



The Fundamentals of Loss Prevention for Lawyers

EXCERPT

► **CHAPTER 5: Documenting
Engagement (and NonEngagement)**

Serving Illinois Lawyers

Chapter 5: Documenting Engagement (and NonEngagement)

Engagement Letters and Fee Agreements

The [Illinois Rules of Professional Conduct](#) do not require a lawyer who works on an hourly or fixed fee basis to have a written fee agreement with the client. Rather, the [Illinois Rules of Professional Conduct](#) state that the basis or rate of the fee should be “communicated” to the client before, or within a reasonable time after, commencing the representation. Thus, lawyers who work on an hourly or fixed fee basis are not required to have a written fee agreement or contract signed by the client. Instead they can satisfy the [Illinois Rules of Professional Conduct](#) by sending the client an engagement letter shortly after the representation begins.

For sample engagement letters and fee agreements, see the section [Sample Letters and Forms](#).

Lawyers who work on a contingency fee basis must use written fee agreements. According to [Illinois Rules of Professional Conduct Rule 1.5](#), a lawyer who works on a contingent fee basis must document the fee arrangement in an agreement with the client that clearly outlines the method by which the fee will be calculated.

Although only contingency fee agreements must be in writing, it is best practice (and highly encouraged) to put all lawyer-client agreements in writing. At a minimum, the agreement should explain the scope of the engagement and the fee. The agreement is also an important tool that you can use to manage the lawyer-client relationship more effectively. For example, by explaining the scope of the engagement, the client is made aware of exactly what services will be provided. When some other issue or conflict occurs, and the client claims that you agreed to also handle the new issue, you will be able to demonstrate that there was no agreement to handle the additional issue.

From a loss prevention standpoint, it is crucial to your defense to have an engagement letter in the file as that will be the starting point for your defense against a grievance or a legal malpractice claim. A case without a written lawyer-client agreement will turn on what you told the client and what the client heard you say. Your vulnerability to malpractice liability is high.

While it is ideal for the firm to obtain the client’s signature in the office, firms who routinely send their engagement letters or fee agreements to clients to be signed and returned should be mindful of these three points:

- The letter or agreement should clearly state that representation will not begin and no legal work will be performed until the signed copy is received from the client.
- You must enforce this rule and postpone the start of any work until the client’s signature has been received.
- The letters should be calendared for follow-up. If the client has not sent in a signed agreement or engagement letter within a few weeks, another letter should be sent. If there is no response to that letter, the firm should send a nonengagement letter. This practice will eliminate any ambiguities as to whether the representation has begun.

Your engagement letter or fee agreement should contain the following elements:

A clear identification of who the client is. (For example, in a corporate setting, you must establish whether the client is the corporation, its shareholders, the directors, or one or more key officers.)

A detailed description of the legal work to be performed.

A description of any critical aspects of the matter for which the lawyer will not be responsible, such as providing tax advice or environmental impact studies.

A detailed description of the fee arrangement, including:

- the legal fees to be charged;
- who will be responsible for the fees;
- a concise statement of the expenses for which the client will be responsible;
- when the client will be expected to pay (i.e., monthly, at the end of the representation, etc.);
- a description of any referral fee or fee splitting arrangements.

Other details that should be included in an engagement letter include:

- in the case of solo lawyers, a backup lawyer designate;
- language that indicates that your firm will not be delivering wire transfer instructions;
- file retention and destruction procedures.

Some lawyers maintain separate engagement letters or fee agreements for each area of law in which they practice. You can start with these basic forms and then customize them to your practice. You may also wish to ask a respected colleague for a sample of their engagement letters and fee agreements.

Nonengagement Letters

After a thorough screening and evaluation of a potential new matter; and the completion of a conflict analysis, you may decide not to accept the representation. Make it a routine office practice to obtain the name and address of every person who calls the firm or is referred to the firm by another lawyer. ***If the firm declines representation, always send a letter to the individual or entity that has been declined.*** This can be accomplished quickly with a form letter.

For a [Sample Nonengagement Letter](#), see the section [Sample Letters and Forms](#).

The nonengagement letter should clearly state your decision not to represent the declined client but should never give an opinion as to the viability of a particular case or matter. If the matter involves a critical deadline, such as a statute of limitations period, the letter should inform the declined person that a deadline exists and suggest that they seek other counsel immediately. ***Do not specify the statute of limitations date in your letter.*** If you state the incorrect date, the nonclient may later argue that they lost the right to sue based upon their reliance on the erroneous date.

Engagement Do's and Don'ts

Do...

- ✓ If the firm declines representation, always send a letter to the individual or entity that has been declined.
- ✓ Clearly state that representation will not begin and no legal work will be performed until the signed copy is received from the client.
- ✓ Calendar engagement letters and fees for follow-up. If there is no response to the letter, send a nonengagement letter.

Don't...

- ⊖ Don't specify the statutes of limitations date in your nonengagement letters.
- ⊖ Don't accept a matter without memorializing the scope of the engagement and the fee.
- ⊖ Don't proceed with matter until you have clarity as to who your client will be and who will be responsible for paying the fees.

Addenda: Sample Letters and Forms

Sample Disengagement Letter – Unpaid Fees

Removing yourself from a case/matter due to unpaid fees

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Client Name]
[Client Address]

RE: Withdrawal of Legal Representation
[State name of Case/Matter]

Dear **[Name]**:

During the past **[__years/months]**, it has been our pleasure to serve you as counsel in **[case/matter]**. In the course of that representation, you have paid us **[dollar amount currently paid]** in legal fees and expenses. Unfortunately, contrary to our Engagement Agreement, you have not paid our statements in a timely manner for the past few months.

At this time, the outstanding and overdue fees and expenses total approximately **[dollar amount currently owing]**. Our firm desires to continue our relationship, but does not have the ability to finance your case. Moreover, you expressly agreed that the hourly fees and expenses in this matter would be kept current.

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

At this point, in our opinion, the trial court will permit us to withdraw. There is still sufficient time for you to retain other counsel without jeopardizing your case or adversely affecting the court's calendar. However, if we wait several more months, it is possible that one of these conditions for withdrawal may not exist.¹

Your new counsel may wish to discuss this case with us. That would be to your advantage both substantively and economically. We are willing to do so as long as satisfactory arrangements are made to compensate us for the additional time and expense which will be incurred. In addition, it will be necessary to agree on a plan to gradually reduce the outstanding fees and expenses. We also have certain work product which has been generated during the past **[time]**. We are willing to share it with your new counsel to the extent our legal obligations require us to do so in the absence of full payment of our fees and expenses.

I enclose a petition for leave to withdraw which will be filed with the court ten days from your receipt of this letter.² In the meantime, if you wish us to continue representing you, we would be pleased to do so if satisfactory arrangements are made to take care of the outstanding and overdue fees and expenses, as well as to take care of the future fees and expenses. I look forward to hearing from you, and remain hopeful the representation can continue.

Sincerely,

¹ See Illinois Rules of Professional Conduct Rule 1.16 for ethical guidelines concerning withdrawal from representation and termination of the lawyer-client relationship. Specifically, when withdrawing from representation, you must take reasonable steps to avoid foreseeable prejudice to the rights of the client, including the following:

- a. giving due notice to the client in writing;
- b. allowing time for employment of other counsel;
- c. delivering to the client all papers and property to which the client is entitled; and
- d. refunding promptly any part of the fee that was paid in advance but which has not been earned.

² Make sure to diary the ten-day deadline and to follow through with filing the petition for leave to withdraw after ten days.

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Adapted with permission of the [Oregon State Bar Professional Liability Fund](#)

Sample Notice to Client of Departure of Partner/Associate from Firm

[Date]

[Client Address]

RE: *[Smith v. Jones]*

Dear *[Client Name]*:

Effective *[date of withdrawal]*, *Mr. B* will be withdrawing from the law firm of *A B & C, Ltd.* which will thereafter be known as *A & C, Ltd.* Effective that same day, *[state date]*, *Mr. B* will begin practicing law with the firm of *B & Associates, 123 LaSalle Street, Chicago, IL; telephone number: 312-123-4567.*

We have appreciated the opportunity to serve you in the past. During the transition period, *Ms. H.* of the firm of *A & C, Ltd.* will handle your ongoing legal work without any interruption of service.

You have the right to select the lawyers who will represent you in the future. You may choose *A & C, Ltd.* or you may choose to retain the firm of *B & Associates.* Alternatively, you may request that your file be delivered to new lawyers other than *A & C, Ltd.* and *B & Associates.* If you wish, you may use the attached form to designate your choice of lawyers. In the event you choose another lawyer, we will of course cooperate in the smooth transition of your files.

Should you have any questions related to these matters, please contact us for further information. Sincerely,

A & C, Ltd.

By: _____

B & Associates

By: _____

Comments:

1. See Illinois Rules of Professional Conduct Rule 1.16 for ethical guidelines concerning withdrawal from representation and termination of the lawyer-client relationship.
2. Remember when withdrawing from representation, you must take reasonable steps to avoid foreseeable prejudice to the rights of the client, including the following:
 - a. giving due notice to the client in writing;
 - b. allowing time for employment of other counsel;
 - c. delivering to the client all papers and property to which the client is entitled; and
 - d. refunding promptly any part of the fee that was paid in advance but which has not been earned.

3. Don't forget to promptly file substitutions of counsel with the court.
4. If the client has decided to retain other counsel, send a closure letter. If the client has opted to move his/her file to your new firm, send an engagement letter.

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Adapted with permission of Warren Lupel of Much Shelist, P.C.

[Date]

**A & C, Ltd. 111 Main Street
Chicago, IL 60000**

RE: **Smith v. Jones**

Dear **Ms. A:**

- We choose to have **A & C, Ltd.** continue to handle the above-referenced file in the future.
- We choose to discharge **A & C, Ltd.** and transfer the above-referenced file to **B & Associates.**
- We choose to transfer our file to the law firm of **[new law firm]**, thereby discharging the firm of **A B & C, Ltd.**

With respect to any files which we have decided to transfer to **[new law firm]**, please make arrangements to transfer those files promptly in an orderly manner. We recognize that **A B & C, Ltd.** has a compensation claim for services rendered and expenses advanced on our behalf to date.

Signature

Print Name

Date

Sample Client Engagement Letter – Hourly Fee Arrangement

[Client Name]

[Client Address]

Dear **[Name of Client]**:

The purpose of this letter is to confirm, based upon our conversation/meeting of **[date]**, that **[name of firm]** has agreed to represent **[client name]**¹ in **[describe matter/case]** **[upon receipt of the requested retainer]**.² In connection with such matter, we will provide the following services: **[list services to be provided]**.

Our charges for legal services are based upon the prevailing hourly rates in effect for our law firm. Currently, these rates range from \$____ to \$____ per hour depending upon the experience and position of the individual lawyers involved. My current billing rate is \$____ per hour. Paralegal services, if reasonably required, will be billed at a rate of \$____ per hour. During the period of our representation, it is possible that the individual hourly rates of lawyers in the firm may be increased **[by some modest amount]** and you will be informed of that immediately upon the change being made.

[It may be necessary for our firm to hire lawyers or other consultants from outside of our firm in order to achieve the objective of this engagement. You hereby authorize us to retain on your behalf such additional counsel, consultants or experts as we determine are necessary. Unless we obtain your express consent, in no event will we retain co-counsel at a rate inconsistent with those rates identified in the foregoing paragraph.]

You will be billed for all of the time spent handling your matter, including but not limited to time spent on **[telephone conferences, intra-office conferences, research, and general preparation]**. You will also be billed for out-of-pocket costs incurred on your behalf such as **[postage, photocopies, filing fees, deposition costs, third-party legal research costs, and travel expenses, if any]**.

[Optional security retainer fee provision]³

We require that you pay a security retainer of [enter dollar amount] before we will commence any work on your behalf. We will place the security retainer in our client trust account and the retainer funds shall remain the property of the client until applied to the services rendered. Charges will be made against the retainer on a monthly basis as time is expended and as out-of-pocket expenses are incurred on the file until such time as the retainer is exhausted. The retainer must be received by [insert date].⁴

[Alternative optional security retainer fee provision]

We require that you pay a security retainer of [enter dollar amount] before we will commence any work on your behalf. We will place the security retainer in our client trust account, but we will not draw from it for your monthly bills. The retainer funds shall remain the property of the client until applied to the services rendered, except as noted below. It is expected that all bills will be paid in full within [__] days from receipt of the bill. Should you not pay a bill in full within [__] days from receipt, we reserve the right to terminate the lawyer-client relationship and apply the retainer to any outstanding balance. When the case is closed or if the lawyer-client relationship has been otherwise terminated, we will draw

the final amount of the bill from the security retainer held in our client trust account. If any monies remain, we will refund those to you. Any fees owed in excess of the security retainer will be billed and shall be paid in accordance with the terms of this agreement.

We will bill you monthly for the amount of work that was performed on your file during the preceding month. At this time, it is impossible to estimate the amount of time and expense that will be necessary to adequately represent you in this matter.

You agree to cooperate with us and to provide all requested information known or available to you relevant to our representation. You also agree to promptly notify us in the event that you move or your contact information ***[including address, telephone number, fax number and email address]*** otherwise changes.

During the representation, we will supply you with copies of all substantive correspondence ***[as well as a set of closing documents upon completion of the matter]***. We suggest that you keep a copy of all of the documents regarding your matter in the file folder we have provided to you. After the matter is closed, we will return all original documents to you. You may obtain copies of other portions of your file by paying our standard photocopying charges and a minimum fee to compensate us for the time necessary to duplicate the file. Due to storage constraints, the file will be destroyed after ten years.⁵

Your primary contact for this matter will be ***[lawyer's name]***. If you have any questions regarding this matter, please feel free to contact ***[lawyer's name]*** directly at ***(###) ###-####***.

You may terminate our representation at any time by notifying us. Upon termination of our representation and satisfaction of your obligations to us, papers and property belonging to you will be returned upon request. Our own files pertaining to the matter, including lawyer work product, will be disposed of or retained by us.

We may withdraw from this representation if you fail to fulfill your obligations under this agreement, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon reasonable notice to you.

If any of the terms set forth above are not in conformance with your understanding of our agreement, please contact me immediately. We look forward to representing you in this matter.

Sincerely,

¹ Specify the name of the client, rather than referring to the client as "you." For example, if the letter is addressed to Robert Smith, President, XYZ Corporation, the term "you" could be construed as either referring to Mr. Smith individually or in his capacity as a representative of the company. If you are representing Mr. Smith individually, state "we are representing you individually." If you are representing the corporation, state "we are representing XYZ Corporation." The client should be identified using a proper legal name, rather than a nickname, shortened name or DBA.

² If the firm will not be representing others who are closely related to the client, such as a spouse or parent or subsidiary corporation, the engagement agreement should make this clear. Also, if the firm represents a legal entity, the engagement agreement should state that the corporation or other legal entity is the client, rather than its officers, directors, partners, members or shareholders, as applicable. This may include the individual who signs the engagement agreement on behalf of a corporate client.

³ In most circumstances, security retainers are the preferred type of retainer. Funds may be withdrawn from a security retainer only pursuant to an agreement between the lawyer and client. Many lawyers choose to bill against the retainer and withdraw retainer funds for the payment of each invoice. For such purposes, the first fee provision may be appropriate. Other lawyers choose to withdraw from the retainer only in the event that a final invoice has been issued and to obtain interim payments from the client. For these purposes, the alternative fee provision may be appropriate. In either event, a retainer agreement should carefully identify the circumstances under which funds may be withdrawn from the retainer.

⁴ If you use the suggested retainer language, calendar the retainer due date. If the retainer is not received by that date, send a nonengagement letter. This will avoid a situation in which the potential client forgets or ignores the retainer request but still believes that a lawyer-client relationship exists.

⁵ For a more detailed discussion on file retention issues, see [File Documentation, Management and Retention](#).

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09/97

Sample Estate Planner's Engagement Letter

For use when representing both spouses

Dear *[Name of Client(s)]*:

I am writing to confirm our agreement to represent both of you jointly regarding your estate plan. Spouses can sometimes have conflicting interests regarding their estate plan. For example, they may have different views as to how much power the surviving spouse should have over the property of a deceased spouse, how assets should be distributed upon the death of one or both of them, and how family assets should be divided between them during their lifetimes. Also, in order to take advantage of available tax benefits, lawyers frequently recommend that family assets be divided between a husband and wife to increase one estate or decrease the other by dividing jointly owned assets or by recommending gifts from one to the other. These are just some examples of potential conflicts that sometimes arise during the estate planning process.

If each of you had your own separate lawyer, you would each have an "advocate" for your position and would each receive totally independent and confidential advice from your own lawyer. Under such an arrangement the information given to your respective lawyers would be confidential and could not be disclosed to your spouse without your consent. This is not the case when one firm advises both of you jointly.

Although we will encourage the resolution of any differences of opinion or conflicting interests, we cannot be an advocate for one of you against the other if we represent both of you. When your individual interests differ, we will attempt to explain to both of you the interests of each of you and the effect on each of you of a particular course of action. Similarly, anything that either of you tells us relating to your estate plan cannot be kept confidential from the other.

In the interests of efficiency, you may choose to communicate with us primarily through one of you, in which event we will provide any necessary explanation of the issues to that individual. Of course, either of you may put questions to us at any time.

By signing this letter, each of you confirm that you have requested and consented to our joint representation of both of you in connection with the preparation of your estate plan and that you each agree that communication and information received from each of you relating to your estate plan will not be kept confidential from the other. Of course, either of you may retain separate counsel at any time. In that event, we will be free to continue to represent the other one of you only with the consent of the one who retained separate counsel.

In very unusual circumstances, a law firm representing both the husband and wife regarding their estate plan confronts a conflict of interest between them that is so serious that the firm can no longer continue to represent either of them. Although such a situation seems highly unlikely in your case, were it to occur, we would promptly notify both of you that we could no longer continue to represent either of you. In some cases, it may not be possible to disclose to both of you precisely why we have concluded that we should discontinue our representation.

Our fee will be based upon the prevailing hourly rates in effect for our law firm. Currently, these rates range from \$___ to \$___ per hour, depending upon the experience and position of the individual lawyer. Paralegal services, if reasonably required, will be billed at a rate of \$___ per hour. During the period of our representation, it is possible that individual hourly rates in the firm may be increased **[by some modest amount]**. You will be informed of any changes immediately.

You will be billed for all of the time spent handling your matter, including but not limited to time spent on telephone conferences, research and drafting. In addition to our fee for services, you will also be billed for out-of-pocket costs incurred on your behalf such as postage, photocopying, long distance charges, facsimile charges, costs of using computerized legal research facilities, filing fees and messenger fees.

We will bill you monthly for the amount of work that was performed on your file during the preceding month. At this time, it is impossible to estimate the amount of time and expense that will be necessary to adequately represent you in this matter.

During the representation, we will supply you with copies of all substantive correspondence **[as well as a complete set of your estate plan documents upon completion of the matter]**. We suggest that you keep a copy of all of the documents regarding your matter in the file folder we have provided to you. After the matter is closed, you may obtain copies of your file by paying our standard photocopying charges and a minimum fee to compensate us for the time necessary to duplicate the file. **[Due to storage constraints, the file will be destroyed after ___ years.]¹**

We understand that we are being retained solely to prepare your estate plan and related documents, that our representation will cease when the documents are signed, and that thereafter you prefer that we not advise you of changes in the law or provide additional or ongoing services, except at your specific request. Because estate taxes and other relevant laws change from time to time and your estate planning goals may also change, we would be pleased to review your estate plan in the future upon your request. We urge that you consider such a review at least once every five years.

Your primary contact for this matter will be _____. If you have any questions regarding this matter, please feel free to contact _____ directly at **(###) ###-####**.

If you disagree with any of the terms and conditions set forth above, please contact me immediately. We will not commence any work on your behalf until we have received a copy of this letter with both of your signatures acknowledging agreement.² We look forward to representing you in the preparation of your estate plan.

Sincerely,

Agreed to:

_____	_____	_____
Signature	Print Name	Date

_____	_____	_____
Signature	Print Name	Date

¹ For a more detailed discussion of file retention issues, see [File Documentation, Management and Retention](#). As discussed therein, it is generally prudent to maintain estate-planning files for longer than 10 years following the conclusion of the engagement.

² Calendar a follow-up date after sending the letter. If a signed copy of the letter is not received from the client by that date, send another letter. If that is not answered, send a nonengagement letter. This will avoid a situation in which you precede without the conflict waiver.

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Contingency Fee Agreement for Legal Services – No Referral Fee

I, the undersigned client, do hereby retain and employ [name of firm] (the "Firm") as my lawyers to represent me [describe case or matter – see options provided below]

Option 1: *[concerning injuries I received arising from an accident that occurred on ___/___/___ at _____]*

Option 2: *[in a claim for the death of _____ arising out of incidents that occurred _____]*

Option 3: *[in a claim against _____ regarding _____]*

As compensation for the services rendered by [name of firm], I agree to pay [name of firm] [describe contingency fee – see options provided below].

Option 1: *[_____ % of whatever may be recovered from said claim whether through settlement, trial, arbitration, or mediation.]*

Option 2: *[the following contingency fee based on whatever proceeds are recovered:
_____ % if settled without suit being filed;
_____ % in the event suit is filed;
_____ % in the event a second trial or an appeal becomes necessary.]*

Option 3: *[_____ % of the first \$ _____ ;
_____ % of the next \$ _____ ;
_____ % of any amount of proceeds recovered over \$ _____ .]¹*

I understand and agree that the court may review contingent fee agreements for fairness, and that, in special circumstances where a lawyer performs extraordinary services involving more than usual participation in time and effort, lawyers may apply to the court for approval of additional compensation.

I further agree that the expenses and other costs associated with this matter will be deducted from the sum recovered **after the lawyer fee is deducted**. Such expenses may include but are not limited to items such as costs of investigation, subpoena fees, court fees, expenses for consultants, experts and other witnesses, deposition costs, postage, photocopy fees and travel costs. Other costs may include required reimbursement of others pursuant to valid liens.

In the event no recovery is made, I understand and agree that I will still be responsible for the payment of such expenses but will not be responsible for the payment of any lawyer fees. At the time the [case/matter] is closed, [name of firm] will provide me with an accounting of the disbursements made in my [case/matter].

[Optional retainer fee provision:

We require that you pay a security retainer of [enter dollar amount] before we will commence any work on your behalf. We will place the security retainer in our client trust account and the retainer funds shall remain the property of the client until applied to our expenses. Charges will be made against the retainer as out-of-pocket expenses are incurred on the file until such time as the retainer is exhausted. The retainer must be received by [insert date].²

I acknowledge that the Firm has suggested that I should keep a copy of all of the documents related to my claim in a file folder that the Firm has provided to me. After the matter is closed, I may obtain copies of my file by paying the Firm's standard photocopying charges and a minimum fee to compensate the Firm for the time necessary to duplicate the file.³

I agree that the Firm has made no promises or guarantees regarding the outcome of my claim. I understand that the firm will investigate my claim and if, after such investigation, the claim does not appear to them to have merit, the Firm shall have the right to cancel this agreement and shall have the right to withdraw from any lawsuit by giving me notice by regular mail.

I understand that, due to storage constraints, portions of the file may be destroyed upon the conclusion of the engagement.

[Notice pursuant to Personal Injury Representation Agreement Act]⁴

I acknowledge that I received and read a copy of this agreement on this ____ day of _____, 20__, and understand its provisions.⁵

Client Signature

Print Name

ACCEPTED BY: _____

[Name of Firm]

¹ Note Regarding Medical Malpractice Claims: Pursuant to Illinois law (735 ILCS 5/2-1114), the total contingent fee for plaintiff's lawyers in all medical malpractice actions shall not exceed 33 1/3% of all sums recovered.

² If you use the suggested retainer language, calendar the retainer due date. If the retainer is not received by that date, send a Non-Engagement Letter. This will avoid a situation in which the potential client forgets or ignores the retainer request but still believes that a lawyer-client relationship exists.

³ For a more detailed discussion on file retention issues, see [File Documentation, Management and Retention](#).

⁴ **NOTICE OF PERSONAL INJURY REPRESENTATION AGREEMENT ACT**

The law in Illinois (815 ILCS 640/1) regarding Personal Injury Agreements provides:

“Any person who makes an agreement with any other person to represent him in his claim for settlement of a personal injury claim within 5 days after the occurrence which gives rise to the claim may, within a 10-day period after the occurrence, elect to avoid the agreement by notifying the other person in writing of the election by registered or certified mail, return receipt requested.”

“The person undertaking the representation of the injured party by such agreement must, at the time of the agreement, furnish the party with whom the agreement is made a copy of the agreement and the address to which the notice may be sent and a copy of this Act, and obtain written acknowledgment of receipt of such from the party represented. If he fails to do so, the 10-day period provided for in this Act does not commence to run until the agreement, address and a copy of this Act are furnished.”

⁵ Calendar a follow-up date after sending the letter. If a signed copy of the letter is not received from the client by that date, send another letter. If that is not answered, send a [Non-Engagement Letter](#). This will avoid any misunderstanding as to whether you are representing the client.

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Contingency Fee Agreement for Legal Services – With Referral Fee

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Option 1: *[concerning injuries I received arising from an accident that occurred on ___/___/___ at _____]*

Option 2: *[in a claim for the death of _____ arising out of incidents that occurred _____]*

Option 3: *[in a claim against _____ regarding _____]*

As compensation for the services rendered by [name of firm], I agree to pay [name of firm] [describe contingency fee – see options provided below].

Option 1: *[_____ % of whatever may be recovered from said claim whether through settlement, trial, arbitration, or mediation.]*

Option 2: *the following contingency fee based on whatever proceeds are recovered:*
_____ % if settled without suit being filed;
_____ % in the event suit is filed;
_____ % in the event a second trial or an appeal becomes necessary.]

Option 3: *[_____ % of the first \$ _____ ;*
_____ % of the next \$ _____ ;
_____ % of any amount of proceeds recovered over \$ _____ .]¹

I understand and agree that the firm of _____ [name of referring lawyer or firm] will receive a fee of [_____] for referring this matter to [name of your firm]. This fee shall be paid from the total agreed contingent fee identified in the foregoing paragraph and shall not impact the client's share of the amount recovered. [Name of referring lawyer or firm] agrees to assume the same legal responsibility for the performance of the services in question as would a partner of [name of your firm].²

I understand and agree that the court may review contingent fee agreements for fairness, and that, in special circumstances where a lawyer performs extraordinary services involving more than usual participation in time and effort, lawyers may apply to the court for approval of additional compensation.

I further agree that the expenses and other costs associated with this matter will be deducted from the sum recovered **after the lawyer fee is deducted**. Such expenses may include but are not limited to items such as costs of investigation, subpoena fees, court fees, expenses for consultants, experts and other

witnesses, deposition costs, postage, photocopy fees and travel costs. Other costs may include required reimbursement of others pursuant to valid liens.

In the event no recovery is made, I understand and agree that I will still be responsible for the payment of such expenses but will not be responsible for the payment of any lawyer fees. At the time the **[case/matter]** is closed, **[name of firm]** will provide me with an accounting of the disbursements made in my **[case/matter]**.

[Optional retainer fee provision:

We require that you pay a security retainer of [enter dollar amount] before we will commence any work on your behalf. We will place the security retainer in our client trust account and the retainer funds shall remain the property of the client until applied to our expenses. Charges will be made against the retainer as out-of-pocket expenses are incurred on the file until such time as the retainer is exhausted. The retainer must be received by [insert date].³

I acknowledge that the Firm has suggested that I should keep a copy of all of the documents related to my claim in a file folder that the Firm has provided to you. After the matter is closed, I may obtain copies of my file by paying the Firm's standard photocopying charges and a minimum fee to compensate the Firm for the time necessary to duplicate the file.⁴

I agree that the Firm has made no promises or guarantees regarding the outcome of my claim. I understand that the firm will investigate my claim and if, after such investigation, the claim does not appear to them to have merit, the Firm shall have the right to cancel this agreement and shall have the right to withdraw from any lawsuit by giving me notice by regular mail.

I understand that, due to storage constraints, portions of the file may be destroyed upon the conclusion of the engagement.

[Notice pursuant to Personal Injury Representation Agreement Act]⁵

I acknowledge that I received and read a copy of this agreement on this ____ day of _____, 20__, and understand its provisions.⁶

Client Signature

Print Name

ACCEPTED BY: _____
[Name of Receiving Firm]

ACCEPTED BY: _____
[Name of Referring Firm]

¹ Note Regarding Medical Malpractice Claims: Pursuant to Illinois law (735 ILCS 5/2-1114), the total contingent fee for plaintiff's lawyers in all medical malpractice actions shall not exceed 33 1/3% of all sums recovered.

² See [Illinois Rules of Professional Conduct Rule 1.5](#) regarding referral fees.

³ If you use the suggested retainer language, calendar the retainer due date. If the retainer is not received by that date, send a nonengagement letter. This will avoid a situation in which the potential client forgets or ignores the retainer request but still believes that a lawyer-client relationship exists.

⁴ For a more detailed discussion on file retention issues, see [File Documentation, Management and Retention](#).

⁵ **NOTICE OF PERSONAL INJURY REPRESENTATION AGREEMENT ACT**

The law in Illinois (815 ILCS 640/1) regarding Personal Injury Agreements provides:

“Any person who makes an agreement with any other person to represent him in his claim for settlement of a personal injury claim within 5 days after the occurrence which gives rise to the claim may, within a 10-day period after the occurrence, elect to avoid the agreement by notifying the other person in writing of the election by registered or certified mail, return receipt requested.”

“The person undertaking the representation of the injured party by such agreement must, at the time of the agreement, furnish the party with whom the agreement is made a copy of the agreement and the address to which the notice may be sent and a copy of this Act, and obtain written acknowledgment of receipt of such from the party represented. If he fails to do so, the 10-day period provided for in this Act does not commence to run until the agreement, address and a copy of this Act are furnished.”

⁶ Calendar a follow-up date after sending the letter. If a signed copy of the letter is not received from the client by that date, send another letter. If that is not answered, send a [Non-Engagement Letter](#). This will avoid any misunderstanding as to whether you are representing the client.

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Sample Non-Engagement Letter

VIA REGULAR MAIL, CERTIFIED MAIL¹ RETURN RECEIPT REQUESTED,
AND VIA ELECTRONIC MAIL

[Name]

[Address]

RE: Declination of Representation

Dear **[Name]**:

You contacted our firm last week² and requested that we represent you in the **[describe case/matter]**. We have now had an opportunity to review the information you provided to us and appreciate the confidence you have expressed in our firm. The firm has, however, decided not to represent you in this matter. **[Enclosed herewith are the documents that you provided to us for review. We have not kept any copies thereof.]**

In declining to accept your matter, the firm is not expressing an opinion as to the merits **[or value]** of such matter. You should be aware that any advice provided during our consultation were based on a preliminary understand of the pertinent facts and were not based on a thorough legal analysis.

[It appears that your legal matter is time-sensitive. This means that the failure to take prompt legal action may result in your legal matter being barred by a time limit.³ In order to preserve your rights, I strongly recommend that you contact another lawyer regarding this matter immediately.] [Although your legal matter may not be time-sensitive, I recommend that you contact another lawyer promptly should you wish to pursue the matter.]

¹ If the firm is returning documents to the individual or entity seeking representation, or if the statute of limitations is fast approaching, it is recommended that the firm send the letter by certified mail. Because the certified letter may not be accepted by the intended recipient, it should be sent via regular mail, as well. If the individual or entity seeking representation has an email address, the declination letter should be sent via email as well as via regular mail and, under the aforementioned circumstances, via certified mail.

² The nonengagement letter should be sent within a reasonable time after the engagement is first sought, especially if the legal matter for which representation is sought involves time-sensitive matters, such as a statute of limitations.

³ As a general rule, lawyers should not specify the exact date on which they believe a statute of limitations period will expire or even the length of the statute of limitations (i.e., one year, two years). This is because lawyers who are declining a case may not have all of the information necessary to establish either the correct date or the statute of limitations that applies to the matter. Case law suggests that a lawyer who states an incorrect limitations period or date in his nonengagement letter may be held liable for providing negligent advice if the nonclient relies on that advice to her detriment.

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Thank you for contacting [*name of firm*]. If you require legal services in the future, I hope you will consider our firm again.

Sincerely,

Sample Letter to Unrepresented Party

[Unrepresented Party Name]

[Address]

RE: **[Identify Matter]**

Dear **[Name]**:

As you know, I represent **[Client Name]** with respect to **[describe matter]**. I understand that you have decided not to seek the advice of legal counsel and will be representing yourself in this matter at this time. Because I do not represent you, I cannot provide you with legal advice and I will be unable to answer any legal questions you may have. I urge you to seek independent legal counsel immediately to protect your interests and represent you on this matter.

Should you obtain legal counsel relative to this matter in the future, I ask that you please have your counsel contact me as soon as possible.

If you do not have a local lawyer, you may want to use the Illinois Lawyer Finder, which can be found at <http://www.isba.org/public/illinoislawyerfinder>.

Sincerely,

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Sample Disengagement Letter

*Removing yourself from a case/matter after having accepted it but before the matter has concluded*¹

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Client Name]
[Client Address]

RE: Withdrawal of Legal Representation
[State name of Case/Matter]

Dear **[Name]**:

The purpose of this letter is to inform you that this firm, **[name of firm]**, is terminating its representation of you with respect to **[identify matter]**.² **[Briefly describe the reason for the termination. If you are withdrawing due to unpaid legal fees, use "Sample Disengagement Letter-Unpaid Fees".]**

[Include language from one of the four options below].

Option 1: Matter in litigation where leave to withdraw is required.

In accord with the applicable rules of **[identify jurisdiction]**, we will promptly file a motion for leave to withdraw as your counsel and we will provide you with a copy thereof. We will continue to serve as your counsel until the court grants our motion. In the event that our motion is granted, our lawyer-client relationship will be immediately terminated and we will cease to provide legal services to you.

Several items remain pending with regard to your case/matter. Specifically, **[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]**.³ You should therefore seek other counsel to represent you on this matter immediately. I will of course cooperate in the smooth transition of your files to another lawyer of your choosing. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.⁴

Option 2: Matter in litigation where substitution of lawyer must be filed with court.

In accord with the applicable rules of **[identify jurisdiction]**, we will work with your new counsel to file with the court a substitution of lawyers form that, when approved by the court, will automatically substitute your new lawyers for our firm as counsel of record on your behalf. We will continue to serve as your counsel until the court approves the substitution. In the event that the court approves the substitution, our lawyer-client relationship will be immediately terminated, and we will cease to provide legal services to you.

Several items remain pending with regard to your case/matter. Specifically, **[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]**.³ You should discuss these matters with your new counsel. I will of course cooperate in the smooth transition of your files to

your new counsel. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.⁴

Option 3: Non-litigation matter where new/successor counsel has been retained by client.

You have informed us that the law firm of **[name of firm]** will be serving as your successor counsel in connection with the matter identified above. Accordingly, we are terminating our lawyer-client relationship immediately. We will work with your successor counsel to ensure a smooth transition of legal services. Unless you direct otherwise, we will promptly transfer all appropriate files to your successor counsel. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.⁴

Several items remain pending with regard to your case/matter. Specifically, **[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]**.³ You should discuss these matters with your new counsel.

Option 4: Non-litigation matter where client has not identified new/successor counsel.

Several items remain pending with regard to your case/matter. Specifically, **[summarize the case status and notify client of any impending deadlines or otherwise time-sensitive matters]**.³ You should therefore seek other counsel to represent you on this matter immediately. I will of course cooperate in the smooth transition of your files to another lawyer of your choosing. With this correspondence, we are returning the **[personal property, including original records and documents]** which you previously provided to us.⁴

[Additional statement where outstanding fees are owed]⁴

Fees for our legal services are paid through **[Month, Day, Year]** and unpaid through **[Month, Day, Year]**.⁵

Sincerely,

¹ See Rule 1.16, Illinois Rules of Professional Conduct, for ethical guidelines concerning withdrawal from representation and termination of the lawyer-client relationship. Specifically, when withdrawing from representation, you must take reasonable steps to avoid foreseeable prejudice to the rights of the client, including the following:

- a. giving due notice to the client in writing;
- b. allowing time for employment of other counsel;
- c. delivering to the client all papers and property to which the client is entitled; and
- d. refunding promptly any part of the fee that was paid in advance but which has not been earned.

² If you are withdrawing from a plaintiff's matter, it is suggested that you provide the client with as much notice as possible before the statute of limitations expires.

³ It is recommended that you provide the client with a summary of the status of his/her matter, including any impending deadlines for uncompleted activities. Example: "Answers to interrogatories are due on or before **[date]**, and the failure to complete them may result in court-ordered sanctions."

⁴ If you are asserting a retaining lien over the client's file, it may be appropriate to delete this sentence; however, recall that Rule 1.16 requires a lawyer to take reasonable steps to avoid foreseeable prejudice to the rights of a client. Depending upon the circumstances, this may include returning original client documents and/or other client property.

⁵ It is suggested that you provide a status on your fees. If you are waiving any uncollected fees, state that in your letter. If you intend to assert a retaining lien, we suggest the following language:

"Please be advised that by reason of the outstanding invoice for fees and costs, we have the right to retain certain of your property in our possession in exercise of our retaining lien rights. We would much prefer to work out a mutually agreeable method of payment and delivery of property. Please contact us to achieve that goal."

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