



Sample Fee Agreement Forms & Comments

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TABLE OF CONTENTS

COMMENTS

Introduction	1
Overview	1
Disclaimer.....	1
Intended Purpose and Limitations	1
Summary of Ethical Rule Requirements	1
Non-Contingent Fee Agreements	1
Contingency Fee Agreements.....	2
Guidelines for Compliance with Rule 4-1.5.....	2
Standard for Disclosure	2
Agreement in Writing.....	2
Conclusion	2
Comments on Each of the Three Sample Forms	3
Form 1: Hourly-Litigation.....	3
Conditions (Par. 1)	3
Scope of Services (Par.2)	3
Client (Par. 3).....	3
Deposit (Advanced Fee) (Par. 5)	3
Legal Fees and Billing Practices (Par. 6).....	4
Costs and Expenses (Par. 7)	4
Billing Statements (Par. 8).....	4
Discharge and Withdrawal (Par. 9).....	4
Disclaimer of Guarantee and Estimates (Par. 10).....	5
Construction Clauses (Par. 11-14).....	5
Form 2: Hourly Non-Litigation.....	9
Scope of Services (Par. 2)	9
Client's Duties (Par. 4)	9
Deposit (Advanced Fee) (Par. 5)	9
Costs and Expenses (Par. 7)	9
Form 3: Contingency Fee.....	13
Conditions (Par. 1)	13
Scope of Services, Responsibility of the Parties, and Limitation of Representation (Par. 2, 4, 13).....	13
Legal Fees and Billing Practices (Par. 6).....	13
Billing Statements (Par. 8).....	13
Discharge and Withdrawal (Par. 9).....	13
Disclaimer of Guarantee and Estimates (Par. 10).....	14
Approval Necessary for Settlement (Par. 12).....	14
Conclusion of Services (Par. 14)	14
Lien (Par. 15)	14
Receipt of Proceeds (Par. 16).....	14
Construction Clauses (Par. 17-20).....	14
Comments on Other Clauses	19
Resolution of a Fee Dispute.....	19
Interest Clause	19
Replenishing Deposit (Advanced Fee)	19
Fixed Fee Clause	19
Other Lawyer Clauses	19
Successor Lawyer Clause	19
SAMPLE FORM 1 – HOURLY LITIGATION.....	6
SAMPLE FORM 2 – HOURLY NON-LITIGATION	10
SAMPLE FORM 3 – CONTINGENCY FEE	15
OTHER CLAUSES FOR CONSIDERATION IN FEE AGREEMENTS	20
Resolution of a Fee Dispute	20
Interest Clause.....	20
Replenishing Deposit (Advanced Fee).....	20
Other Payor Clause – Personal.....	20
Fixed Fee Clause	20
Lawyer Withdraws before the Matter is Concluded	20
Lawyer is Discharged before the Matter is Concluded	21
“Other Lawyer” Clause – Contingency.....	21
“Other Lawyer” Clause – Hourly.....	21
Successor Lawyer Clause	21

THE MISSOURI BAR SAMPLE FEE AGREEMENT FORMS & COMMENTS



The following three sample fee agreement forms and comments have been prepared by The Missouri Bar Fee Dispute Resolution Committee, the Office of Chief Disciplinary Counsel, and The Bar Plan.

These sample fee agreements and comments were approved for distribution by The Missouri Bar Board of Governors May 10, 2002, and revised on December 2007.

DISCLAIMER

Neither The Missouri Bar nor the Fee Dispute Resolution Committee makes any representations or warranties of any kind, express or implied, concerning the legal adequacy or enforceability of any of the accompanying forms or any part of them. Nothing in the "Comments" or in the forms shall be interpreted or construed as such a representation or warranty. The "Comments" and the forms are intended for use only by lawyers admitted to practice in Missouri, who are expected to utilize their own independent legal and business judgment when evaluating the forms and these comments.

***THIS INFORMATION SHOULD BE USED AS A GUIDE ONLY.
You alone are responsible for your contracts.***

COMMENTS

I

INTRODUCTION

Attached are sample lawyer-client fee agreements, drafted to comply with Rule 4-1.5 of the Rules of Professional Conduct under most circumstances.

The first two agreements are forms designed for use in non-contingent fee arrangements. They cover (1) litigation on an hourly basis, and (2) non-litigation on an hourly basis. The third form is for a contingency fee matter. Finally, there are "Other Clauses of Interest in Fee Agreements", which list optional clauses for specific circumstances.

II

OVERVIEW

A. DISCLAIMER

Neither The Missouri Bar nor the Fee Dispute Resolution Committee makes any representations or warranties of any kind, express or implied, concerning the legal adequacy or enforceability of any of the accompanying forms or any part of them. Nothing in the "Comments" or in the forms shall be interpreted or construed as such a representation or warranty. The "Comments" and the forms are intended for use only by lawyers admitted to practice in Missouri, who are expected to utilize their own independent legal and business judgment when evaluating the forms and these comments.

B. INTENDED PURPOSE AND LIMITATIONS

The accompanying forms are samples only. They are not mandatory forms. They enjoy no preferred status. They create no minimum standards. They do not presume to address every setting in which the lawyer-client relationship arises, nor do they contain every term a fee agreement might include.

By enumerating certain charges and billing practices, it is not suggested that you must or should adopt them. It is simply to acknowledge that some lawyers follow them.

The agreements are in the format of a relatively formal agreement, while attempting to eliminate unnecessary "legalese." For those lawyers who prefer a more colloquial style, such as a letter-agreement, the language can be adapted to that format. Lawyers are encouraged to mold the samples to fit their needs.

C. SUMMARY OF ETHICAL RULE REQUIREMENTS

1. Non-Contingent Fee Agreements

In non-contingent matters, there is no specific requirement under the Rules of Professional Conduct that a fee agreement be in writing. However, it is highly recommended that lawyers reduce all fee arrangements to writing to avoid any misunderstanding. Supreme Court Rule 4-1.5(b) requires that when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. The Comment to the rule cautions that in a new lawyer-client relationship, the fee must be promptly established.

The detail that is necessary in a fee agreement is defined by the circumstances. A lawyer has a duty to communicate with the client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. [Rule 4-1.4(b)] This would include providing sufficient information about the anticipated fees and costs so that the client can make an informed decision on how to proceed. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding. [Comment to Rule 4-1.5]

The scope of representation should be set forth and any limits on what the lawyer will do must be clearly spelled out. A lawyer may limit the objectives of the representation if the client gives informed consent [Rule 4-1.2(c)] However, any limitation must accord with the Rules of Professional Conduct and other law. A client may not be asked to agree to representation so limited in scope as to violate Rule 4-1.1 relating to competence or to surrender the right to terminate the lawyers' services or the right to settle litigation that the lawyer might wish to continue. [Comment, Rule 4-1.2] A lawyer cannot limit their duties or liability under the Rules of Professional Conduct in the fee agreement. For example, a lawyer could not undercut their responsibility to

comply with the requirements of Rule 4-1.16 on terminating the lawyer client relationship, by stating in the fee agreement that he or she can withdraw from employment with or without cause at any time. This would be contrary to the rule requiring the lawyer to take steps reasonably practicable to protect a client's interest upon termination, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, etc. [Rule 4-1.16(d)]

It is advisable to make provision for the terms of payment of the fee. (i.e. within specific time frames or within thirty days after billing) A lawyer may require advance payment, but is obliged to return any unearned portion in a prompt fashion.

If a division of fees with a lawyer from another firm is involved, the client's consent must be obtained. This consent must be confirmed in writing. The division may be based on the proportion of services performed by each lawyer or each lawyer must assume joint responsibility for the representation. [Rule 4-1.5(e)]

2. Contingency Fee Agreements

A contingent fee must be in writing, signed by the client. A lawyer may enter into a contingent fee agreement with certain exceptions. [Rule 4-1.5(c)] The agreement shall state the method by which the fee is to be determined, including the percentage that shall accrue in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. 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. It is not permissible to charge a contingent fee in a domestic relations matter for securing a divorce or dissolution, or upon the amount of maintenance, alimony, support, or marital property settlement or in a criminal case.

All other considerations as stated in Section 1 on Non-Contingency Fee Agreements should be considered, as to scope of representation, limiting liability and professional duties, and communicating sufficient information for the client to make informed decisions about the financial consequences of proceeding with their matter.

D. GUIDELINES FOR COMPLIANCE WITH RULE 4-1.5

Forms alone cannot tell a lawyer how to comply. Rather, compliance will result from the lawyer's understanding of the interaction of the Rules and any applicable statutes to their practice area. For example, lawyers doing workers compensation law should be aware that there are regulations on charging fees in this area and their fees are subject to the regulation by the worker's compensation division or commission. (287.260 RSMo) Likewise, fees must be approved in other areas of law practice, such as bankruptcy, matters in which a minor is a client, probate, etc. These fee agreements and guidelines cannot address all the specifics that may be necessary for every client matter.

E. STANDARD FOR DISCLOSURE

The Rule should be examined in the light most favorable to the client.

F. AGREEMENT IN WRITING

In those cases where a fee agreement is required to be in writing, it must be signed by the client. A lawyer must follow through with the request that the client sign and return the agreement so that a copy of the executed agreement can be kept in the lawyer's file.

III

CONCLUSION

These forms have been disseminated in the hope that they will be useful to lawyers in their practices. You are urged you to make any alterations in these forms so that they conform to your practice and the needs and requirements of your practice and your clients. We also urge you to study the rules in effect at the time of the agreement, since the rules may have changed since the last update to these forms. We invite your comments and suggestions.

COMMENTS ON FORM 1: HOURLY-LITIGATION

Conditions (Par. 1)

The lawyer-client relationship is not dependent upon the payment of a fee or a formal written agreement. It will typically be found when a client seeks and receives legal advice from you. The existence of the lawyer-client relationship will be inferred from the facts and circumstances surrounding the creation of the relationship. Moreover, your duties to a client ordinarily arise only after there is an agreement between you and the client to render legal services. However, some duties in the relationship, such as confidentiality, may attach when you agree to consider whether to establish the relationship, such as during an initial meeting with the client. For this reason, potential conflicts of interest must be searched for during the earliest stages of contact with the client.

Some duties attach even if you do not accept the case or the prospective client does not hire you. Rule 4-1.18. If you render legal services to a client before a formal agreement is entered into, you may be limited to recovering only the “reasonable” value of those services, not the later-agreed to “contract” value.

Scope of Services (Par. 2)

Fill in a brief description of the subject of the representation. Be aware in doing so that you have a duty to inform the client of not only what the subject of the representation is, but further, what it is not. If the client has other possible causes of action arising from the facts and circumstances giving rise to your representation, you have a duty to inform the client of these possible actions, that you are not representing the client on them, that the client should seek independent representation if the client wishes to pursue a remedy, and that delay or failure to do so may result in the client being barred by a statute of limitations from being able to recover under these other causes of action.

If the fee agreement fails to exclude matters, such as appeals or collection, enforcement, or modification of a judgment, you may be responsible for representing a client in such a matter for the same fee as in the underlying representation. Accordingly, if you do not want to be responsible for representing the client in such matters, or are willing to do so but will charge a different or additional fee than in the underlying matter, the language of the scope of the representation should expressly state that such matters are not part of the initial representation and are subject to a new fee agreement if you accept the representation on these additional matters. Alternatively, the fee for these other matters may be included in the original agreement.

Client (Par. 3)

It is important to designate by name the client or all clients to be covered by the representation. To avoid confusion, in cases where a third party or a relative of the client may be present at meetings or court appearances with the client or in a case where fees are being paid by someone other than the client, it is advisable to explain that the lawyer’s representation and duty to communicate is strictly limited to the named client. Obviously, this provision in an agreement will not effectively “bind” the third party to this understanding, but this provision is useful as an educational tool to the client and may be pointed out to any third party accompanying the client who may fall into this situation.

If all or part of the payment will be provided by a third party, the best idea is to make sure there is an understanding between the client and the third party, at or before the time of the payment by the third party regarding disbursement of any potential refund. Have them address what is to happen with the funds if

the representation is prematurely terminated, or

the representation terminates normally but there are funds left, or

the third party demands his or her money back while the representation is ongoing.

Deposit (Advanced Fee) (Par. 5)

This is an optional clause. Fill in the amount of any deposit (advanced fee) and the date by which it must be paid. It is not advisable to refer to this as a “retainer” because that term has so many possible meanings that it regularly leads to confusion. A lawyer cannot withdraw funds from the trust account without the client’s authorization. The form provides for that authorization as well as a reasonable opportunity for the client to

object after receipt of the billing statement. If you prefer a more cautious approach to the authorization question, you might provide that sums will be withdrawn from the trust account only after they are invoiced to client and "x" days pass without client's protest of any of the charges.

You need not require a deposit (advanced fee) of any kind. This paragraph sets forth one way to handle the deposit (advanced fee) if you opt for one. In addition, the form provides for advance payment of all fees and costs to be incurred in preparing for and conducting trial or arbitration. Because it is calculated based on objective facts, no ceiling has been placed on the pre-trial deposit (advanced fee).

The "Replenishing Deposit (Advanced Fee)" clause provided in the "Other Clauses for Consideration in Fee Agreements" forms may be used as an alternative.

Legal Fees and Billing Practices (Par. 6)

Some firms either do not charge for travel time or charge at reduced rates. The lawyer should discuss this with the client.

If interest will be charged on late payments, the agreement must include terms that comply with all state and federal laws related to charging interest. Even if not required by such laws, Rules 4-1.4 and Rule 4-1.5 require that the terms of such charges be clearly described in the agreement.

Costs and Expenses (Par. 7)

This is not an inclusive list. You may include more or less. You should disclose the rate or charge for any items not passed through strictly at cost, for example, copying charges. You may only charge the client your cost for goods and services purchased from third parties. You may charge for the cost of your services involved in obtaining the third party goods and services.

The lawyer should specifically address travel expenses with the client.

The sample paragraph allows the lawyer to incur costs and retain consultants, etc. with client consultation. Optional clauses, to be initialed by the client, would require client approval before costs in excess of a specific dollar amount or of a certain nature, (e.g. experts) were incurred.

Language is included notifying the client that in certain cases, it may be the client's responsibility to pay other parties' costs.

Billing Statements (Par. 8)

Lawyers' statements shall describe the services rendered, and must state the "basis" of the charges, including the amount, rate, and basis for calculation or other method of determination of fees and costs.

Discharge and Withdrawal (Par. 9)

This is declaratory of applicable law and rules. Note that the return of the file and other property is also required under the Rules of Professional Conduct. Addressing the issue of retention of the client's file in the fee agreement will save misunderstandings in the future and may permit destruction of the file sooner than would be permitted by Rule 4-1.15(j). The original file belongs to the client. In the absence of an agreement with the client, files must be kept a minimum of ten years and items of intrinsic value must not be destroyed. Rule 4-1.15(j)

Formal Opinion 115, as amended, of the Supreme Court Advisory Committee states that a lawyer may not withhold a client's file or other personal property from the client in order to enforce payment of fees or expenses, nor may a lawyer contract away the obligation to turn over the file to a client if the client requests it. An exception is made for items that the lawyer has paid out-of-pocket expense and has not yet been reimbursed, the common example being a deposition transcript. Even if there is an agreement with the client allowing file destruction, before disposing of a file, it should be reviewed to ascertain if any extenuating circumstances require retaining that particular file longer than the agreed. For example, consideration should be given, in cases where maintenance or child support is awarded, to maintaining the file until the obligation for such payments is terminated.

Disclaimer of Guarantee and Estimates (Par. 10)

While it may seem obvious to the lawyer that there is no guarantee of results, it is not always obvious to a client. A lawyer's enthusiasm for the merits of a case may be interpreted as an assertion that the client is entitled to recover as a matter of law.

Construction Clauses (Par. 11 - 14)

These are optional clauses found in many formal agreements. The lawyer should note that any modification of a fee agreement at a critical stage of the proceedings may be construed as over-reaching by the lawyer. In regard to the effective date of the agreement, the clause sets the commencement of the contract on the date Lawyer first performs services. The lawyer must be aware that if he or she has undertaken the representation prior to the client signing the agreement or payment of fees, a lawyer-client relationship has been formed. A lawyer's duties under the Rules of Professional Conduct arise at the point a lawyer-client relationship is formed, as opposed to when money is first paid or a formal contract is signed.

**FIRM NAME
STREET
CITY, STATE, ZIP
PHONE
DATE**

LAWYER-CLIENT FEE AGREEMENT

_____ ("Lawyer"), will provide legal services to _____ ("Client"), on the terms set forth below.

1. CONDITIONS. This Agreement will not take effect, and Lawyer will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit (advanced fee) called for under Paragraph 5.

2. SCOPE OF SERVICES. Client hires Lawyer to provide legal services in the following matter: [describe matter]. Lawyer will provide those legal services reasonably required to represent Client. Lawyer will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Lawyer will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in execution proceedings after judgment. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate Agreement.

3. CLIENT. The lawyer is representing the Client _____ (name) _____ only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or otherwise, in this matter, that lawyer's duty is to act in the best interest of the Client and lawyer cannot share information about Client's case with anyone other than Client without express permission.

4. RESPONSIBILITIES OF THE PARTIES. Client agrees to be truthful with Lawyer, to cooperate, to keep Lawyer informed of any information or developments which may come to Client's attention, to abide by this agreement, and to pay Lawyer's bills on time. Further, while it is impossible to predict the course of a representation, it may be important for Lawyer to contact Client immediately, or upon short notice, to confer with Client regarding the status of Client's case. An inability to do so may result in Client's case being prejudiced and detrimentally affect the outcome of the case. Accordingly, Client agrees to keep Lawyer informed of Client's current address, telephone number and whereabouts. If Client leaves town, for example, to travel on business or vacation, Client agrees to notify Lawyer before leaving of the expected duration of the trip and how Client may be contacted in the meantime.

5. DEPOSIT (ADVANCED FEE). Client agrees to pay Lawyer an initial deposit (advanced fee) of \$ _____ by _____. The hourly charges will be credited against the deposit (advanced fee). The initial deposit (advanced fee), as well as any future deposit (advanced fee), will be held in a trust account. Client authorizes Lawyer to use that fund to pay the fees and other charges as they are incurred. Billing statements detailing the charges credited against the deposit (advanced fee) will be sent periodically to the client. Withdrawal from the trust account will be made _____ days after the date of this billing statement. Client acknowledges that the deposit (advanced fee) is not an estimate of total fees and costs, but merely an advance for security.

Whenever the deposit (advanced fee) is exhausted, Lawyer reserves the right to demand further reasonable deposits (advanced fees). Once a trial or arbitration date is set, Client shall pay all sums then owing and pay the lawyers' fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees and court costs or arbitration fees, expert witness fees and other costs likely to be assessed.

Client agrees to pay all deposits (advanced fees) after the initial deposit (advanced fee) within _____ days of Lawyer's demand. Any unused deposit (advanced fee) at the conclusion of Lawyer's services will be refunded. Client understands that failure to deposit (advanced fee) within _____ days may result in lawyer asking for leave to withdraw.

6. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Lawyer's prevailing rates for all time spent on Client's matter by Lawyer's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____ /hour	Time is charged in units _____ of an hour.
Partners	_____ /hour	Telephone calls:
Associates	_____ /hour	Letters:
Paralegals	_____ /hour	Other:
Law clerks	_____ /hour	Interest charges:

The time charged will/may include the time Lawyer spends on telephone calls relating to Client's matter, including calls with Client, witnesses, opposing counsel or court personnel. The legal personnel assigned to Client's matter will/may confer among themselves about the matter, as required and appropriate. When they do confer, each person will/may charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will/may charge for the time spent. Lawyer will/may charge for waiting time in court and elsewhere and for travel time, both local and out of town.

7. COSTS AND EXPENSES

(a) In General. Lawyer will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Lawyer's cost.

In-office photocopying	_____ /page
Facsimile charges	_____ /page
Mileage	_____ /mile
Other:	

(b) Out of Town Travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Lawyer's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

ALTERNATE ONE

(c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. Lawyer will consult with client on the selection of any expert witnesses, consultants, etc., to be hired and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

ALTERNATE TWO

(c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Lawyer will select, in consultation with client, any expert witnesses, consultants or investigators to be hired and Client will be informed of persons chosen and their charges.

Client authorizes Lawyer to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Lawyer's judgment unless one or both of the clauses below are initialed by Lawyer.

Lawyer shall obtain Client's consent before incurring any costs in excess of \$_____.

Lawyer shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

8. BILLING STATEMENTS. Lawyer will send Client periodic statements for fees and costs incurred, upon request by client. If Client requests a statement, Lawyer will provide one within 10 days, but no more

frequently than thirty days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount. If the Client objects to any charges to be credited against the deposit (advanced fee), Client must notify Lawyer within _____ days. (Correlate with paragraph 5-Deposit – Advanced Fee) If any statement carries a balance due, it shall be paid in full within _____ days after the date of such statement.

9. DISCHARGE AND WITHDRAWAL. Client may discharge Lawyer at any time. Lawyer may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this agreement, refusal to cooperate or to follow Lawyer's advice on a material matter or any fact or circumstance that would render Lawyer's continuing representation unlawful or unethical. When Lawyer's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Lawyer will, upon Client's request, deliver Client's file, and property in Lawyer's possession whether or not Client has paid for all services. Client understands that to the limited extent lawyer has paid out of pocket expenses for items, which have not yet been reimbursed by client, lawyer must be reimbursed for that particular expense before releasing the item.

Lawyer will maintain Client's file for ___ years after this matter is concluded. Client may request the file at any time during, upon conclusion of, or after conclusion of, this matter. ___ years after the conclusion of this matter, the file may be destroyed without further notice to Client.

10. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this agreement and nothing in Lawyer's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Lawyer makes no such promises or guarantees. Lawyer's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Lawyer shall not be a guarantee. Actual fees may vary from estimates given.

11. ENTIRE AGREEMENT. This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

12. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

13. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent Agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

14. EFFECTIVE DATE. This Agreement will govern all legal services performed by Lawyer on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of this Agreement is for reference only. Even if this agreement does not take effect, Client will be obligated to pay Lawyer the reasonable value of any services Lawyer may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

Client Name _____

Address _____

Telephone: _____

DATED: _____

LAW FIRM

By: _____

(NAME), Partner

COMMENTS ON FORM 2: HOURLY NON-LITIGATION

With the exceptions and additions recited below, the comments on the Hourly-Litigation Form 1 apply equally to the Hourly Non-Litigation Form 2.

Scope of Services (Par. 2)

Exclusion for litigation has been added.

Client's Duties (Par. 4)

References to appearances at legal proceedings have been deleted.

Deposit (Advanced Fee) (Par. 5)

References to trial and arbitration dates and related fees have been deleted.

Costs and Expenses (Par. 7)

Litigation-related costs have been deleted.

**FIRM NAME
STREET
CITY, STATE ZIP
PHONE
DATE**

LAWYER-CLIENT FEE AGREEMENT

_____ ("Lawyer"), will provide legal services to _____ ("Client"), on the terms set forth below.

1. CONDITIONS. This Agreement will not take effect, and Lawyer will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit (advanced fee) called for under Paragraph 5.

2. SCOPE OF SERVICES. Client hires Lawyer to provide legal services in the following matter: [describe matter]. Lawyer will provide those legal services reasonably required to represent Client. Lawyer will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate Agreement.

3. CLIENT. The lawyer is representing the Client _____ (name) _____ only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or otherwise, in this matter, that lawyer's duty is to act in the best interest of the Client and lawyer cannot share information about Client's case with anyone other than Client without express permission.

4. CLIENT'S DUTIES. Client agrees to be truthful with Lawyer, to cooperate, to keep Lawyer informed of any information or developments which may come to Client's attention, to abide by this agreement, to pay Lawyer's bills on time and to keep Lawyer advised of Client's address, telephone number and whereabouts. Client will assist Lawyer in providing information and documents necessary for the representation in the described matter.

5. DEPOSIT (ADVANCED FEE). Client agrees to pay Lawyer an initial deposit (advanced fee) of \$ _____ by _____. The hourly charges will be credited against the deposit (advanced fee). The initial deposit (advanced fee), as well as any future deposit (advanced fee), will be held in a trust account. Client authorizes Lawyer to use that fund to pay the fees and other charges as they are incurred. Payments from the fund will be made upon remittance to client of a billing statement. Client acknowledges that the deposit (advanced fee) is not an estimate of total fees and costs, but merely an advance for security.

Whenever the deposit (advanced fee) is exhausted, Lawyer reserves the right to demand further deposits (advanced fees), each up to a maximum of \$ _____. Client agrees to pay all deposits (advanced fees) after the initial deposit (advanced fee) within _____ days of Lawyer's demand. Unless otherwise agreed in writing, any unused deposit (advanced fee) at the conclusion of Lawyer's services will be refunded.

6. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Lawyer's prevailing rates for all time spent on Client's matter by Lawyer's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	/hour
Partners	/hour
Associates	/hour
Paralegals	/hour
Law clerks	/hour

The rates on this schedule are subject to change on 30 day written notice to client. If Client declines to pay any increased rates, Lawyer will have the right to withdraw as Lawyer for Client.

The time charged will include the time Lawyer spends on telephone calls relating to Client's matter, including calls with Client and other parties and lawyers. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will

charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent. Lawyer will charge for waiting time and for travel time, both local and out of town.

Time is charged in minimum units of one tenth (. 1) of an hour. The following have higher minimum charges:

Telephone calls:

Letters:

Other:

7. COSTS AND EXPENSES.

(a) In General. Lawyer will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include fees fixed by law or assessed by public agencies, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses and consultants' fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Lawyer's cost.

In-Office photocopying _____/page

Facsimile charges _____/page

Mileage _____/ mile

Other:

(b) Out of Town Travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Lawyer's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

ALTERNATE ONE

(c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. Lawyer will consult with client on the selection of any expert witnesses, consultants, etc., to be hired and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

ALTERNATE TWO

(c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Lawyer will select, in consultation with client, any expert witnesses, consultants or investigators to be hired and Client will be informed of persons chosen and their charges.

Client authorizes Lawyer to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Lawyer's judgment unless one or both of the clauses below are initialed by Lawyer.

Lawyer shall obtain Client's consent before incurring any costs in excess of \$_____.

Lawyer shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

8. BILLING STATEMENTS. Lawyer will send Client periodic statements for fees and costs incurred. Each statement will be payable within _____ days of its mailing date. Client may request a statement at intervals of no less than 30 days. If Client requests a statement, Lawyer will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

9. DISCHARGE AND WITHDRAWAL. Client may discharge Lawyer at any time. Lawyer may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this agreement, refusal to cooperate or to follow Lawyer's advice on a material matter or any fact or circumstance that would render Lawyer's continuing representation unlawful or unethical. When Lawyer's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Lawyer will, upon Client's request,

deliver Client's file, and property in Lawyer's possession, whether or not Client has paid for all services. Client understands that to the limited extent Lawyer has paid out of pocket expenses for items, which have not yet been reimbursed by client, Lawyer must be reimbursed for that particular expense before releasing the item.

Lawyer will maintain Client's file for ___ years after this matter is concluded. Client may request the file at any time during, upon conclusion of, or after conclusion of, this matter. ___ years after the conclusion of this matter, the file may be destroyed without further notice to Client.

10. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this agreement and nothing in Lawyer's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Lawyer makes no such promises or guarantees. Lawyer's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Lawyer shall not be a guarantee. Actual fees may vary from estimates given.

11. ENTIRE AGREEMENT. This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

12. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

13. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent Agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

14. EFFECTIVE DATE. This Agreement will govern all legal services performed by Lawyer on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of this Agreement is for reference only. Even if this agreement does not take effect, Client will be obligated to pay Lawyer the reasonable value of any services Lawyer may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

Client Name _____

Address _____

Telephone: _____

DATED: _____

LAW FIRM

By: _____

(NAME), Partner

COMMENTS ON FORM 3: CONTINGENCY FEE

With the exceptions and additions recited below, the comments on the Hourly Litigation Form 1 apply equally to the Contingency Fee Form 3.

Conditions (Par. 1)

The instructions for this paragraph are the same as those for the Hourly Litigation Form, paragraph 1.

Scope of Services, Responsibility of the Parties, and Limitation of Representation (Par. 2, 4, 13)

Fill in the defendant's name, the nature of the event giving rise to the claim and the date (Par. 2). This paragraph and paragraph 13 (Limitation of Representation), describe the scope and limitations of the representation. Enumerations of the client's and lawyer's responsibilities likewise are recommended.

The point at which the covered services end should be carefully defined to avoid any questions of the obligation to provide additional services without additional fees. The scope of the services in the sample excludes appeal from the judgment and execution proceedings. You may exclude more, less or nothing.

The client should be informed whether the client will be required to pay to the lawyer any compensation for work that arises out of their relationship but is not covered by the contingency fee agreement. The sample (Par. 13) provides that representation as to related matters will require a separate agreement. As to the related matter of defending the client on counter-claims, the option of a separate agreement or engaging separate counsel is given. Here again, you may broaden the scope of the services to include those related matters which are excluded in the sample.

If the matter is one in which it is possible that attorney fees will be awarded, the agreement should address how any such award will factor into the fee agreement, especially in the event that the award is more or less than the fees that are established by the agreement. If it is a case in which the fees must be approved by a tribunal, it is a good idea to reference that. If fees must be approved, the agreement cannot provide for more fees than the amount approved.

The client should be informed of any other possible causes of action the client may have connected to the events that gave rise to the action in which you are engaged, whether you will represent the client in those matters and your fee for doing so (a separate fee agreement is recommended in such situation), and if not the that the client should engage other counsel to do so if the client wants to pursue those claims, and that failure to timely act in pursuing those claims may result in the client being barred by a statute of limitations from ever being able to pursue those claims.

Legal Fees and Billing Practices (Par. 6)

As required by statute, this paragraph explains the contingency on which fees become due, the method of calculation of fees at various points in the litigation, and deduction of costs. An optional clause includes non-monetary proceeds as part of the net recovery on which the fees are based. If this clause is used, consideration should be given to whether or not to enumerate the potential non-monetary items, e.g. the value of continued insurance coverage.

Neither the particular points in litigation at which the percentage of the fee changes, nor the specific basis for computation of a reasonable fee in the event of discharge, should be viewed as being endorsed by The Missouri Bar. It should be noted that no specific contingency fee amounts are recommended in these forms. These provisions are illustrative only. Other provisions may be more appropriate in particular cases.

Existing case law provides for payment of a reasonable fee in the event of discharge of the lawyer by the client prior to occurrence of the contingency on which fees become due. Accordingly, this paragraph states that the reasonable fee in such a case is payable on the occurrence of the contingency and provides assistance in the determination of the amount of a fee which may be considered reasonable.

Billing Statements (Par. 8)

This optional paragraph is intended for use in the event the client is to pay costs as the litigation progresses, rather than deducting all costs from the recovery.

Discharge and Withdrawal (Par. 9)

This is declaratory of applicable law and rules. Together with paragraphs 6 (Legal Fees and Billing Practices), 14 (Conclusion of Services) and 15 (Lien), this paragraph notifies the client of payment obligations if the lawyer is discharged or withdraws.

Disclaimer of Guarantee and Estimates (Par. 10)

This is an optional clause.

Approval Necessary for Settlement (Par. 12)

This provision is optional.

Conclusion of Services (Par. 14)

Returning the file and other property is required under existing law and rules including the Rules of Professional Conduct.

Lien (Par. 15)

In Missouri, a lawyer lien to protect your fee is governed by V.A.M.S. §§ 484.130 and 484.140. You should refer to these statutes to determine compliance with the necessary notice requirements contained therein in order to establish an enforceable lien.

Formal Opinion 115, as amended, of the Supreme Court Advisory Committee states that a lawyer may not withhold a client's file or other personal property from the client in order to enforce payment of fees or expenses, nor may a lawyer contract away the obligation to turn over the file to a client if the client requests it. An exception is made for items that the lawyer has paid out-of-pocket expense and has not yet been reimbursed, the common example being a deposition transcript. Even if there is an agreement with the client allowing file destruction, before disposing of a file, it should be reviewed to ascertain if any extenuating circumstances require retaining that particular file longer than the agreed timeframe. For example, consideration should be given, in cases where, there is a structured settlement, to maintaining the file until the obligation for such payments is terminated.

Receipt of Proceeds (Par. 16)

This is an optional clause.

Construction Clauses (Par.17 - 20)

These are optional clauses found in many formal agreements.

**FIRM NAME
STREET
CITY, STATE ZIP
PHONE
DATE**

LAWYER-CLIENT CONTINGENCY FEE AGREEMENT

_____ ("Lawyer"), will provide legal services to _____ ("Client"), on the terms set forth below. This agreement is required by Supreme Court Rule 4-1.5(c).

1. CONDITIONS. This Agreement will not take effect, and Lawyer will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit (advanced fee), if any, called for under Paragraph 5.

2. SCOPE OF SERVICES. Client is hiring Lawyer to represent Client in the matter of Client's claims against _____ and possibly others as future investigation may indicate, arising out of _____ which occurred on or about _____.

Lawyer will represent Client until a settlement or judgment is obtained by way of negotiations or arbitration or trial. Lawyer will oppose any motion for a new trial or any other post-trial motions filed by an opposing party, or will make any appropriate post-trial motions on Client's behalf. After judgment Lawyer will not represent Client on any appeal, or in any proceedings designed to execute on the judgment, without such additional compensation as may be agreed upon in a separate Agreement.

3. CLIENT. Lawyer is representing the Client _____ (name) _____ only in this matter. It is understood by Client and any third party who may be assisting Client financially, emotionally or otherwise, in this matter, that lawyer's duty is to act in the best interest of the Client and Lawyer cannot share information about Client's case with anyone other than Client without express permission.

4. RESPONSIBILITIES OF THE PARTIES. Lawyer will provide those legal services reasonably required to represent Client in prosecuting the claims described in paragraph 2. Client agrees to appear, at all legal proceedings (including depositions, hearings including but not limited to trial) when Lawyer deems it necessary. Client further agrees to generally cooperate fully with Lawyer in all matters related to the preparation and presentation of Client's claims (including but not limited to interrogation, written discovery, trial preparation, client interviews). Further, while it is impossible to predict the course of a representation, it may be important for Lawyer to contact Client immediately, or upon short notice, to confer with Client regarding the status of Client's case. An inability to do so may result in Client's case being prejudiced and detrimentally affect the outcome of the case. Accordingly, Client agrees to keep Lawyer informed of Client's current address, telephone number and whereabouts. If Client leaves town, for example, to travel on business or vacation, Client agrees notify Lawyer before leaving of the expected duration of the trip and how Client may be contacted in the meantime.

5. DEPOSIT (ADVANCED COST DEPOSIT). Client agrees to pay Lawyer an initial deposit (advanced cost deposit) for costs of \$_____, to be returned with this signed Agreement. Lawyer will hold this initial deposit in a trust account. Client hereby authorizes Lawyer to use that deposit to pay the costs and other expenses incurred under this Agreement.

When Client's deposit (advanced cost deposit) is exhausted, Lawyer reserves the right to demand further deposits. Once a trial or arbitration date is set, Lawyer will require Client to pay all sums then owing, and to deposit the costs Lawyer estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees court costs or arbitration fees likely to be assessed. Those sums may exceed the deposit.

Client agrees to pay all deposits (advanced fees) required under this Agreement within _____ days of Lawyer's demand. Any deposit (advanced fee) that is unused at the conclusion of Lawyer's services will be refunded.

6. LEGAL FEES AND BILLING PRACTICES. Lawyer will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs and expenses, as described in Paragraph 7.

ALTERNATE ONE

The fee to be paid will be a percentage of the "gross recovery," depending on the stages at which settlement or judgment is reached. The term "gross recovery" means the total of all amounts received by settlement, arbitration award or judgment, including any award of lawyer's fees. The fee will be calculated before the deduction of any costs and expenses as set forth in Paragraph 7, and the costs and expenses will remain the responsibility of Client to be paid from the portion of any amounts received by Client after deduction of the fee.

Upon conclusion of the matter, Lawyer will provide Client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to Client and the method by which the remittance was calculated.

ALTERNATE TWO

The fee to be paid will be a percentage of the "net recovery," depending on the stage at which settlement or judgment is reached. The term "net recovery" means: 1) the total of all amounts received by settlement, arbitration award or judgment. 2) minus all costs and expenses as set forth in Paragraph 7.

Upon conclusion of the matter, Lawyer will provide Client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to Client and the method by which the remittance was calculated.

Lawyer's fee shall be calculated as follows:

- (i) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Lawyer's fee will be _____ percent of the net recovery;
- (ii) If the matter is resolved prior to _____ days before the date initially set for the trial or arbitration of the matter then Lawyer's fee will be _____ percent (____%) of the net recovery; and
- (iii) If the matter is resolved after the times set forth in (i) and (ii), above, then Lawyer's fee will be _____ percent (____%) of the net recovery.

In the event of Lawyer's discharge or withdrawal for cause as provided in Paragraph 12, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Lawyer shall be entitled to be paid by Client a reasonable fee for the legal services provided the extent to which Lawyer's services have contributed to result obtained. Such fee shall be determined by considering the following factors:

7. COSTS AND EXPENSES. Lawyer will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs and expenses paid or owed by Client in connection with this matter, or which have been advanced by Lawyer on Client's behalf and which have not been previously paid or reimbursed to Lawyer. Costs and expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, costs and expenses will be charged at our cost.

- In-Office photocopying _____/page
- Facsimile charges _____/page
- Mileage _____/ mile
- Other:

Client understands that, as set forth in Paragraph 5, a deposit (advanced fee) for costs may be required before the expenditure is made by Lawyer.

ALTERNATE ONE

Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Client agrees to pay such fees and charges. Lawyer will consult with client on the selection of any expert witnesses, consultants, etc., to be hired and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

ALTERNATE TWO

Experts, Consultants, and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants, or investigators. Lawyer will select, in consultation with client, any expert witnesses, consultants or investigators to be hired and Client will be informed of persons chosen and their charges.

Client authorizes Lawyer to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Lawyer's judgment unless one or both of the clauses below are initialed by Lawyer.

Lawyer shall obtain Client's consent before incurring any costs in excess of \$_____.

Lawyer shall obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

If an award of fees and/or costs is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Lawyer is entitled to charge its clients or that only the fees and/or costs which were allowed were reasonable. Client agrees that, whether or not lawyer's fees or costs are awarded by the court in Client's case, Client will remain responsible for the payment, in full, of all lawyer's fees and costs in accordance with this Agreement.

Additionally, Client understands that if Client's case proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such award will be entirely the responsibility of Client.

8. BILLING STATEMENTS. Lawyer will send Client periodic billing statements for costs and expenses incurred in connection with this matter. Each statement is to be paid in full within _____ days after the date of such statement.

9. DISCHARGE AND WITHDRAWAL. Client may discharge Lawyer at any time, upon written notice to Lawyer. Lawyer may withdraw from representation of Client (a) with Client's consent (b) upon court approval, or (c) if no court action has been filed, for good cause and upon reasonable notice to Client. Good cause includes Client's breach of this contract, Client's refusal to cooperate with Lawyer or to follow Lawyer's advice on a material matter or any other fact or circumstance that would render Lawyer's continuing representation unlawful or unethical.

Notwithstanding Lawyer's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Lawyer for all costs incurred prior to the termination. In the event that there is any recovery obtained by Client after *conclusion* of Lawyer's services, Client remains obligated to pay Lawyer for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

Lawyer will maintain Client's file for ___ years after this matter is concluded. Client may request the file at any time during, upon conclusion of, or after conclusion of, this matter. ___ years after the conclusion of this matter, the file may be destroyed without further notice to Client.

10. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Lawyer's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Lawyer makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Lawyer's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Lawyer has made no promise or guarantees about the outcome.

11. NEGOTIABILITY OF FEES. The rates set forth are not set by law, but are negotiable between a lawyer and client.

12. APPROVAL NECESSARY FOR SETTLEMENT. Lawyer will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client has the absolute right to accept or reject any settlement. Client agrees to seriously consider any settlement offer Lawyer recommends before making a decision to accept or reject such offer. Client agrees not to make any settlement or compromise of any nature of any of Client's claims without prior notice to Lawyer.

13. LIMITATION OF REPRESENTATION. Lawyer represents Client only on the matter described in paragraph 2 – Scope of Services. Lawyer's representation does not include independent or related matters that arise,

including, among other things, claims for property damage, workers' compensation disputes with health care providers about the amount owed for services, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy.

In the event there is a dispute between Client and a third party regarding any amounts allegedly owed by Client to the third party and there is a colorable claim to a lien on any proceeds in Lawyer's possession by the third party, Lawyer will interplead those proceeds to the court for resolution of the dispute, if Client and the third party are unable to resolve the dispute amicably after a reasonable period of time.

This agreement does not include defending Client against, or representing Client in any claims that may be asserted against Client as a cross-claim or counter-claim in Client's case. This agreement does not apply to any other legal matters. If any such matters arise later, Lawyer and Client will either negotiate a separate Agreement if Client and Lawyer agree that Lawyer will perform such additional legal work or Client engage separate counsel with respect to cross-claims or counter-claims or additional legal work.

Client may have other possible causes of action arising from the facts and circumstances giving rise to this representation. As Lawyer does not represent Client on these other possible claims, Client should seek independent representation if Client wishes to pursue a remedy. Delay or failure to do so may result in Client being barred by a statute of limitations from being able to recover under these other causes of action.

14. CONCLUSION OF SERVICES. When Lawyer's services conclude, all previously approved costs and expenses will immediately become due and payable. Lawyer is authorized to use any funds held in Lawyer's trust account as a deposit (advanced fee) against costs to apply to such unpaid costs and expenses. After Lawyer's services conclude, upon request, Client's file and property will be delivered to Client or Client's Lawyer whether or not Client has paid any fees and/or costs owed to Lawyer. Client understands that to the limited extent Lawyer has paid out of pocket expenses for items, which have not yet been reimbursed by Client, Lawyer must be reimbursed for that particular expense before releasing that item.

15. LIEN. Client hereby grants Lawyer a lien on any and all claims or causes of action that are the subject of Lawyer's representation under this Agreement. Lawyer's lien will be for any sums owing to Lawyer for any unpaid costs, or lawyers' fees, at the conclusion of Lawyer's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

16. RECEIPT OF PROCEEDS. All proceeds of Client's case shall be deposited into Lawyer's trust account for disbursement in accordance with the provisions of this Agreement. No disbursement may be made until the settlement/or recovery check has cleared the bank.

17. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

19. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

20. EFFECTIVE DATE. This Agreement will govern all legal services performed by Lawyer on behalf of Client commencing with the date Lawyer first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Lawyer the reasonable value of any services Lawyer may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

Client Name _____
Address _____
Telephone: _____

DATED: _____

LAW FIRM _____
By: _____
(NAME), Partner

COMMENTS ON OTHER CLAUSES

There are innumerable additional provisions that a lawyer may include in a fee agreement. We have provided several which the lawyer may wish to consider. All of these clauses are optional. See page 18-19 for samples.

Resolution of a Fee Dispute

If a dispute concerning the fee or expenses related to this matter should arise during or after this matter is concluded, a provision may be added for resolving the dispute through the appropriate Fee Dispute Resolution Program offered by The Missouri Bar, the Bar Association of Metropolitan St. Louis, or the Kansas City Metropolitan Bar Association. Services offered by these programs may vary so the drafter should take that into consideration. These services may include mediation, binding arbitration, or non-binding arbitration for the resolution of fee disputes depending upon the program. The programs are offered at no cost to the parties unless they wish to be represented by counsel at their own expense. The Lawyer will inform the Client about the differences between mediation and binding arbitration and the advantages and disadvantages of each. Binding arbitration does not absolve the lawyer from liability or limit liability under the law.

Interest Clause

A reasonable and legal rate of interest is permissible and may be charged on past due fees. Any interest charged must be reasonable so as not to violate either the prohibitions against unreasonable fees per Rule 4-1.5(a) or the usury provisions of the Missouri Constitution and Section 408 of the Revised Statutes of Missouri or any subsequent modifications thereof. If interest will be charged on late payments, the agreement must include terms that comply with all state and federal laws related to charging interest. Even if not required by such laws, Rules 4-1.4 and Rule 4-1.5 require that the terms of such charges be clearly described in the agreement.

Replenishing Deposit (Advanced Fee)

This is an alternative to paragraph 5 in the forms and provides for an automatically replenishing deposit (advanced fee).

Fixed Fee Clause

Two clauses are provided as suggested alternatives to paragraph 6 (Legal Fees and Billing Practices) where the work is being performed on a fixed fee basis. A lawyer should be aware that, in any case, a fee must be reasonable. Simply designating the fee as a "fixed fee" or a "non-refundable" fee will not be enforceable, if the fee is not reasonable under the circumstances. (See Rule 4-1.5) It is not advisable to use the term "non-refundable" because there are no true non-refundable fees in Missouri. The only fee that is not refundable is one that has been earned, taking into consideration the factors listed in Rule 4-1.5(a).

Other Lawyer Clauses

These clauses may be appropriate where the lawyer contemplates working with another lawyer who is not a partner, associate or shareholder of the lawyer. [See Rule 4-1.5(e)]

Successor Lawyer Clause

This clause provides for advance permission from the Client for another lawyer to temporarily be appointed in the event of the Lawyer's illness, vacation, or other similar absences. In the event of the Lawyer's incapacity, permanent disability, or death, permission is also given by the Client for a successor lawyer to review the file and close out the lawyer's office.

OTHER CLAUSES FOR CONSIDERATION IN FEE AGREEMENTS

1. RESOLUTION OF A FEE DISPUTE

If a dispute concerning fees or expenses should occur during or at the conclusion of this matter, if the Lawyer and Client are not able to resolve the dispute, the parties agree to use the services offered by the Fee Dispute Resolution Program in their jurisdiction provided by (The Missouri Bar) (The Bar Association of Metropolitan St. Louis) (The Kansas City Metropolitan Bar Association). The services provided by the fee dispute resolution program are offered at no cost to the Lawyer and Client unless either party wishes to be represented by counsel at their own expense. The Lawyer will provide the Client with information about how to start the proceedings and the differences between mediation and binding arbitration.

If Lawyer and Client agree to binding arbitration, they waive their right to have the fee dispute decided in Court. Binding arbitration does not absolve the Lawyer from liability or limit liability.

By initialing below, Client conforms that s/he has read and understands the options that are available should a fee dispute arise, and Lawyer and Client voluntarily agree to participate in the services offered by the Fee Dispute Resolution Program.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

(Client's Initials)

(Lawyer's Initials)

2. INTEREST CLAUSE

If a billing statement balance is not paid in full when due, interest will be charged on any unpaid balance that remains past due beginning on the first day it is past due and continuing until paid at the rate of _____ percent (%) per annum (or the maximum lawful rate if less.)

3. REPLENISHING DEPOSIT (ADVANCED FEE)

To commence the representation, Client has provided [must provide] Lawyer with a \$_____ deposit (advanced fee). Lawyer will hold the deposit (advanced fee) in Lawyer's trust account and apply it to each statement when rendered by Lawyer. Client will pay any additional balance due upon receipt of Lawyer's statements each month and also will replenish the deposit (advanced fee) each month in the amount of all payments made to Lawyer from the deposit (advanced fee). At the conclusion of the matter, the deposit (advanced fee) will be applied to the final statement, in which event Client will be responsible for any amount due over and above the deposit (advanced fee) or be entitled to a refund of any amount remaining after the final statement is satisfied in full.

4. OTHER PAYOR CLAUSE-PERSONAL

Client has informed Lawyer that Client has arranged for [employer/relative-name and relationship] to be responsible for some or all of Lawyer's fees which may become due under this Agreement. It is understood that should [name] fail for any reason to pay Lawyer's statements as they become due, Client shall remain responsible for paying all Lawyer's statements as they are rendered upon the billing and payment terms set forth in this Agreement.

[Provide signature line for employer/relative in Agreement.]

5. FIXED FEE CLAUSE

Client agrees to pay a fixed fee of \$_____ for Lawyer's services under this Agreement. The fixed fee is due by _____. By pre-determining this fixed fee, Lawyer and Client believe this will constitute a reasonable fee for the contemplated services. The Client understands that his legal matter may require more effort and time or in some cases less, than contemplated as the representation begins. However, the fee will not be raised or lowered if this occurs.

(a) Lawyer Withdraws before the Matter is Concluded

Unless Lawyer withdraws before the completion of the services, fails to perform substantial services, or the fee is unreasonable under the circumstances, the fixed fee will be earned in full and no portion of it will be refunded once any material services have been performed.

(b) Lawyer is Discharged before the Matter is Concluded

If the lawyer-client relationship ends before the client's legal matter is completed, Lawyer will be entitled to a reasonable fee for services rendered up to that point, which will be calculated on the Lawyer's regular rate of \$_____ per hour. If Client believes a refund is due, Client must inform Lawyer within 30 days of terminating services.

6. "OTHER LAWYER" CLAUSE-CONTINGENCY

It is agreed that Lawyer will divide the lawyer's fees in this case with another lawyer, [name], who will be compensated out of the fees which Lawyer otherwise will earn under this Agreement. The total fee to Client will not be increased. Lawyer _____ has agreed to assume joint responsibility for this matter. (This will require a second signature by the associated lawyer)

7. "OTHER LAWYER" CLAUSE-HOURLY

It is agreed that Lawyer will associate with another lawyer, [name], who will assist Lawyer regarding the representation. [Name] will be compensated by Lawyer on an hourly basis at a rate of \$_____ per hour. These charges will be billed by Lawyer to Client as a cost as defined in this Agreement.

8. SUCCESSOR LAWYER CLAUSE

Client agrees that a successor lawyer maybe appointed to temporarily assist with the case in the event of the lawyer's illness, vacation, or other similar absences. In the event of Lawyer's death, disability, impairment, or incapacity, the Client agrees that a successor lawyer can review the Client's file for the limited purposes of protecting the Client's rights and can assist with the closure of Lawyer's law practice. Client maintains the right to select a Lawyer to represent him/her.

The Missouri Bar
SAMPLE FEE AGREEMENT FORMS & COMMENTS

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May 10, 2002
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