

ClientKeeper

Professional Tools to Enhance Client Relations



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I. EFFECTIVE CLIENT MANAGEMENT POLICIES

Management studies show that it costs a business from seven to ten times more to attract a new customer than it does to retain one. In addition, a significant percentage of malpractice claims against lawyers are caused by failure to follow common-sense rules for effective communication with clients.

The first step toward fostering positive client relations is to adopt uniform office policies and procedures for all firm members and staff to follow. The following documents suggest "client-friendly" mail and telephone procedures, which may be adjusted to suit your needs. Include them in your office procedure manual or copy and distribute them to your staff.

I. - A. INCOMING MAIL PROCEDURES



Checklist

- _____ Designate a specific place to receive incoming mail.
- _____ Mail should be received so that client confidences will be protected. It should not be opened and laid out at the receptionist's station where clients coming in for appointments can see it.
- _____ Give a specific person responsibility for opening incoming mail and train a backup.
- _____ All incoming mail should be date stamped. You may want some original documents to be date stamped on a "yellow sticky" for later removal or on the back of the document. If you want this done, be sure the mail opener knows how and for what documents.
- _____ It is usually not necessary to save envelopes. If you want the envelopes attached to correspondence, specify to the mail opener.
- _____ Mail should be sorted for each attorney or support staff member. The attorney's secretary should further sort mail into correspondence from attorneys, clients, courts, periodicals and "junk" mail.
- _____ "Failure to Calendar Properly" was the basis for almost 9% of paid malpractice claims from 1986-1996. [From the 1996 MISSOURI Legal Malpractice Report] A designated person should enter any court dates into the docketing system as orders are received.
- _____ If an attorney will be out of the office for more than a day, support staff should make a daily "Mail Log" (see example attached). As much as possible, mail should be filed as received, unless it requires further attention. When the attorney returns, Mail Logs should be reviewed, after which time they may be disposed of.
- _____ Another attorney in the office should look at the priority mail on the Mail Log and take care of any situations requiring immediate attention. Sole practitioners should have support staff look at mail and, if the attorney will not be communicating with the office daily, designate another available attorney to whom emergency matters can be referred.
- _____ "Green cards" or other receipt of mail forms should be recorded and attached to the appropriate document in the file.
- _____ Any returned mail or change of address should be noted and entered into the system.
- _____ Checks should be recorded as received and immediately given to bookkeeping to process as appropriate. Deposits to trust accounts should be made daily.

I.-A. OUTGOING MAIL PROCEDURES



Checklist

- ___ Designate a specific place for outgoing mail.
- ___ Designate a specific person to prepare outgoing mail. Designate and train a backup person.
- ___ If mail is processed through a mail room, all staff members should know when mail is picked up or taken to the post office so that emergency trips can be avoided.
- ___ Maintain client confidentiality for outgoing mail. Do not place it on the receptionist's desk for postal pick-up with client names exposed.
- ___ If a postage meter is used, a specific person should be responsible for maintaining postage on the meter.
- ___ Record "return receipt" letters in a log for easy reference.

I. - B. TELEPHONE PROTOCOL

- Establish a set phone answering order; e.g., if receptionist is busy, the phone will ring at secretary A's station, who will pick up after a set number of rings (three or four).
- Inform your support staff exactly how you want the telephone answered. Example: "Good morning, [firm name]. How may I direct your call?" or "How may I assist you? And who may I say is calling?" Avoid asking the person's name and then telling them whether or not the attorney is available. This procedure may make a client feel his or her call is less important than another person's call. Always thank clients for calling!
- If an attorney is unavailable, a message should be recorded on a duplicate message pad. Messages should always be put in the same place to be picked up by the attorney upon his or her return.
- Who talks to clients and what is said when an attorney is gone should be spelled out to support staff. Staff should be cautioned not to give legal advice when talking to clients. Perhaps all calls are referred to the absent attorney's secretary, or perhaps the receptionist fields all calls. Whoever talks to your clients, remember to instruct him or her to say: "Attorney X is in court at this time. I anticipate his/her return later today. When is an acceptable time to return your call and at what telephone number can you be reached?" Such a response sounds much better than: "Attorney X is out this afternoon. Can I have him call you?" (Caution again: Staff should never reveal to a caller anything about the identity of a client or the nature of a case the attorney is working on.)
- All calls should be returned by the end of the business day, if possible, and at the latest, within 24 hours. If an attorney is not able to return the calls, support staff may do so, simply explaining the nature of the delay and determining if an emergency exists. The duplicate pad comes in handy for this. Without revealing the name of the client or the nature of the case, a staff member may say: "Attorney X is still in trial, but anticipates returning your call tomorrow. Is this something that will require a call before that time?"
- Be careful where the person sits who answers the phone. You are responsible for ensuring the caller's identity and any information regarding the caller remain confidential. Be sure clients waiting in the reception area cannot hear phone calls being announced.
- Have a procedure for taking true emergency calls. You may wish to suggest that your secretary discretely knock on your door and place a note in front of you where no one else can see it.
- Unless you are following emergency procedures, NEVER take a call from another client while you are in conference with a client. Even excusing yourself to do so will make them wonder why another client is more important than they are when they are sitting right there.
- Never discuss confidential client information over a cellular or cordless telephone without client consent.

II. INITIAL CLIENT CONTACT

Before taking on a new client, you must:

- * Decide if you have the necessary expertise to handle the case;
- * Determine if there is a conflict of interest;
- * Gather background information from your prospective client; and
- * Conduct a careful intake interview.

"Failure to know/properly apply the law" accounted for 12 percent of paid malpractice claims between 1986 and 1996. "Failure to Ascertain Deadline Correctly" accounted for nearly 18% of paid malpractice claims in the same period. When a prospective client seeks services, which are outside your area(s) of expertise, you can avoid making a potentially costly mistake by declining their business.

After initial client screening but before undertaking representation of a client, a lawyer must also determine that there is no conflict of interest affecting that representation. An attorney's duty of confidentiality attaches when the attorney agrees to consider whether the attorney-client relationship shall be established. Therefore, a conflicts check must be conducted prior to receiving any confidential information from a prospective client. This exercise is required, and failure to screen for potential conflicts of interest can result in legal malpractice suits. Use a simple card file or a sophisticated computer database to cross reference for additional and adverse parties. Do not rely on memory to provide you with a complete list of each and every client you have ever represented. The checklist provided in *ClientKeeper* can help identify possible conflicts of interest.

Even if you decline to represent a prospective client, regardless of the reason, keep a file, which includes the person's name, date of inquiry, nature of legal matter, and the reason for the declination. You are responsible for keeping records to show that no confidential information was communicated to you by the potential client. If the representation is declined because of a conflict of interest is discovered, and no confidential information was obtained during the initial interview, your records should reflect that.

Before agreeing to represent a client, you also will need to gather information. Among the following documents are a client intake sheet for basic information, an initial appointment confirmation letter, and a general information questionnaire for more comprehensive information.

II.- A. CONFLICTS OF INTEREST CHECK

REQUEST DATE: _____ NEED BY: _____ DATE COMPLETED: _____

NEW MATTER: _____ SEARCH ONLY: _____ UPDATE FOR DATA FILE: _____

CLIENT: _____

ADDRESS: _____

HOME TELEPHONE: _____ WORK TELEPHONE: _____

PLACE OF EMPLOYMENT: _____

AREA OF LAW: _____

ATTORNEY: _____

PRIOR REPRESENTATION BY FIRM: _____

DEFENDANT(S): _____

ADDRESS: _____

TELEPHONE: _____

DEFENDANT(S) ATTORNEY: _____

OTHER PROTECTED PARTIES: _____

OTHER AFFECTED PARTIES: _____

FILE NUMBER: _____ **DATE FORM COMPLETED:** _____
NEW CLIENT: [] **PRIOR CLIENT:** []

CLIENT: _____ **SS#:** _____
SPOUSE: _____ **SS#:** _____

ADDRESS: _____
HOME TELEPHONE: _____

CLIENT EMPLOYER: _____
TELEPHONE: _____
SPOUSE EMPLOYER: _____
TELEPHONE: _____

INSURANCE INFORMATION: _____

EMERGENCY CONTACT(S): (NAME) (RELATIONSHIP) (TELEPHONE)

CASE NAME AND NUMBER _____

AREA OF LAW: _____

ORIGINATING ATTORNEY: _____

ASSIGNED ATTORNEY(S): _____

REFERRED BY (CLIENT OR ATTORNEY?): _____

Initial and date the following items when completed:

CONFLICT CHECK: _____ **FEE CONTRACT:** _____

ENGAGEMENT LETTER: _____ **DOCKET ENTERED:** _____

STATUTE OF LIMITATIONS/TIME DEADLINE: _____

II. - C. INITIAL APPOINTMENT CONFIRMATION

Dear Prospective Client:

Thank you for contacting our firm about representing you concerning (Specify reason for representation.) .

We have scheduled an initial appointment with you on _____ at _____
o'clock.

It is important that we meet with you as scheduled. Please complete the enclosed General Information Questionnaire* and bring it with you, along with any other documents and papers you think might be important.

At this point, we have not undertaken representation for you. After we have met with you and reviewed the information concerning this matter, we will inform you if we will undertake representation.

We look forward to meeting with you. Should you have any questions or need directions to our office, please feel free to call us.

Very truly yours,

Enclosure

NOTE: Questions 1 - 12 in this questionnaire are designed to be useful in most civil and criminal representations. Questions 13 - 20 should be added when screening prospective personal injury litigation clients. The questionnaire can be completed by the attorney during a first meeting with prospective clients or mailed to the client in advance and reviewed at a first meeting.)

II. - D. GENERAL INFORMATION QUESTIONNAIRE

1. Personal and Family History

Full name _____

Present home address _____

Home phone _____ Business phone _____

2. Have you ever used, or been known by, any other name than that shown above?

If so, list here each other name, and state when and why each other name was used:

3. State the addresses where you have resided during the past 10 years, and the period of time at each residence, including dates:

4. Place of birth _____ Date _____

Have you ever used any other date or place of birth? _____

If so, explain: _____

5. Are you presently married? _____

Date of marriage _____ Place of marriage _____

Full name of spouse _____

Have you ever been divorced or legally separated? _____

6. List the names, ages and addresses of all those (including children) who are dependent upon you for support, and your relationship to each:

NAME	ADDRESS	AGE	RELATIONSHIP
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. Employment History

Social Security number _____

Most recent employer _____

Employer's address _____

Ending date _____ Beginning date _____

Job classification _____

Beginning pay rate _____ Ending pay rate _____

Reason(s) for leaving _____

Employer prior to last listed _____

Employer's address _____

Ending date _____ Beginning date _____

Job classification _____

Beginning pay rate _____ Ending pay rate _____

Reason(s) for leaving _____

8. Educational Background

What education have you had, including any special job training?

9. Military Background

Have you been in the military service? _____

If so, give service number _____

Type of discharge _____

Dates of service _____

Have you ever been rejected for military service because of physical, mental or other reasons?

If so, explain: _____

Do you have any service-connected injuries or disabilities? _____

If so, give details: _____

Percentage of disability _____

Present condition of service-connected injury or disability _____

Do you receive payments for service-connected injuries? _____

10. Prior Claims and Lawsuits

Many cases have been damaged beyond repair by a history of other claims and lawsuits, which your attorney did not know about. It is **NOT** the fact that one has had other claims or lawsuits that is important, for one will not be penalized by a court or jury if the claims are reasonable and genuine. It is the **DENIAL** of previous claims and suits that damages the case. List every claim you have ever made for personal injury or property damage, and give details:

a) Date _____ Nature of claim _____
Against whom _____ Suit filed? _____
Result _____

b) Date _____ Nature of claim _____
Against whom _____ Suit filed? _____
Result _____

c) Date _____ Nature of claim _____
Against whom _____ Suit filed? _____
Result _____

11. Police Record

Under the rules of evidence, there are circumstances under which a person's prior criminal record may be relevant in a proceeding. The other attorney will make a complete investigation of your background, and we must be **PREPARED AGAINST** development of unfavorable evidence. List here any arrest(s) and state the date, place, charge, court, case number and outcome:

12. Workers=Compensation

Have you ever made a claim for Workers=Compensation? _____

If so, when was the date of your injury? _____

Are you receiving payments at present? _____

If so, explain: _____

Who is handling your Workers=Compensation action? _____

Are you receiving disability payments from any source other than Workers=Compensation at present? If so, explain:

13. Date of Injury or Accident _____
(If you are not certain about a specific date, please discuss with the lawyer immediately).

Location of Accident/Injury _____

Names of other people involved in the accident/injury:

Have you missed any time from work as a result of your injury? _____

If so, list the dates you were unable to work:

FROM:

TO:

14. Prior Physical Examinations

List here **EVERY** physical examination you have ever had during the last five years, for any purpose, including employment, promotion, insurance, selective service, armed forces, etc. State date, name of doctor, and result, as fully as you can recall.

a) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

b) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

c) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

15. Prior Accidents and Injuries

Failure to mention other accidents or injuries can undermine a lawsuit, no matter how trivial they may seem. List here every such incident, whether it resulted in a claim for damages or not, stating the date, place, nature of the accident and extent of your injuries. If none, so state:

16. Illness or Disease

No matter how trivial an illness, either before or since your accident, we must know about it. This is particularly true if there is any connection with your present physical complaints. At the trial, the defendant will have a complete history of your past physical condition, made available through medical and hospital records, veteran's records, insurance records, etc.

a) Date _____ Nature of illness _____
Duration _____ Treated by _____

Hospitalized? _____ If so, give dates: _____

Name and address of hospital _____

b) Date _____ Nature of illness _____
Duration _____ Treated by _____

Hospitalized? _____ If so, give dates: _____

Name and address of hospital _____

c) Date _____ Nature of illness _____
Duration _____ Treated by _____

Hospitalized? _____ If so, give dates: _____

Name and address of hospital _____

Do you now, or have you ever had trouble with: eyes? _____ ears? _____

If so, give details: _____

Have you ever worn glasses? _____ an artificial eye? _____

a hearing aid? _____ If so, give details: _____

Have you ever worked with radioactive substances, asbestos or any other substance alleged to cause diseases, such as cancer? _____

Have you ever been denied life or health insurance? _____

If so, by which company and why? _____

17. Alcoholism, Drug Addiction, and Venereal Disease
If you have ever been treated for these conditions, please be sure to discuss it with your attorney **CONFIDENTIALLY**, long before your case goes to trial.

18. The Injury

State all injuries known to be a result of the accident:

Length of time confined to bed _____

Length of time confined to house _____

State present physical condition, including scars, disabilities, deformities, discomforts, etc., due to the injuries:

19. List all physicians and surgeons you have seen for your injury/injuries.

a) Name _____

Address _____

Nature of treatment _____

Still under care? _____

- b) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____
- c) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____
- d) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____
- e) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____

CONTINUE ON BACK, IF NECESSARY

20. List all nurses, therapists or other health care professionals that you have seen.

- a) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____
- b) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____
- c) Name _____
 Address _____
 Nature of treatment _____
 Still under care? _____

III. ENGAGEMENT LETTERS, etc.

After having screened a prospective client, conducted a conflicts check, and gathered information through an initial consultation, you must tell him or her whether or not you will provide representation. Following are sample letters of engagement, non-engagement and disengagement.

A letter of engagement welcomes a new client, confirms a conference time, delineates the specific matters to be handled by your firm and sets forth the terms of the relationship.

If you have decided **not** to represent someone, it is especially important that you provide, in writing, a non-engagement or declination letter. The non-engagement letter should not make any judgment about the merits of the client's case, but should urge the client to be mindful of time constraints in legal matters. Ideally, this letter should be sent certified mail, return receipt requested. Be sure that all original documents are categorized and returned to the client with this letter. If you will be providing other services to the client, the services should be set forth and distinguished in the non-engagement letter, as well as covering the engaged services in a separate engagement letter.

When a client with whom you have already established a relationship fails to keep his or her part of the bargain (by failing to pay you, for example), you may want to terminate the relationship. Keep in mind that your withdrawal must be accomplished in a manner that does not have a material adverse effect on your client's interest. A disengagement letter indicates your intention to remove yourself from the case as well as the reason for this decision. It also should contain specific information concerning statutes of limitation, any activities that remain uncompleted, as well as the return of the client's file. In Missouri, the file belongs to the client from cover-to-cover except those items for which the attorney has borne out-of-pocket expenses, such as transcripts. You may retain such items until paid for by the client, but the balance of the file must be forwarded upon request. If you want to maintain a copy of the client's file, you may do so at your own expense for copying.

III. - A. ENGAGEMENT LETTER

Dear Client:

This letter will confirm our conference on _____ (date) _____ and the fact that our office is now representing you in the following matter(s): _____ (full description of legal services to be provided, including, if applicable, the level of services--e.g. administrative review, trial, appeal, etc.).

We are glad to have you as a client in regard to this particular situation(s). If you wish for us to represent you in any matter other than that stated above, we will be happy to review that matter with you and determine if we can be of service to you.

Our fees are outlined in our fee agreement, which we have already discussed and a copy of which is enclosed. (Note: If agreement has not yet been signed, send two signed copies of fee agreement and request that the client sign one and return it to you.) Our file retention policy is outlined in our fee agreement. Please note we will maintain your file for the period of time set forth in the fee agreement, after which time your file may be destroyed without further notice to you. You may request your file at anytime during, upon the conclusion of, or, within the time period set forth in the fee agreement, after the conclusion of, this matter.

We will keep you informed as this matter progresses. In the meantime, if you have any questions, please call. Thank you for choosing our firm to represent you in this matter.

Very truly yours,

Enclosure

III. - B. NON-ENGAGEMENT LETTER

Dear Mr./Ms.:

In response to your request when you contacted this firm, I have reviewed the information you provided regarding possible representation in the matter of: _____ . I appreciate the confidence you have expressed in our firm; however, the firm has decided not to represent you in this matter. Therefore, I am returning with this letter the documents you provided for my review, which are: [fully list documents]. In declining to represent you in this matter, please understand that we are not expressing any opinion concerning the merits of your case.

If you still wish to pursue this legal matter or make a claim against any other party, you should be aware that the passage of time may bar you from doing so. Since time is always important in legal matters and could be critically short in your case, if you decide to contact another law firm about this matter, I recommend that you do so immediately.

We are not charging any fee for reviewing your case, since we have declined to represent you and are not expressing an opinion as to the merits of your case. If you need legal assistance for other matters in the future, I hope you will again consider our firm. Should you have any questions, please contact me.

Very truly yours,

III. - C. DISENGAGEMENT LETTER

Dear Mr./Ms.:

When I undertook to represent you concerning (describe nature of representation, including case number, if any) you signed a Fee Agreement agreeing to pay for the legal services provided to you and the costs and disbursements made on your behalf. At the present time, our records reflect that you have not paid our invoices in a timely manner as you agreed you would.

Our records reflect that you have paid (report amount) leaving a balance of (report amount), which is now due and owing. Due to the apparent breakdown in our professional relationship, enclosed please find a Motion to Withdraw as Counsel, which I intend to file. I will be happy to continue to represent you if we can make acceptable financial arrangements in the very near future. Otherwise, my further representation of you has terminated.

If you wish to be represented in this matter, you should contact another attorney immediately. Keep in mind that, if your case is not filed in a timely manner, you may be barred forever from pursuing your claim. (Include specific time limit, if known.) You may wish to call the Lawyer Referral Service at (provide number).

Please contact our office to make arrangements for return of your file. I will be happy to give it directly to you or to forward it to your new attorney, if you wish. It is our policy to maintain a file such as yours for _____ years, after which time it will be destroyed. I look forward to hearing from you soon regarding these arrangements.

Very truly yours,

IV. FEE AGREEMENTS

Clients do not buy lawn services without a contract, and they should not be expected to buy legal services without being informed about your fees and expenses. A written fee agreement spelling out information about payment of fees and expenses as well as billing procedures should be signed by both you and your clients. Fee dispute claims most often arise when a client who did not receive a written agreement balks at paying some portion of the lawyer's bill. The lawyer then sues to collect on the account, the former client counterclaims for malpractice, and the lawyer-client relationship degenerates into a costly, time-consuming battle.

Keep in mind that when billing for expenses, you are limited to the amount of the actual cost, unless you have advised the client of the actual cost, information client of the amount over the actual cost you are billing, and the client agrees to pay the higher amount.

If you are discharged from a contingent fee case prior to a settlement or judgment, your fee is calculated in quantum meruit.

One of an attorneys biggest headaches is maintaining client files upon conclusion of a matter. If files are maintained for any significant length of time, for example, 5 years to permit the statute of limitations to expire on a legal malpractice claim, it may be difficult to find the client and receipt permission OT destroy the file. However, files should not be destroyed absent client consent. To avoid this problem, explain your file retention policy to the client in the engagement letter and fee agreement. Reiterate the procedure in your closing letter to the client. Always give the client the opportunity to take the file at the conclusion of the matter. When the retention period has run, you may then rely on the client's notice of your policy and failure to request the file, thus eliminating the need to track down the client years after the matter has been concluded. However, even then you may not destroy items that have intrinsic value such as, but not limited OT, original wills, stock certificates, or unrecorded deeds.

Keep in mind that in Missouri the file belongs to the client from cover-to-cover, except those items for which the attorney has borne out-of-pocket expenses, such as transcripts. You may retain such items until paid for by the client, but the balance of the file must be forwarded upon request. If you want to maintain a copy of the client's file, you may do so at your own expense for copying.

Included in the *ClientKeeper* package is a sample hourly fee agreement and a sample contingent fee agreement, both of which can be modified to suit your needs.

IV. - A. HOURLY FEE AGREEMENT

The undersigned, _____ (hereinafter known as Client) hereby requests the legal services of _____ (hereinafter known as Attorney) for representation concerning _____

Legal services will be billed on an hourly basis, with time being charged in tenths of an hour, at the following rates:

Partners	_____ per hour	Paralegals	_____ per hour
Associates	_____ per hour	Law Clerks	_____ per hour

Attorney will use his/her discretion in staffing, to provide services in the most economical manner possible. Please note that all time spent on your behalf in this matter, including time spent in telephone conversations, will be charged to you. The initials of the person performing the services will be noted on the invoice.

In addition to fees for legal services, Attorney will be entitled to payment or reimbursement for costs and expenses incurred for services, including but not limited to: photocopying, messenger and delivery service, fees for computerized research services, travel (including mileage, parking, air fare, lodging, meals and ground transportation), long distance telephone, telecopying, depositions, court costs and filing fees. Client agrees that Client is responsible for such expenses relating to this case. Depending upon the type of case you have, expenses may also include, but are not limited to: charges for medical examinations and reports, the cost of accident and credit reports, hospital records and pictures. Attorney is hereby authorized to charge such expenses and have such expenses billed to Client and Client agrees to pay them promptly. Unless other arrangements are made at the outset, fees and expenses of others will not be paid by Attorney and will be the responsibility of and billed directly to the Client.

Client agrees that Attorney may retain co-counsel, and Attorney agrees that Client will be consulted concerning co-counsel and any fee arrangement with co-counsel prior to retention of or consultation with co-counsel by Attorney.

Invoices for legal services rendered and costs advanced or incurred are issued (indicate time interval, e.g. monthly) and are payable upon receipt. Interest at the rate of _____ percent per month will be added to the balance due on amounts, which remain unpaid thirty (30) days or more.

Attorney reserves the right to withdraw from representation if, among other things, Client fails to honor the terms of this **FEE AGREEMENT** by failing to pay Attorney's invoices, by failing to cooperate or follow Attorney's advice on a material matter, or if any fact or circumstance arises or is discovered that would, in Attorney's view, render our continuing representation unlawful or unethical.

The outcome of negotiations and litigation is subject to factors which cannot always be foreseen; therefore, it is understood that Attorney has made no promises or guarantees to Client concerning the outcome of this representation and cannot do so. Nothing herein shall be construed as such a promise or guarantee.

Attorney 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.

This **FEE AGREEMENT** pertains only to legal services rendered and costs and expenses for the matter expressly stated above. It does not relate to any other matter for which Client seeks representation by Attorney. Any other matter will require a separate **FEE AGREEMENT**.

Date: _____

Client: _____

Date: _____

Attorney: _____

Date: _____

Witness: _____

IV. - B. CONTINGENT FEE AGREEMENT

The undersigned, _____, (hereinafter known as Client) requests the legal services of _____ (hereinafter known as Attorney) for representation to assert a claim for damages against _____ arising out of an occurrence on or about _____ in which Client was injured or claims to have sustained injury and damage.

Attorney shall perform all reasonable, necessary and usual services in matters of this kind including, but not limited to: investigation of facts, gathering of evidence, preparation of exhibits, interviewing witness(es), compiling records of expenses, and negotiations with the adversary's insurance carrier or other representative.

If a settlement is not effected which is satisfactory to the Client, Attorney agrees to (specify: initiate alternative dispute resolution proceedings, arbitration, or bring an action against) _____ to attain the benefits provided by judicial oversight of the claim.

In connection with this, Attorney will file all necessary court papers, attend pretrial conferences and status conferences, prepare appropriate interrogatories, requests for admissions and requests for production of documents, attend and take appropriate depositions, and continue settlement negotiations. If a settlement satisfactory to Client cannot be attained, Attorney agrees to try the case in the trial court unless permitted to withdraw pursuant to Rule 4-1.16 of the Missouri Rules of Professional Conduct.

If a judgment in favor of Client is obtained in the trial court and the adversary appeals, Attorney shall provide all appropriate services in resistance to the appeal, including review of the trial court's record, preparation of appropriate briefs, and oral argument in the reviewing courts. [Notice should be given to the attorney that representation of an appeal is optional, but if the issue of appellate representation is not addressed in the Fee Agreement, the attorney will ordinarily be required to undertake an appeal as part of the fee received in the underlying litigation.]

If the trial of the case should result in a judgment that is adverse to Client, Attorney shall not be obligated to appeal. Attorney shall advise Client of the opinion concerning the advisability of appeal and may undertake to provide services as appellate counsel under a new, separate and distinct **FEE AGREEMENT**.

The fee of Attorney shall be contingent upon the result obtained. There shall be no legal obligation by Client to pay Attorney any fee if nothing is recovered from the adversary or from the Client's insurer in an underinsured or uninsured situation.

However, Client is responsible for all expenses incurred in the prosecution of the claim. Client gives permission to Attorney to advance the payment of costs and expenses, but Client acknowledges the Client remains responsible for payment of said costs and expenses and agrees to reimburse Attorney for any such costs and expense for which Attorney advances payment. Client may reimburse Attorney as costs and expenses are incurred or, if Client reimburses Attorney upon settlement, Client agrees that such costs and expenses shall be paid out of Client's portion of the settlement proceeds.

The legal fee of Attorney shall be _____ percent of the gross amount recovered, if settlement is achieved without the necessity of filing suit; _____ percent of the gross

settlement or judgment if it is necessary to file suit; and _____ percent of the ultimate gross settlement or judgment following the trial [and any appeal undertaken by the adversary, if applicable.]

In the event of discharge by Client and in the event Client subsequently recovers money or other property as a result of this action, Client shall be indebted to Attorney for legal fees based upon the value in (name of city, Missouri) of legal services rendered and for any costs and expenses advanced by Attorney.

Attorney will maintain your 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.

Attorney reserves the right to withdraw from representation if Client fails to cooperate or follow Attorney's advice on a material matter, or if any fact or circumstance arises or is discovered that would, in Attorney's view, render continuing representation unlawful or unethical.

Date: _____ Client: _____

Date: _____ Attorney: _____

Date: _____ Witness: _____

According to statistics, nearly 14 percent of paid malpractice claims between 1986 and 1996 were caused by failure to obtain consent, to inform clients or to follow a client's instructions. Communication is vital at every stage of representation. Keep in mind that, while a particular case represents one of many for the lawyer, it is the only case a client is thinking about. Even if there is no "big news" to report, status letters let a client know the lawyer is continuing to work on his or her case. Monthly billing statements can eliminate the "sticker shock" response to a large bill representing many months of legal work.

Following are sample documents which correspond to mileposts in a lawyer-client relationship, including:

- An appointment confirmation letter that notes the time and purpose of the meeting and instructs clients about materials he or she should bring;
- A monthly status letter to keep clients apprised of developments in the case;
- A sample monthly bill to be included with the status letter;
- A deposition scheduling letter to be sent with deposition instructions and a glossary of common legal terms;
- A court appearance or hearing letter containing specific information about time and location.

V. - A. SUBSEQUENT APPOINTMENT CONFIRMATION

Dear Client:

This will confirm your appointment to meet with me in our office on _____
at _____ o'clock. The purpose of our meeting will be _____
_____. Please bring (specify documents, pictures, etc.) _____ with you when you
come.

I look forward to meeting with you again. If you have any questions before our meeting, please
feel free to call.

Very truly yours,

V. - B. MONTHLY STATUS LETTER

Dear Client:

In order to keep you informed on a regular basis regarding your case, I will be sending you status reports such as this one on a monthly basis. Please do not hesitate to contact me at any time for more detailed information concerning the progress of your case.

Since our last meeting on _____, the following has happened:
(specify court appearances, discovery, motions filed, etc.)

I have enclosed copies of correspondence, filings, other documents our firm has prepared on your behalf since our last status report, and a monthly bill for our services, which I trust you will find in order.

Thank you for allowing our firm to represent you in this matter. We will continue to apply our best efforts on your behalf and report to you as your case continues.

Very truly yours,

**V. - C. MONTHLY BILL
(ATTORNEY LETTERHEAD)**

DATE: _____ **INVOICE NUMBER:** _____

CLIENT NAME: _____

CLIENT ADDRESS: _____

RE: _____

(FILE NUMBER) _____

STATEMENT

LEGAL SERVICES

(Date)	(Description of Services)	(Attorney Initials)	(Hours)

hours x (\$ _____) hr. = _____

COSTS

(Date)	(Description)	(Amount)

Total Costs: _____

TOTAL BILL: _____

(ADD INFORMATION CONCERNING UNPAID BILLS, ETC. HERE.)

V. - D. DEPOSITION SCHEDULING LETTER

Dear Client:

Your discovery deposition has been scheduled for _____ at _____ o'clock here in our offices. I will meet with you in our office at _____ o'clock to the deposition, to answer any questions you may have concerning this matter. Please review the enclosed Deposition Instructions before we meet.

I look forward to seeing you on _____ for your deposition. Until then, if you have any questions, please feel free to call.

Very truly yours,

Enclosure

V. - E. DEPOSITION INSTRUCTIONS

(**Note:** Some of the advice provided below is applicable primarily in personal injury cases. Practitioners will wish to tailor these instructions to suit particular cases.)

Under the law, the other lawyer has a right to take your ~~Adiscovery~~ deposition. This means that you will be put under oath and the lawyer will ask you questions relating to this case. The lawyer's questions and your answers will be taken down by a court reporter. One of your lawyers will be present at all times.

There will be no judge or jury present. However, after the deposition is over, the court reporter may type out all the questions and answers, and both your lawyer and the other lawyer will receive copies. The original may be filed in court.

If your case goes to trial, your deposition may be used in court, particularly in cross-examination of you by the other lawyer should your testimony at trial be different than your testimony at the time of the deposition. The lawyer will want to indicate that you told two different stories. For this reason it is extremely important that you have everything in mind concerning the cause and nature of your injuries, and the facts of the case at the time of the deposition. It would be helpful if you try to refresh your recollection before you have your deposition taken.

The other lawyer at the deposition can ask you questions that may seem as if they are none of his/her business and that, actually, would not be admissible in court. However, the courts allow ~~Adiscovery~~ in these depositions, and the lawyer may ask you for ~~Ahearsay~~ and other things that will enable him/her to make further investigation of the case.

For this reason, do not be surprised if we do not object to questions that seem to you to be out of line. If the other lawyer questions you on any subject that is not proper, we will object to the question. If we object to the question and instruct you not to answer it, then you should REFUSE TO ANSWER THE QUESTION. Please answer all other questions. Sometimes we will object for the record, but may still permit you to answer. The only time you should not answer the question is when we instruct you not to answer.

REASONS FOR TAKING THIS DEPOSITION:

The deposition will assist the opposition in evaluating your case for settlement purposes. This is often the first and only opportunity for the other lawyer to see you before the case comes to trial. Therefore, you should be clean and neatly dressed, and courteous and respectful to the other lawyer, and all others in the room. Be prepared to exhibit any injuries that might be visible, so wear the right clothes. Discuss what to wear with us if you have any questions.

You should answer all questions in an honest and straightforward manner.

HOW TO CONDUCT YOURSELF IN THE DEPOSITION:

We know that you would not deliberately lie, but it is important that you do not testify to something that is inaccurate or exaggerated. For this reason, LISTEN TO EACH QUESTION CAREFULLY AND BE SURE THAT YOU UNDERSTAND IT BEFORE ANSWERING. If you do not understand it, ask the other lawyer to rephrase it so you do understand the question, then answer it honestly and in a straightforward manner. If you do not know the answer, do not be afraid to say that you don't know or don't recall. No one can remember every small detail. However, you will remember the important things and should give an honest and full answer to questions on these points.

The other lawyer will probably be friendly and will not bully you in any manner. His/her theory will probably be that the more he/she can get you to say, the more likely you are to put your foot in your mouth. Therefore:

--UNDERSTAND THE QUESTION. You don't have to hurry to answer.

--ANSWER THAT QUESTION TRUTHFULLY.

--STOP!

Do not volunteer anything. Give a full and complete answer to the question asked, but do not anticipate any other question or attempt to answer it. If the other attorney overlooks any relevant or important questions, that is his/her worry, not yours.

If the other lawyer should be rough in any manner, do not lose your temper. We will be there with you and be certain he/she acts properly.

Speak loudly and clearly enough that everyone can hear and understand you. You must answer out loud, saying Yes or No, as a nod of your head cannot be recorded by the court reporter transcribing your testimony.

PAST INJURIES: (if applicable)

The other lawyer will undoubtedly ask you about injuries you may have sustained in the past. Insurance companies and railroads have central index bureaus where they can get information on all injuries that persons have sustained, where persons have been paid workers' compensation, and where they have filed suit or recovered from any employer or insurance company. Also, it is common for the other side to check on treatments you have had--medical doctors, osteopaths, chiropractors and hospitals--wherever you have lived and in adjoining areas. Therefore, it is extremely important that you answer every question truthfully.

Also, answer only the question you are asked. In other words, if you are asked what injuries you have had to the same part of your body that was injured this time, then limit your answer to that part of your body. Or, if you are asked what injuries you have sustained on a certain job or in automobile accidents, then limit your answer to the questions asked. If, however, you are asked generally about any

injuries you have had, give the other attorney the information requested concerning any and all injuries of any type and to any part of your body that you have had at any time.

ACTIVITIES SINCE INJURY: (if applicable)

Before the trial, perhaps before the deposition, the other side may have investigated what you do at work, at home, in your neighborhood, and any other place you go. It is quite common for them to hire photographers to hide a block or so away, out of sight, and take movies or pictures with a telephoto lens of a person working around the house, on the job, or out fishing, or engaged in other recreational activities.

Fishing, mowing the lawn, working or doing anything else you feel able to do (and that your doctor allows you to do), will not hurt your case in and of itself. However, if you forget that you have engaged in a certain activity and testify at your deposition that you are unable to do so because of your injuries, the other lawyer can seriously damage your case with pictures, movies or witnesses directly contradicting your testimony.

SUMMARY:

1. You should be clean, and wear clean, neat clothing.
2. Treat all persons in the deposition room with respect. Consider this an important and solemn occasion.
3. Come prepared to exhibit any and all injuries, which you have suffered.
4. Have with you the facts and figures with respect to your time lost from work, amount of wages lost, doctor bills, hospital bills and all other facts with respect to the damages caused as a result of your injury. Review these items before coming to the deposition.
5. Tell the truth.
6. Never lose your temper.
7. Don't be afraid of the lawyers.
8. Speak slowly and clearly.
9. Answer all questions directly, giving concise answers to the questions, and STOP TALKING.
10. NEVER VOLUNTEER any information. Wait until the question is asked; answer it and STOP. If you can answer Yes or No, do so and STOP.
11. Do not magnify your injuries or losses.
12. If you don't know, admit it. Some witnesses think they should have an answer for every question asked. You cannot know all the facts and you do yourself a disservice if you attempt to testify to facts with which you are not acquainted. It is IMPERATIVE that you be HONEST and STRAIGHTFORWARD in your testimony.

13. Do not try to memorize your story. Justice requires only that a witness tell his/her story to the best of his/her ability.
14. Do not answer a question unless you have heard it and clearly understand it. If you have to, ask that it be explained or repeated.
15. Do not guess or estimate time, speed or distance unless you are sure that the estimate is correct, and then make certain that when you answer, you state that this is your estimate. Go over these estimates with us before your deposition is taken.
16. Many of the questions you will be asked will not be admissible at the trial, but the opposition is entitled to an answer in order to help them prepare their case. Many cases are lost because the witness tries to hide something. Many of the questions can be used at the trial to discredit you.
17. If we object to a question, stop talking, and we will instruct you after we object to either answer the question or not to answer it.
18. After the deposition is over, do not discuss anything in the presence of the opposing lawyers or the reporter. If you want to discuss something after the deposition, wait until we are alone.

REMEMBER, perhaps the most important aspect of your lawsuit is YOU AND THE APPEARANCE YOU MAKE. If you give the appearance of earnestness, fairness and honesty, and if in giving your discovery deposition you keep in mind the suggestions we have made, you will be taking a great stride toward successful completion of the litigation in which you are involved.

Because the testimony you give will be your own, there is NO NEED FOR YOU TO TAKE THESE INSTRUCTIONS WITH YOU TO THE DEPOSITION. Your testimony will be more natural if you are not relying too heavily upon instructions.

WORDS AND PHRASES

We understand that most people have never been involved in a lawsuit. Some of the words and phrases you will hear are not familiar; therefore they are defined here for you, so you can have a better understanding of the legal process. If you hear any other words or phrases you do not understand, do not hesitate to ask your lawyer to explain them to you.

ALLEGE:	To claim that something is true.
ANSWER:	The paper filed in the court by the defendant's lawyers stating their defense to your claims.
ATTORNEY:	Another word for lawyer.
DAMAGES:	The loss, in money, that the plaintiff claims he or she should be awarded. Only after we prove that the defendant is liable are we entitled to ask for money damages.
DEFENDANT:	The person or company against whom a lawsuit is filed.
DEPOSITION:	Sworn testimony given during the course of the lawsuit. Anyone, a plaintiff, a defendant or a witness, may be deposed. It allows one side to find out exactly what the other side intends to prove.
TO FILE/FILING:	The physical act of taking or mailing the pleadings to the courthouse and depositing them with the clerk of courts.
INTERROGATORIES:	Questions submitted by one side to the other, filed with the court, which must be answered under oath. Interrogatories usually ask specific questions on the facts of the case.
JUDGMENT:	The final decree which ends a part, or all of a lawsuit.
LEGAL ASSISTANT/ PARALEGAL:	A person on an attorney's staff who has taken classes in the area of law and who will assist the attorney under his or her supervision in document preparation and information-gathering.
LIABILITY:	Legal responsibility. What must be proved against a defendant before the plaintiff is entitled to an award of money damages.
MOTION:	A paper, filed with the court, which asks the court to make an order during the lawsuit. The motion may ask for final judgment, a ruling on the admissibility in court of certain evidence, or many more things.
ORDER:	Any ruling by the judge on any issue brought up by the parties. An order is signed and filed with the clerk of courts to be placed in the court's file.

PLAINTIFF: The person who asks the court to award him/her a remedy (e.g. money damages, an injunction, a declaration of rights or responsibilities, etc.)

PLEADINGS: All the papers filed with the clerk of courts during the lawsuit.

STATUTE OF LIMITATIONS: The law which puts an absolute time limit on filing a Complaint. There are different statutes of limitations for different areas of law. For example, in a case involving bodily injury from negligence occurring in Missouri, this date is five years after the date of your injury. There are some exceptions to this law, which may allow the filing more than two years after the injury. Always consult an attorney **immediately** if you believe that you have a claim, and are uncertain as to the statute of limitations for your claim. You may have **less** than one year from the date of an injury for circumstances to bring your case in court for medical malpractice or other types of claims, so **never delay**.

V. - F. COURT APPEARANCE OR HEARING LETTER

Re: Case Name & Number

Dear Client:

Your case has been set for jury trial on _____ at _____ o'clock in the county courthouse, located at _____ in _____. Your case is before Judge _____ in Courtroom _____.

You will find it most convenient to park _____ (specify parking lots, etc.)

Judge _____ courtroom is located on the _____ floor. I will meet you (location) _____ at _____ o'clock the day of the trial.

You must plan to be present for this. If you have any questions, please feel free to call.

Very truly yours,

V. - F. COURT APPEARANCE OR HEARING LETTER

Re: Case Name & Number

Dear Client:

Your case has been set for jury trial on _____ at _____ o'clock in the county courthouse, located at _____ in _____. Your case is before Judge _____ in Courtroom _____.

You will find it most convenient to park _____ (specify parking lots, etc.)

Judge _____ courtroom is located on the _____ floor. I will meet you (location) _____ at _____ o'clock the day of the trial.

You must plan to be present for this. If you have any questions, please feel free to call.

Very truly yours,

VI. FILE CLOSING PROCEDURES

√ Checklist

- ___ Complete original documents concluding matter (Release executed, Dismissal Entry filed, etc.)
- ___ Return original documents and papers to the client. Note: You may **not** charge the client for copying any documents you wish to retain for your files.
- ___ Copy useful forms for office form file. Do not charge client for copies of file.
- ___ Remove duplicates and "clean out" file for storage.
- ___ Send closing letter to client.
- ___ Prepare and send final bill to client. Be sure to check on all court costs and other expenses.
- ___ Calendar future docket dates such as Uniform Commercial Code and judgment renewals.
- ___ Send client survey to client.
- ___ Enter case into closed file database for future conflicts checks.
- ___ Assign date for review/destruction of file. Ask client if he/she prefers to have the file returned or destroyed after the assigned date.

VI. - A. FILE CLOSING LETTER

Re:

Dear Client:

Thank you for allowing our firm to represent you in this matter. Your case is now concluded and we are closing our file. We will retain our file for a period of _____ years.

We are returning all original documents and papers you gave us in connection with this case. You should keep all your information concerning this matter in a safe place in case you need it in the future. If you would like to have anything else from our file, please let us know as soon as possible.

We hope this matter was concluded to your satisfaction. We would appreciate it if you would take a few minutes to complete and return the enclosed client survey. If we may be of assistance in the future to you or to friends or family members who may need legal help, we hope you will contact us.

Very truly yours,

VI. - B. POST-REPRESENTATION SURVEY

How did you find out about our firm?

_____ Referred by family/friend
_____ Knew attorney personally
_____ Advertisement in _____
_____ Other: _____

Was our office conveniently located for you? Yes No

Did our staff greet you courteously when you came to the office? Yes No

Were your phone calls answered pleasantly by staff? Yes No

Were your phone calls returned promptly by attorneys? Yes No

Did the attorney handling your case explain what the firm would do? Yes No

Did you feel the legal fees charged were fair for the services provided? Yes No

Did you receive regular bills on your case? Yes No

Were you given regular status reports on your case? Yes
No

Did the attorney handling your case explain the progress of your case? Yes No

Did you feel you met with your attorney when you needed to? Yes No

Did you feel your attorney cared about you and your case? Yes No

Overall, were you satisfied with the legal services you received? Yes No

If you need legal representation in the future, would you call our firm? Yes No

If a friend needed an attorney, would you refer him/her to our firm? Yes No

Please write down any comments or suggestions you may have to help us better serve our clients in the future.

Thank you again. It was our privilege to represent you.

*Ten Commandments
To
Avoid Legal Malpractice*

- I. Know your client.*
- II. Use your calendar and docket control.*
- III. Beware of potential conflicts of interest.*
- IV. Set fees and document your time.*
- V. Maintain good client relations.*
- VI. Confirm all important questions in writing.*
- VII. Triple check all outgoing documents and files.*
- VIII. Do adequate research and consult experts.*
- IX. Maintain high ethics and standards of practice.*
- X. Don't ever think it won't happen to you.*

Tenets Of Professional Courtesy

- I. *A lawyer should never knowingly deceive another lawyer.*
- II. *A lawyer should honor promises or compliments made to another lawyer.*
- III. *A lawyer should make all reasonable efforts to schedule matters with opposing counsel by agreement.*
- IV. *A lawyer should maintain a cordial and respectful relationship with opposing counsel.*
- V. *A lawyer should seek sanctions against opposing counsel only where required for the protection of the client and not for mere tactical advantage.*
- VI. *A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.*
- VII. *A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.*
- VIII. *A lawyer should always be punctual.*
- IX. *A lawyer should seek information agreement on procedural and preliminary matters.*