptions contained in Rule 1.6(b)5.

If earned fees or costs have been transferred from your trust account to your operating account, and later the client disputes the fees or costs, a "charge back" by the credit card company against your trust account may result in a failure to safeguard or conversion of other clients' funds in violation of Rule 1.15. On the other hand, if your credit card processing account is only linked to your operating account, you would violate Rule 1.15 by putting advance deposits paid by credit card directly into your operating account because they have not yet been earned. If the client pays by credit card sums owed to you for past work performed, expenses incurred, or a flat fee, the funds may be deposited directly into your operating account, since those funds become your property when paid.

The Rules of Professional Conduct Committee, as well as these authors, recommend that you link both your trust account and your operating account to the credit card account so that funds charged to a client's credit card may be placed into the correct account. The contract between you and the credit card company should also provide that any "charge back," disputed transaction, or costs associated with use of the credit card will be charged solely to your operating account.

<sup>2</sup> See La. Rules of Professional Conduct 1.0(e), 1.4 and 1.5(B).

## Additional Resources

- Foonberg, Jay G., *The ABA Guide to Lawyer Trust Accounts* (American Bar Association, 1996) or check out the book via the LSBA Lending Library [www.lsba.org/PracticeManagement/LendingLibrary.aspx](http://www.lsba.org/PracticeManagement/LendingLibrary.aspx).
- *The Louisiana Lawyer and Other People's Money* (Louisiana Bar Foundation, 1998) or check out the book via the LSBA Lending Library [www.lsba.org/PracticeManagement/LendingLibrary.aspx](http://www.lsba.org/PracticeManagement/LendingLibrary.aspx).
- LSBA Ethics Opinion 05-RPCC-004 Safekeeping the Property of Clients and Third Parties <http://files.lsba.org/documents/ethics/safekeepingproperty.pdf>.

# Fee Agreement and Authority to Represent (Contingency Fee)

(In accordance with amended Rule 1.5 (c) of the Louisiana Rules of Professional Conduct, effective date April 1, 2006)

I, \_\_\_\_\_, the undersigned client (hereinafter referred to as "I," "me" or the "Client"), do hereby retain and employ \_\_\_\_\_ and his/her law firm (hereinafter referred to as "Attorney"), as my Attorney to represent me in connection with the following matter:

---

This claim is not in litigation yet; and I specifically authorize Attorney to undertake negotiations and/or file suit or institute legal proceedings necessary on my behalf. As used herein, the term "suit" includes, where applicable, the institution of proceedings to impanel a medical review panel and/or certified public accountant review panel. I further authorize Attorney to retain and employ, at my expense, the services of any experts, including physicians and doctors, as well as the services of other outside contractors, as Attorney deems necessary or expedient in representing my interests. I also authorize Attorney to retain and employ other attorneys with my prior knowledge and written consent; however, the combined fee of Attorney and all other attorneys shall be limited as set forth herein below.

1. **ATTORNEY'S FEES.** As compensation for legal services, I agree to pay my Attorney as follows:

## Contingency Fee

Attorney shall receive the following percentage of the amount recovered and before the deduction of costs and expenses as set forth in Section 2 herein:

\_\_\_\_ % in the event of settlement before the suit is filed;

\_\_\_\_ % in the event the suit is filed and the matter settles before a trial on the merits;

\_\_\_\_ % in the event of settlement after the start of a trial on the merits;

\_\_\_\_ % in the event a judgment is rendered at a trial on the merits and no appeals are filed by any party;

\_\_\_\_ % in the event an appeal is filed by any party after conclusion of a trial on the merits.

It is understood and agreed that this employment is upon a contingency fee basis; and, if no recovery is made, I will not be indebted to my Attorney for any sum whatsoever as Attorney's fees. (However, I agree to pay all costs and expenses as set forth in Section 2 herein, regardless of whether there is any recovery in this matter. In the event of recovery, costs and expenses shall be paid out of my share of the recovery.)

2. **COSTS AND EXPENSES.** In addition to paying Attorney's fees, I agree to pay all costs and expenses in connection with Attorney's handling of this matter. Costs and expenses shall be billed to me as they are incurred, and I hereby agree to promptly reimburse Attorney. If an advance deposit is being held by Attorney, I agree to promptly reimburse Attorney for any amount in excess of what is being held in

advance. These costs may include (but are not limited to) the following expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long distance telephone charges, postage charges, copying charges (\$ \_\_\_ per page), mileage (not to exceed the IRS acceptable rate), and outside courier service charges.

**Advance deposit required** \_\_\_ Yes \_\_\_ No

I agree to advance \$ \_\_\_\_\_ for costs and expenses, which amount shall be deposited in Attorney's client trust account and shall be applied to costs and expenses as they accrue. Should this advance be exhausted, I agree to replenish the advance promptly upon Attorney's request. If I fail to replenish the advance within ten (10) days of Attorney's request, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney. Client understands<sup>4</sup> and agrees<sup>5</sup> that neither attorney nor client shall receive any interest from these funds

3. **NO GUARANTEE.** I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly, and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from this matter if, in Attorney's professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendations of Attorney, I fail to abide by the terms of this agreement, if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time if otherwise permitted under the Rules of Professional Conduct.
4. **STATUTORY LIMITS ON ATTORNEY'S FEES.** In the event of recovery under the provisions of the Longshore and Harbor Workers' Compensation Act, or under Louisiana Workman's Compensation laws, or under any other laws which specify attorney's fees to be paid, then Attorney's fees under this agreement shall be paid in accordance with the maximum allowed by law but no more than the amount specified herein.
5. **PRIVILEGE.** I agree and understand that this contract is intended to and does hereby assign, transfer, set over and deliver unto Attorney as his fee for representation of me in this matter an interest in the claim(s), the proceeds or any recovery therefrom under the terms and conditions aforesaid, in accordance with the provisions of Louisiana Revised Statute § 37:218, and that Attorney shall have the privilege afforded by Louisiana Revised Statute § 9:5001.

[Optional]

- [6. **ALTERNATIVE FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;

- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.]

**NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Fee Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.**

**I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the “Alternative Fee Dispute Resolution” provision.**

Client’s Initials \_\_\_\_\_

Attorney’s Initials \_\_\_\_\_

7. **ADDITIONAL TERMS.** Attorney and Client agree to the following additional terms:

\_\_\_\_\_  
 \_\_\_\_\_

8. **LOUISIANA LAW.** This contract shall be governed by Louisiana law.

9. **TERMINATION OF REPRESENTATION.** I understand that I have the right to terminate the representation upon written notice to that effect. I understand that I will be responsible for any fees or costs incurred prior to the discharge or termination.

10. **FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that time, then our office will maintain your file for a maximum of 5 years after termination of representation in this matter, after which your file may be destroyed without further notice.

11. **ENTIRE AGREEMENT.** I have read this agreement in its entirety, a copy of which I have received, and I agree to and understand the terms and conditions set forth herein. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

**This agreement is executed by me, the undersigned Client, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .**

**CLIENT** \_\_\_\_\_

**The foregoing agreement is hereby accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .**

**ATTORNEY** \_\_\_\_\_

# Fee Agreement and Authority to Represent (Flat Fee)

I, \_\_\_\_\_, the undersigned client (hereinafter referred to as “I,” “me” or the “Client”), do hereby retain and employ \_\_\_\_\_ and his/her law firm (hereinafter referred to as “Attorney”), as my Attorney to represent me in connection with the following matter:

---

The firm will provide all services necessary to the representation of the above matter, including court appearances, investigation, pretrial discovery, negotiations with opposing counsel and trial on the merits, if necessary. I also authorize Attorney to retain and employ other attorneys with my prior knowledge and written consent; however, the entire fee of Attorney and any such other attorneys shall be limited as set forth herein below.

1. **ATTORNEY’S FEES.** As compensation for legal services, I agree to pay my Attorney as follows:

### Flat Fee

I understand that the flat fee for these legal services is \$\_\_\_\_\_, which amount is due and payable before \_\_\_\_\_. The fee reflects not simply the number of hours which individual lawyers may devote to my representation, but also the experience, reputation, skill and efficiency of the attorneys, as well as the potential inability of the firm to accept other employment during the pendency of the representation. I understand that if all of the flat fee is not received by \_\_\_\_\_, then client has breached this agreement and attorney can terminate representation. This agreement pertains to the representation through trial only. Any writ, appeal, motion for new trial, motion for reconsideration, or any other kind of post-trial relief is not covered by this agreement and first be agreed upon by Attorney and client on the subject of a new written fee agreement.

2. **COSTS AND EXPENSES.** In addition to paying Attorney’s Fees, I agree to pay all costs and expenses in connection with Attorney’s handling of this matter. Costs and expenses shall be billed to me as they are incurred, and I hereby agree promptly to reimburse Attorney. If an advance deposit is being held by Attorney, I agree promptly to reimburse Attorney for any amount in excess of what is being held in advance. These costs may include (but are not limited to) the following expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long distance telephone charges, postage charges, copying charges (\$\_\_\_\_ per page), mileage (not to exceed the IRS acceptable rate), and outside courier service charges.

**Advance deposit required** \_\_\_ Yes \_\_\_ No

I agree to advance \$ \_\_\_\_\_ for costs and expenses, which amount shall be deposited in Attorney’s trust account and shall be applied to costs and expenses as they accrue. Should this advance be exhausted, I agree to replenish the advance promptly upon Attorney’s request. If I fail to replenish the advance within ten (10) days of Attorney’s request, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney. Client understands and agrees that neither attorney nor client shall receive any interest from these funds.



3. **NO GUARANTEE.** I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly, and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from this matter subject to refund of any unearned fees, costs and expenses, if, in Attorney's professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendations of Attorney, I fail to abide by the terms of this agreement, if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, and/or at any other time if otherwise permitted by the Rules of Professional Conduct.

[Optional]

4. **ALTERNATIVE FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program. I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.

**NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Fee Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.**

**I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the "Alternative Fee Dispute Resolution" provision.**

Client's Initials \_\_\_\_\_

Attorney's Initials \_\_\_\_\_

5. **ADDITIONAL TERMS.** Attorney and Client agree to the following additional terms:

\_\_\_\_\_  
\_\_\_\_\_

6. **TERMINATION OF REPRESENTATION.** I understand that I have the right to terminate the representation upon written notice to that effect. I understand that I will be responsible for any fees or costs incurred prior to the discharge or termination.

- 7. **FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that thime, then our office will maintain the file for a maximum of 5 years after termination of representation, after which your file may be destroyed without further notice.
- 8. **LOUISIANA LAW.** This contract shall be governed by Louisiana law.
- 9. **ENTIRE AGREEMENT.** I have read this agreement in its entirety, and I agree to and understand the terms and conditions set forth herein. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

This agreement is executed by me, the undersigned Client, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

CLIENT \_\_\_\_\_

The foregoing agreement is hereby accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

ATTORNEY \_\_\_\_\_

# Fee Agreement and Authority to Represent (Hourly with Advance)

I, \_\_\_\_\_, the undersigned client (hereinafter referred to as “I,” “me” or the “Client”), do hereby retain and employ \_\_\_\_\_ and his/her law firm (hereinafter referred to as “Attorney”), as my Attorney to represent me in connection with the following matter:

---

1. **ATTORNEY’S FEES.** As compensation for legal services, I agree to pay my Attorney as follows:

### **Hourly Fee —with Advance Deposit**

I agree to pay Attorney’s Fees at the rate of \$\_\_\_\_\_ per hour (and paralegal fees at the rate of \$\_\_\_\_\_ per hour.) I agree that time is billed in minimum increments of 6 minutes, i.e., one tenth of an hour increment.

It is understood and agreed that I shall pay Attorney an initial Advance Deposit of \$\_\_\_\_\_ due upon Attorney’s acceptance of this agreement, which deposit shall be applied toward the payment of Attorney’s fees and costs and expenses. This deposit shall be deposited into Attorney’s trust account, and Attorney is authorized to pay Attorney’s fees and costs and expenses out of the existing deposit, at least on a monthly basis. Periodically Attorney shall provide me with itemized Statements for Professional Services Rendered (including costs and expenses). Should the work performed by Attorney exceed the amount held in trust, I agree to replenish the Advance Deposit upon Attorney’s written request. Should no written request be made, I agree to pay all invoices submitted by the firm within 30 days of receipt. I agree that, pursuant to this agreement, Attorney shall have, in addition to other rights, the right to withdraw as my Attorney based on my failure substantially to fulfill an obligation to Attorney.

It is understood and agreed that Attorney is authorized, with my prior knowledge and written consent, to employ other attorneys with their rates to be specified in writing and agreed upon, to work on my case. Said additional attorney’s fees shall be paid solely by me; and Attorney is authorized to deduct said fees from any Advance Deposit made by me.

2. **COSTS AND EXPENSES.** In addition to paying Attorney’s Fees, I agree to pay all costs and expenses in connection with Attorney’s handling of this matter. Costs and expenses shall be billed to me as they are incurred, and I hereby agree promptly to reimburse Attorney. If an advance deposit is being held by Attorney, I agree promptly to reimburse Attorney for any amount in excess of what is being held in advance. These costs may include (but are not limited to) the following expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long distance telephone charges, postage charges, copying charges (\$0. per page), mileage (not to exceed the IRS accepted rate), and outside courier service charges.

3. **NO GUARANTEE.** I acknowledge that Attorney has made no promise or guarantee regarding the outcome of my legal matter. In fact, Attorney has advised me that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. I further acknowledge that Attorney shall have the right to cancel this agreement and withdraw from this matter if, in Attorney’s professional opinion, the matter does not have merit, I do not have a reasonably good possibility of recovery, I refuse to follow the recommendations of Attorney, I fail to abide by the terms of this agreement, if Attorney’s continued representation would result in a violation of the Rules of Professional Conduct, or at any other time if otherwise permitted under by the Rules of Professional Conduct.
4. **STATUTORY LIMITATION ATTORNEY’S FEES.** In the event of recovery under the provisions of the Longshore and Harbor Workers’ Compensation Act, or under Louisiana Worker’s Compensation laws, or under any other laws which specify attorney’s fees to be paid, then the Attorney’s fees shall be paid in accordance with the maximum allowed by law.

[ **Optional** ]

5. **ALTERNATIVE FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program. I understand that, by agreeing to submit to binding arbitration, I am:
- Waiving my right to a trial by jury;
  - Waiving my right to appeal the decision;
  - Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
  - Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
  - Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
  - Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
  - Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.

**NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Fee Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.**

**I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the “Alternative Fee Dispute Resolution” provision.**

Client’s Initials \_\_\_\_\_

Attorney’s Initials \_\_\_\_\_

6. **ADDITIONAL TERMS.** Attorney and Client agree to the following additional terms:

\_\_\_\_\_

\_\_\_\_\_

7. **LOUISIANA LAW.** This contract shall be governed by Louisiana law.
8. **TERMINATION OF REPRESENTATION.** I understand that I have the right to terminate the representation upon written notice to that effect. I understand that I will be responsible for any fees or costs incurred prior to the discharge or termination. At the time of any termination in the representation, I understand that I will be given an accounting for all fees, expenses and costs. Any unearned portion of the deposit will be returned to me. I will still be responsible for paying any fees, costs or expenses in excess of the advance deposit.
9. **FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that thime, then our office will maintain the file for a maximum of 5 years after termination of representation, after which your file may be destroyed without further notice.
10. **ENTIRE AGREEMENT.** I have read this agreement in its entirety, and I agree to and understand the terms and conditions set forth herein. I acknowledge that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

This agreement is executed by me, the undersigned Client, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

CLIENT \_\_\_\_\_

The foregoing agreement is hereby accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

ATTORNEY \_\_\_\_\_

<sup>1</sup> This paragraph may be omitted if no advance deposit is being made by the client.

# Attorney-Client Fee Agreement (Hourly with Advance Deposit, Domestic)

DATE \_\_\_\_\_

CLIENT NAME \_\_\_\_\_

We appreciate the confidence you have shown in retaining our firm to represent you. This letter sets forth our respective participation and responsibilities in your case. You have hired us to handle the following matter for you:

**DIVORCE, CHILD CUSTODY, CHILD SUPPORT, SPOUSAL SUPPORT,  
AND COMMUNITY PROPERTY PARTITION**

Legal services on your case will not begin until after we have received your deposit for fees and a signed copy of this agreement, unless the attorney decides otherwise. You have paid a deposit of \$ \_\_\_\_\_ to secure the services of our firm, to compensate us for assuming responsibility for your case, and to ensure our availability to represent you.

The deposit will be applied toward payment of legal services rendered on your behalf. You authorize us to transfer expenses incurred and fees earned from our client trust account to our business account. When your credit balance with us has been depleted, you agree to replenish your deposit, so that you maintain a minimum credit balance on deposit with the firm at all times in the amount of your original advance deposit. At the conclusion of the case, any unused portion of the advance deposit will be refunded to you. We will send you itemized statements each month. If your statement shows a balance due to the firm, you agree to pay both that balance due and to replenish your advance deposit if it has been depleted. You agree to make these required payments no later than ten (10) days from the date of the statement.

This firm does not finance legal services. If you fail to maintain the terms of this agreement, and to pay fees as expressly set forth herein, we may file a Motion to Withdraw as your counsel of record.

You agree to pay the firm for attorneys' services at the rate of \$ \_\_\_\_\_ per hour. You also agree to pay \$ \_\_\_\_\_ per hour for paralegal services rendered to you. The time expended on your matter will be computed on the basis of one-tenth of an hour increments.

Any figures we quote you for the total cost of our services are merely estimates. The opposing party, the opposing attorney, or others may engage in activities beyond our control, requiring us to expend additional time not originally contemplated.

In addition to paying Attorney's Fees, I agree to pay all costs and expenses in connection with Attorney's handling of this matter. Costs and expenses shall be billed to me as they are incurred, and I hereby agree to promptly



reimburse Attorney. If an advance deposit is being held by Attorney, I agree to promptly reimburse Attorney for any amount in excess of what is being held in advance. These costs may include (but are not limited to) the following expenses incurred solely for the purposes of the representation undertaken for the Client: court costs and expenses of litigation, including filing fees; deposition costs; expert witness fees; transcript costs; witness fees; photographic, electronic, or digital evidence production; investigation fees; travel expenses; litigation-related medical expenses; and any other case-specific expenses directly related to the representation, such as computer legal research costs, long-distance telephone charges, postage charges, copying charges (\$\_\_\_\_ per page), mileage (not to exceed the IRS accepted rate), and outside courier service charges.

We will consult with you prior to employing any experts, such as accountants, appraisers, business valuation experts, and the like. We will mutually decide whether such expert fees are paid out of the advance deposit or directly by you. You authorize us to hire other attorneys, with your prior knowledge and written consent, to work with us on this engagement, at your expense.

Our representation does not include preparation of Qualified Domestic Relations Orders to divide qualified defined benefit plans (such as pension plans) or qualified defined contribution plans (such as 401(k) or profit-sharing plans). Our representation also does not include preparation of Court Orders Approved for Processing to divide government and military benefits. These require extra work which may be referred to another attorney.

We also do not give advice on the tax consequences in community property, spousal support, child support and succession cases. We advise you to confer with a tax attorney or Certified Public Accountant to determine the tax consequences of any proposed action prior to settlement or trial.

We make every reasonable effort to settle contested issues without the emotional and financial burden of trial. Sometimes, though, it is not possible to reach agreement. If it becomes apparent that your case will have to go to trial, you agree to pay the firm a trial deposit, in an amount to be determined by the attorney, within one week after we notify you of the amount required. If your case is subsequently resolved without the necessity of a trial, any unused portion of your **trial deposit** will be refunded to you. If you do not pay the trial deposit within one week of notification, we may file a Motion to Withdraw in your case.

We reserve the right to terminate this agreement for any of the following reasons:

1. You fail to pay fees, costs, advance fee replenishment or trial deposits in accordance with this agreement.
2. You fail to cooperate and comply fully with all reasonable requests of the firm in reference to your case.
3. You insist on pursuing an objective that the firm considers repugnant, illegal or imprudent, or contrary to your legal best interest.
4. You engage in conduct which makes it unreasonably difficult to carry out the purposes of this employment.
5. Any other reason allowed under the Rules of Professional Conduct.

You have the right to terminate our services upon **written** notice to that effect. You will be responsible for any and all fees for services performed or costs expended prior to our withdrawal or discharge, including time and costs expended to duplicate the file, turn over the file, and withdraw as counsel of record.

You understand and agree that this contract is intended to and does hereby assign, transfer, set over and deliver unto us as the fee for representing you, an interest in the claims, proceeds, or any recovery therefrom under the terms and conditions above, and that our firm shall have a privilege afforded by Louisiana Revised Statute § 9:5001.

We have explained to you that the court dockets are crowded, and that it might take a long time to have a contested matter heard. While most cases will settle, some do not. You acknowledge that we have made no

promises regarding when the matter will be concluded or any particular results. We will work as quickly as possible to get the matter concluded, consistent with our caseload and the proper protection of your rights.

New fee arrangements will be required at our discretion for appellate work and the collection of amounts which the opposing party may be required to pay to you. This agreement is only for services to be performed through the trial court level and does not extend beyond the entry of judgment or motion for new trial.

**[Optional]**

**[ALTERNATIVE FEE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning the scope, enforceability, or interpretation of this agreement or any portion thereof, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program or another mutually-agreed upon arbitration process. I understand that, by agreeing to submit to binding arbitration, I am:

- Waiving my right to a trial by jury;
- Waiving my right to appeal the decision;
- Agreeing that all disputes regarding legal fees and expenses contracted for, charged or collected pursuant to this agreement will be submitted to binding arbitration;
- Waiving my right to broad discovery under the Louisiana Code of Civil Procedure and/or Federal Rules of Civil Procedure;
- Acknowledging that I have had the opportunity to speak with independent legal counsel of my choice before signing this agreement;
- Aware that this clause does not limit the liability to me of the attorney(s) engaged hereunder for his, her, or their negligence or fraud; and
- Aware that this clause does not prevent me from filing a disciplinary complaint with the appropriate authorities against the attorney(s) engaged hereunder.

**NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “Alternative Fee Dispute Resolution” provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.**

**I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the “Alternative Fee Dispute Resolution” provision.**

Client’s Initials \_\_\_\_\_

Attorney’s Initials \_\_\_\_\_

ADDITIONAL TERMS. Attorney and Client agree to the following additional terms:

---



---



---

**FILE RETENTION.** Our office will offer to deliver/surrender your file to you at the conclusion of this matter, or sooner, if representation is terminated. If you choose not to take your file at that thime, then our office will maintain the file for a maximum of 5 years after termination of representation, after which your file may be destroyed without further notice.

Please read this document carefully. It sets forth all the terms of our agreement. If you agree with these terms, please sign in the place provided for your signature and return one signed copy to the firm. You should also retain a copy for your files so that you will have a memorandum of your agreement.

**APPROVED AND AGREED TO THIS** \_\_\_\_\_ **day of** \_\_\_\_\_, **20**\_\_\_\_ .

**CLIENT** \_\_\_\_\_

**ATTORNEY** \_\_\_\_\_

# Sample Invoice

FIRM NAME  
Attorneys at Law  
P.O. Box 0000  
New Orleans, LA 70000

January 31, 2017

Ms. Jane J. Good Client  
1234 Shady Lane  
Covington, LA 70433

FOR PROFESSIONAL SERVICES RENDERED FOR THE PERIOD JANUARY 1 - JANUARY 31, 2017

DATE	PROFESSIONAL	DESCRIPTION	HOURS/RATE	AMOUNT
1/2/04	JJJ	Telephone conference with defense attorney regarding scheduling of Ms. Client's deposition	0.10 / \$175	\$17.50
1/7/04	JJJ	Meeting with Ms. Client to review file and prepare for her deposition	1.50 / \$175	\$262.50
1/10/04	JJJ	Attend the deposition of Ms. Client	4.00 / \$175	\$700.00
1/17/04	MLT	Review and summarize deposition of Ms. Client	1.50 / \$75	\$112.50
1/18/04	JJJ	Prepare Motion for Summary Judgment, Memorandum in Support of Motion for Summary Judgment, and Affidavit of Ms. Client	3.00 / \$175	\$525.00
1/20/04	MLT	Court run to Civil District Court to file Motion for Summary Judgment; obtain hearing date from division; walk through service to Sheriff	1.00 / \$75	\$75.00
TOTAL FEES				\$1,692.50
COSTS EXPENDED ON YOUR BEHALF				
1/18/04		Crackerjack Court Reporters - one copy of Ms. Client's deposition		\$245.00
2/20/04		Clerk, Civil District Court - filing fee - Motion for Summary Judgment		\$25.00
1/20/04		Civil Sheriff, Orleans Parish - service fee - Motion for Summary Judgment		\$20.00
TOTAL COSTS				\$290.00
<b>TOTAL AMOUNT DUE</b>				<b>\$1,982.50</b>

# Sample Settlement Statement

JANE J. GOOD CLIENT  
versus  
NEVERPAY INSURANCE COMPANY

24TH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON  
CASE NO. 144488, DIVISION "J"

<b>Settlement Amount:</b>	\$25,000.00	\$25,000.00
<b>Attorney's Fee:</b> 40% of gross amount recovered after filing suit	10,000.00	(10,000.00)
<b>Payments to Third Parties:</b> East Jefferson General Hospital - Emergency Room Fees	252.00	(252.00)
<b>Expenses:</b> UPS overnight charges Filing fees with 24th Judicial District Court Sheriff of East Baton Rouge Parish (service on Neverpay)	9.50 175.00 <u>40.00</u> <u>\$224.50</u>	    <u>(224.50)</u>
<b>Advance by Attorney:</b>		
<b>Net to Client:</b>		<u>\$14,523.50</u>
<b>SUMMARY</b> Net to client Net to third parties Net to attorney		\$14,523.50 \$252.00 \$10,224.50
<b>TOTAL SETTLEMENT</b>		<u>\$25,000.00</u>

## Approval and Receipt

Receipt is hereby acknowledged of the sum of \_\_\_\_\_ cash, as the final amount due me in settlement of the claim for which the attached check is issued. This further acknowledges that I understand that, except as shown above, Attorney has not and will not pay any additional amounts which may still be due and owing to health care providers, insurance companies, or others, and Attorney has no knowledge of any such amounts. If there are any such amounts, that is my responsibility. This also acknowledges that this disbursement statement has been explained to me. I understand it, and have been given a copy of it. I acknowledge that this settlement was entered into freely and voluntarily on my part.

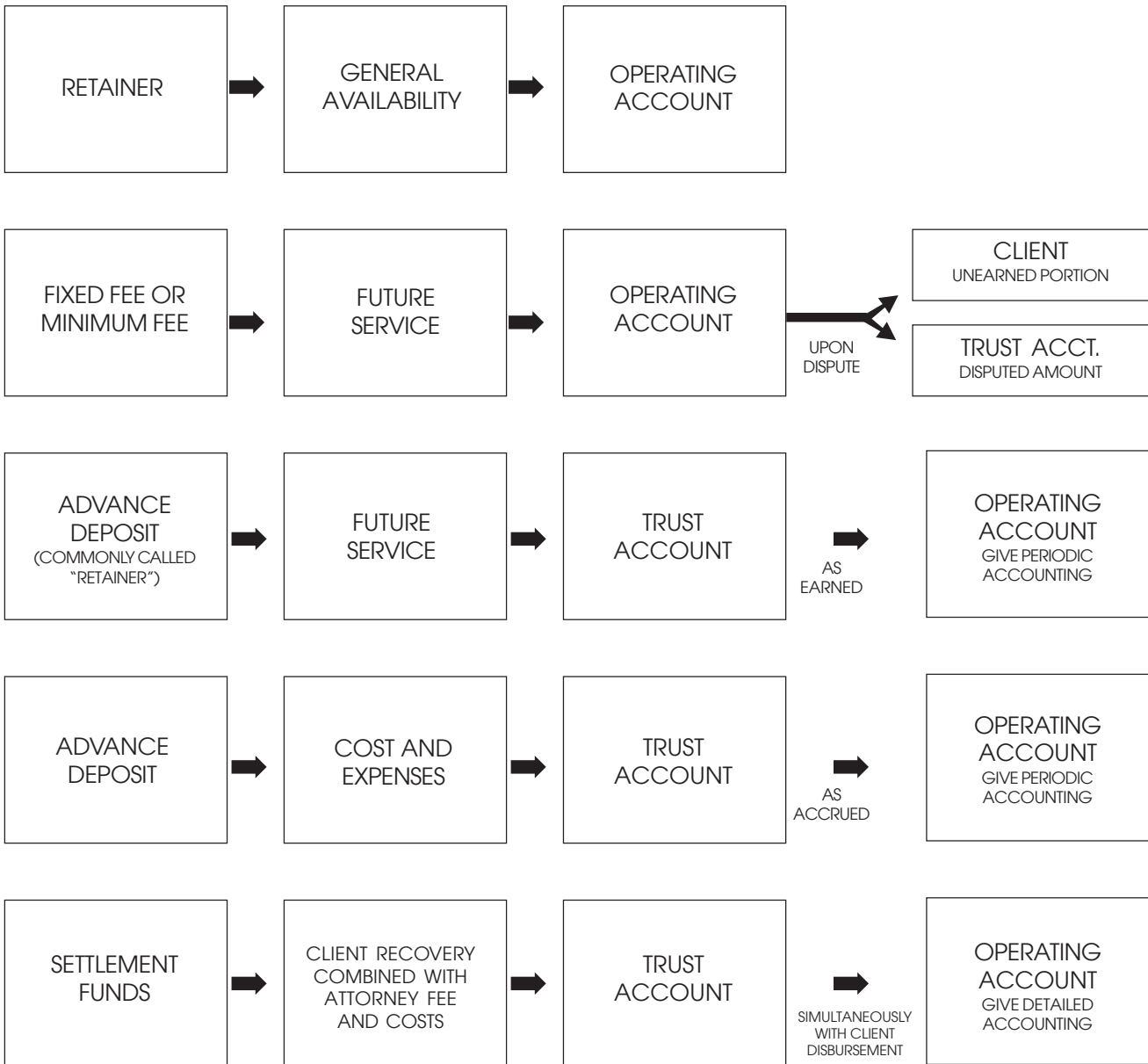
Date \_\_\_\_\_ Client \_\_\_\_\_





# MONEY MANAGEMENT MAP

When An Attorney Receives:	For This Purpose:	Funds Should Be Placed in:
----------------------------	-------------------	----------------------------



For detailed information, see the Rules of Professional Conduct. Compliments of Office of Loss Prevention, Gilsbar, LLC, Covington, LA.