Fees, Billing and Trust Accounts

As stressed, 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.
- ➤ 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 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. (See page 82.) 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.

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 Arrangements

Contingent Fee Arrangements

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; and
- ➤ whether the expenses are to be deducted before or after the contingent fee is calculated.
- ➤ 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 the rules [1.4(c) and 1.8(e)] must be given to the client.

The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

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 take special care to 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 on pages 46-47.

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. The funds may be disbursed only in accordance with Rule 1.15 (see page 89) and the written contingency fee contract.

Rule 1.5(c) (see page 83) requires that, upon conclusion of a contingent fee matter, you must 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) (see page 83) 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.[1]

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.

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 on pages 46-47, but it does not necessarily provide the client with a complete outline of the scope of representation, conflicts of interest, or 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.[2]

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. It is recommended 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. (See page 110.)

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[1] *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, on page 41.*

[2] *You should be aware of an apparent 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 (see page 82), 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 unenforceable.*

Remember that there is no such thing as a non-refundable fee. 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 promptly answered 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.

Lawyers are sometimes not careful about the terminology they use when referring to forms of fees or fee payments. That sloppiness has led to considerable confusion about when and how client funds can be used by the lawyer. Subsection (f) of Rule 1.5 (see page 83) was rewritten in 1992 in an effort to clarify what payments from clients can be spent by the lawyer immediately upon their receipt, and what payments must be put in trust because they remain client funds until earned.

Advance Deposits and Hourly Fee Agreements

Sometimes lawyers mistakenly call "advance deposits" by the name "retainer." It is important to know the difference 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). (See page 83.)

A *retainer* is an amount paid by a client in order to keep a lawyer generally available to the client. When paid, the money belongs to the lawyer and may be used by her. 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 take possession of the money as she works and bills for it.

In this sort of transaction, the lawyer generally quotes an hourly fee and an estimate of her expenses. She asks for some amount of money "up front" to ensure that her fee will be paid. Since she does not earn her fee until she actually does the work, the money which she obtains in advance is not hers and must be put in her trust account. 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.

While obtaining an advance deposit protects you from a client who doesn't pay, it is a rather complicated transaction. Careful trust account records must be kept. Withdrawals should not be made from the trust account without issuing an invoice. A copy of the invoice should be sent to the client, along with notification that money has been withdrawn from the trust account in order to pay the invoice. The client should be updated on the status of the deposit on a monthly basis.

Hourly fee agreements do not necessarily entail advance deposits as a matter of course. Hourly billing is 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 on pages 48-51.

Flat Fee, Fixed Fee or Minimum Fee

A lawyer may sell her future services for a specified price to be paid in advance. For example, you may charge a set amount for handling a divorce or a DWI defense. You may require that the flat amount be paid in advance and 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). (See page 82.)

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. 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.

Rule 1.5(f)(2) (see page 83) defines this sort of fee relationship and provides that a flat fee or minimum fee becomes the property of the lawyer when paid and may be deposited into the operating account and spent. 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 also should suggest a means for prompt resolution of the dispute, such as the Louisiana State Bar Association's Legal Fee Dispute Resolution Program. (See page 110.) 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.

As a practical matter, you may pocket any fee that is fixed, flat or minimum. However, you should do so only if you have the ability to *immediately* deposit an equivalent amount in trust should a dispute arise. Also, you should keep in mind that you may 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 on pages 44-45.

True Retainers

Rule 1.5(f)(1) (see page 83) defines the old-fashioned "true retainer." This is a sum of money paid by a client in order to assure the lawyer's general availability to the client, such as serving as a bank's general counsel. The fee is not 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 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 fee engagements should be formalized with an engagement letter 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) on page 83.)

Other Points

- ➤ Be sure to obtain the client's signature on the contract and obtain any advance deposit *before* commencing the representation.
- ➤ Be sure to detail in any contract 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. (See page 80.)
- ➤ Be sure any potential conflicts of interest are spelled out in the contract and are waived in writing by the client. Remember that some conflicts cannot be waived.
- ➤ Make sure 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 remember that your client is the one who makes the decisions about her case. (See Rule 1.8(f) on page 86.)
- ➤ 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). (See page 91.)

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. Advance deposits for costs and expenses never become the property of the lawyer. 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.

You must determine that sufficient funds of each particular client are on deposit in the trust account *prior to* each and every withdrawal therefrom. 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 must write the check out of her operating account. She must then 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.

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 it was considered unethical and improper to provide financial assistance to clients. The court 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 on April 1, 2006, to settle the question. The pertinent rules are very technical in nature, as follows:

Rule 1.4(c) provides:

A lawyer who provides 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) provides:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except as follows.
   (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter, provided that the expenses were reasonably incurred. Court costs and expenses of litigation include, but are not necessarily limited to, filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other case specific expenses directly related to the representation undertaken, including those set out in Rule 1.8(e)(3).
   (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
   (3) Overhead costs of a lawyer's practice which are those not incurred by the lawyer solely for the purposes of a particular representation, shall not be passed on to a client. Overhead costs include, but are not necessarily limited to, office rent, utility costs, charges for local telephone service, office supplies, fixed asset expenses, and ordinary secretarial and staff services.
   With the informed consent of the client, the lawyer may charge as recoverable costs such items as computer legal research charges, long distance telephone expenses, postage charges, copying charges, mileage and outside courier service charges, incurred solely for the purposes of the representation undertaken for that client, provided they are charged at the lawyer's actual, invoiced costs for these expenses.
   With client consent and where the lawyer's fee is based upon an hourly rate, a reasonable charge for paralegal

services may be chargeable to the client. In all other instances, paralegal services shall be considered an overhead cost of the lawyer.

(4) In addition to costs of court and expenses of litigation, a lawyer may provide financial assistance to a client who is in necessitous circumstances, subject however to the following restrictions.
   (i) Upon reasonable inquiry, the lawyer must determine that the client's necessitous circumstances, without minimal financial assistance, would adversely affect the client's ability to initiate and/or maintain the cause for which the lawyer's services were engaged.
   (ii) The advance or loan guarantee, or the offer thereof, shall not be used as an inducement by the lawyer, or anyone acting on the lawyer's behalf, to secure employment.
   (iii) Neither the lawyer nor anyone acting on the lawyer's behalf may offer to make advances or loan guarantees prior to being hired by a client, and the lawyer shall not publicize nor advertise a willingness to make advances or loan guarantees to clients.
   (iv) Financial assistance under this rule may provide but shall not exceed that minimum sum necessary to meet the client's, the client's spouse's, and/or dependents' documented obligations for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for subsistence.

(5) Any financial assistance provided by a lawyer to a client, whether for court costs, expenses of litigation, or for necessitous circumstances, shall be subject to the following additional restrictions.
   (i) Any financial assistance provided directly from the funds of the lawyer to a client shall not bear interest, fees or charges of any nature.
   (ii) Financial assistance provided by a lawyer to a client may be made using a lawyer's line of credit or loans obtained from financial institutions in which the lawyer has no ownership, control and/or security interest; provided, however, that this prohibition shall not apply to publicly traded financial institutions where the lawyer's ownership, control and/or security interest is less than 15%. Where the lawyer uses such loans to provide financial assistance to a client, the lawyer should make reasonable, good faith efforts to procure a favorable interest rate for the client.
   (iii) Where the lawyer uses a line of credit or loans obtained from financial institutions to provide financial assistance to a client, the lawyer shall not pass on to the client interest charges, including any fees or other charges attendant to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.
   (iv) A lawyer providing a guarantee or security on a loan made in favor of a client may do so only to the extent that the interest charges, including any fees or other charges attendant to such a loan, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding. Interest together with other charges attendant to such loans which exceeds this maximum may not be the subject of the lawyer's guarantee or security.
   (v) The lawyer shall procure the client's written consent to the terms and conditions under which such financial assistance is made. Nothing in this rule shall require client consent in those matters in which a court has certified a class under applicable state or federal law; provided, however, that the court must have accepted and exercised responsibility for making the determination that interest and fees are owed, and that the amount of interest and fees chargeable to the client is fair and reasonable considering the facts and circumstances presented.
   (vi) In every instance where the client has been provided financial assistance by the lawyer, the full text of this rule shall be provided to the client at the time of execution of any settlement documents, approval of any disbursement sheet as provided for in Rule 1.5, or upon submission of a bill for the lawyer's services.
   (vii) For purposes of Rule 1.8(e), the term "financial institution" shall include a federally insured financial institution and any of its affiliates, bank, savings and loan, credit union, savings bank, loan or finance company, thrift, and any other business or person that, for a commercial purpose, loans or advances money to attorneys and/or the clients of attorneys for court costs, litigation expenses, or for necessitous circumstances.

Other Important Information About Trust Accounts and Handling of Client Funds

- All lawyers who handle 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.
- You must *segregate* all funds in which a client or third person has an interest in your 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.
- 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 10-year prescriptive period applicable to the filing of a disciplinary complaint. There is no prescriptive period applicable to the filing of a complaint against an attorney accused of fraudulent conduct.
- There is only one exception to the commingling rule: you may deposit 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.
- Funds in a trust account must be subject to withdrawal upon request and without delay.
- Make sure the bank is federally insured in the event of its failure. If the amount of deposits for a particular client is large, consult with your banker to make sure that the deposit is fully insured and, if necessary, open a separate trust account for that client.
- Upon receiving funds or other property in which a client or third person has an interest, you must promptly *notify* the client or third person.
- Another obligation of a lawyer with respect to client funds is that of delivery. Except as stated in Rule 1.15 (see page 89) or otherwise permitted by law or by agreement with the client, you must promptly *deliver* to the client any funds which she is entitled to receive and, upon request by the client or third person, shall promptly render a full *accounting* regarding such property.
- Also, upon termination of representation, you must refund any advance payment of the legal fee that has not been earned.
- 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.
- You should pay yourself last. 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 always pay yourself promptly to avoid commingling your funds with those of other clients.
- Issuance of NSF checks drawn on a lawyer's trust account creates a presumption 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" in her trust account of funds in the account belonging to other clients constitutes conversion of the other clients' funds.
- 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.

Property Belonging to 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(b) on page 89; the latter is governed by Rule 1.15(c) on page 89.

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 separate account maintained in Louisiana, 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.
- **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 above obligations owing to a third person (as opposed to your client) arise only under certain conditions, unless otherwise permitted by law or by agreement with the client:

- 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 representation in which two or more persons (one of whom may be you) claim 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.

The most 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. Again, we recommend the use of informal dispute resolution methods, such as the Louisiana State Bar Association Legal Fee Dispute Resolution Program (see page 110) 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 trust account be interest-bearing 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 non-interest-bearing account. See Rule 1.15(f) for detailed IOLTA rules (page 90).

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 be required to open a separate trust account for that client's funds. The factors that decide what amount of client's funds is "nominal" are:

- 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.

Additional Resources

➤ Foonberg, Jay G., *The ABA Guide to Lawyer Trust Accounts* (American Bar Association, 1996).

➤ *The Louisiana Lawyer and Other People's Money* (Louisiana Bar Foundation, 1998).

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 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 such other attorneys shall be limited as set forth hereinbelow.

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 this agreement is null and void. This agreement pertains to the representation through trial only. Any writ, appeal, new trial motion or any other kind of post-trial relief must be 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 to promptly reimburse Attorney. If an advance deposit is being held by the Attorney, I agree to promptly reimburse the Attorney for any amount in excess of what is being held in advance. These costs may include (but are not limited to) the following: long distance telephone charges, photocopying (____ per page), postage, facsimile costs, Federal Express or other delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff's and service fees, travel expenses and investigation fees.

   Advance 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.

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, and/or if Attorney's continued representation would result in a violation of the Rules of Professional Conduct.

[Optional]

[4. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. 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 Dispute Resolution" provision.

_____
Client's Initials

_____
Attorney's Initials

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

_____

_____

6. **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 (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 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; 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. 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 hereinbelow.

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 before the deduction of costs and expenses as set forth in Section 2 herein:

   _____ % if settled without suit;
   _____ % in the event suit is filed;
   _____ % in the event a trial actually starts;
   _____ % in the event an appeal is filed by any party.

   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: long distance telephone charges, photocopying ($ ___per page), postage, facsimile costs, Federal Express or other delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff's and service fees, travel expenses and investigation fees.

   Advance 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.

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, and/or if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under the Rules of Professional Conduct.

4. **STATUTORY 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 shall be paid in accordance with the maximum allowed by law.

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 DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. 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 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. **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 (Hourly with Advance)

I, _____, the undersigned client (hereinafter referred to as "I," "me" or the "Client"), do hereby retain and employ _____ and his 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 increments of 6 minutes.

   [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 request. Should no 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.][1]

   It is understood and agreed that Attorney is authorized, with my prior knowledge and written consent, to employ other attorneys 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. I agree to promptly reimburse Attorney for any amount in excess of what is being held in deposit. These costs may include (but are not limited to) the following: long distance telephone charges, photocopying ($____ per page), postage, facsimile costs, express delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff's and service fees, travel expenses and investigation fees. Should the advance be exhausted by the payments of costs, expenses or fees, 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.

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, and/or I fail to abide by the terms of this agreement, and/or if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under by the Rules of Professional Conduct.

4. **STATUTORY 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.

---

[1] This paragraph may be omitted if no advance deposit is being made by the client.

[Optional]

[5. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. 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 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. **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

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 falls below 50% of the amount of the deposit, 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 at least 50% of your original advance fee. At the conclusion of the case, any unused portion of the advance 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 each time you receive a statement from us. 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, you will be responsible for all costs which we may incur on your behalf. These costs include filing fees, service of process, depositions, appraisals, witness fees, court reporter fees, copy and telephone expense, and fees for accountants, investigators, psychologists and other experts. We will consult with you prior to employing any such services. 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 community retirement or profit-sharing benefits. This requires extra specialized work which will usually 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 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 fee 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 DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, I agree to submit to arbitration by the Louisiana State Bar Association Legal Fee Dispute Resolution Program.]

NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. 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 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 maintain your file for a minimum of five 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, 2004

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

FOR PROFESSIONAL SERVICES RENDERED FOR THE PERIOD JANUARY 1 - JANUARY 31, 2004

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
		TOTAL AMOUNT DUE	**$1,982.50**	

SAMPLE SETTLEMENT STATEMENT

JANE J. GOOD CLIENT
versus
NEVERPAY INSURANCE COMPANY

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

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

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 _____

GILSBAR

MONEY MANAGEMENT MAP

When An Attorney Receives:	For This Purpose:	Funds Should Be Placed in:		
RETAINER	GENERAL AVAILABILITY	OPERATING ACCOUNT		
FIXED FEE OR MINIMUM FEE	FUTURE SERVICE	OPERATING ACCOUNT	UPON DISPUTE	CLIENT UNEARNED PORTION TRUST ACCT. DISPUTED AMOUNT
ADVANCE DEPOSIT (COMMONLY CALLED "RETAINER")	FUTURE SERVICE	TRUST ACCOUNT	AS EARNED	OPERATING ACCOUNT GIVE PERIODIC ACCOUNTING
ADVANCE DEPOSIT	COST AND EXPENSES	TRUST ACCOUNT	AS ACCRUED	OPERATING ACCOUNT GIVE PERIODIC ACCOUNTING
SETTLEMENT FUNDS	CLIENT RECOVERY COMBINED WITH ATTORNEY FEE AND COSTS	TRUST ACCOUNT	SIMULTANEOUSLY WITH CLIENT DISBURSEMENT	OPERATING ACCOUNT GIVE DETAILED ACCOUNTING

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

Supreme Court Implements Trust Account Overdraft Notification

The Louisiana Supreme Court amended the Rules of Professional Conduct and Rules for Lawyer Disciplinary Enforcement to provide for trust account overdraft notification. The Court's action follows the passage of complementary legislation (2005 La. Acts 249), which facilitates overdraft notification and which recognizes the Supreme Court's rulemaking authority in this area. Such notification was supported by the Louisiana State Bar Association through its House of Delegates.

Pursuant to the new rules, the Attorney Registration Statement for 2006/2007 and subsequent years will include a Trust Account Disclosure and Overdraft Notification Authorization form which all LSBA members will be required to complete. The Court has made provisions for law firm reporting and for attorneys who do not hold client funds and are therefore not required to maintain trust accounts. Further, the Office of Disciplinary Counsel has developed an Overdraft Notification Protocol which provides that no formal investigation will be opened if the ODC's Screening Department determines the overdraft incident was a one-time occurrence attributable to simple inadvertence or employee mistake.

See the Rule below and form on page 56.

Part 1. Louisiana Supreme Court Rule XIX, §28 be and is hereby amended to change the Section title and to enact a Subpart D, to read as follows:

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

* * *

D. Overdraft Notification. Any lawyer or law firm maintaining a client trust or escrow account in accordance with this rule and Rule 1.15 of the Louisiana Rules of Professional Conduct shall execute an agreement with the federally-insured financial institution or its affiliate that holds the attorney's trust or escrow account funds. The agreement shall authorize the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft on such account(s). Notification of trust or escrow account overdrafts shall be made in accordance with the written agreement between the federally-insured financial institution and the attorney or law firm and in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Every lawyer practicing or admitted to practice in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the overdraft provisions mandated by this rule.

A copy of the executed agreement shall be forwarded to the Office of Disciplinary Counsel within thirty (30) days of its execution. A Court-approved overdraft notification agreement that attorneys and federally-insured financial institutions and their affiliates shall utilize is included as Appendix F to these rules.

Part 2. This rule change shall become effective on April 15, 2006, and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court. Notwithstanding the effective date of this rule change, all attorneys who maintain trust or escrow accounts on the effective date of this rule change shall confect agreements with their financial institution(s) so that the overdraft notification procedure shall become effective on November 1, 2006 and thereafter. Attorneys who open trust or escrow accounts in accordance with La. S. Ct. Rule XIX, §28 and Rule 1.15 of the Rules of Professional Conduct between April 15, 2006 and November 1, 2006 shall confect agreements with their financial institutions so that the overdraft notification procedure shall become effective on November 1, 2006 and thereafter. Any attorney who opens a client trust or escrow account on or after November 1, 2006 shall not deposit funds in any such account until an agreement in conformance with these rules is executed between the attorney and the financial institution(s) in which the trust or escrow account funds are to be placed.

Supreme Court of Louisiana
Trust Account Disclosure & Overdraft Notification Authorization

Bar Roll Number _____ Attorney's Name (Type or Print) _____

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule 19, every attorney licensed to practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of their practice that they are not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such accounts with a federally insured financial institution with whom they have executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft created on such accounts. Use of this form complies with the rules of the Supreme Court.

_____ **I certify that because of the nature of my practice, I do not maintain a client trust or escrow account. I further certify that I do not handle funds of clients or third persons, and that I do not expect to receive the funds of a client or third person within the next twelve (12) months. Should these facts change, I am required to notify the Office of Disciplinary Counsel within 30 days and execute this form providing the required information.**

(Attorney's Signature) _____ (Date) _____

Trust Account Certification:

As an officer of the Court, I _____ do certify that I am a duly licensed Louisiana attorney and I am familiar with the provisions of the Supreme Court rules regarding trust accounts. I acknowledge that:

1. all attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to as a trust or escrow account);
2. every attorney maintaining a trust or escrow account must participate in the Interest On Lawyers Trust Account (IOLTA) Program unless a written notice is issued by the Louisiana Bar Foundation exempting an attorney's account from participation; and
3. all attorneys who are required to maintain trust and escrow accounts must do so with a federally insured financial institution with which they have executed an agreement requiring the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any overdraft incident created on such accounts.

I certify that the following information regarding my trust and escrow account(s) is truthful and accurate and that should such information change, I am ethically obligated to notify the Office of Disciplinary Counsel within 30 days of any change.

Bank Name and Address

_____

_____

_____

Name Listed On Account

_____

Account Number

_____

(Attorney's Signature) _____ (Date) _____

Law Firm Reporting

I am a member of the law firm of (insert firm name)_____ and all trust and escrow accounts are maintained under the name of that law firm. The firm has designated one Louisiana licensed attorney, (insert name)_____ as the responsible reporting counsel for our firm and that attorney's bar roll number is _____. I adopt the reporting as made by our designated reporting attorney.

(Attorney's Signature) _____ (Date) _____

Authorization To Financial Institution

The financial institution with whom I (or my law firm) maintain a trust or escrow account is hereby authorized to provide written and/or electronic notification to the **Office of Disciplinary Counsel** of an instance of overdraft occurring on such account(s) in accordance with the rules of the Louisiana Supreme Court and Act 249 of the Louisiana Legislature (Regular Session 2005). Notification shall be sent to:
Office of Disciplinary Counsel, 4000 S. Sherwood Forest Blvd., Suite 607, Baton Rouge, La. 70816
(phone: 225-293-3900 fax: 225-293-3300 e-mail: overdraft@ladb.org)

_____ _____
(Attorney's Signature) (bar roll number)

Authorization is Accepted: _____ _____
(Bank Officer) (Date)

(Notice to Financial Institution: Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice shall not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The Act provides that no civil or criminal action may be based upon a disclosure or a non-disclosure of financial records made pursuant to the Act.)

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