

ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES

1

To be used in conjunction with YLS program 4/06

MRPC 1.5 Fees

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the result obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) When the 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.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or by other law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer 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. Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the client is advised of and does not object to the participation of all the lawyers involved; and
- (2) the total fee is reasonable.

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

**ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES**

2

To be used in conjunction with YLS program 4/06

Rule 8.121 Contingent Fees in Claims or Actions for Personal Injury and Wrongful Death

(A) Allowable Contingent Fee Agreements. In any claim or action for personal injury or wrongful death based upon the alleged conduct of another, in which an attorney enters into an agreement, expressed or implied, whereby the attorney's compensation is dependent or contingent in whole or in part upon successful prosecution or settlement or upon the amount of recovery, the receipt, retention, or sharing by such attorney, pursuant to agreement or otherwise, of compensation which is equal to or less than the fee stated in subrule (B) is deemed to be fair and reasonable. The receipt, retention, or sharing of compensation which is in excess of such a fee shall be deemed to be the charging of a "clearly excessive fee" in violation of MRPC 1.5(a).

(B) Maximum Fee. The maximum allowable fee for the claims and actions referred to in subrule (A) is one-third of the amount recovered.

(C) Computation.

(1) The amount referred to in subrule (B) shall be computed on the net sum recovered after deducting from the amount recovered all disbursements properly chargeable to the enforcement of the claim or prosecution of the action. In computing the fee, the costs as taxed and any interest included in or upon the amount of a judgment shall be deemed part of the amount recovered.

(2) In the case of a settlement payable in installments, the amount referred to in subrule (B) shall be computed using the present value of the future payments.

(a) If an annuity contract will be used to fund the future payments, "present value" is the actual cost of purchasing the annuity contract. The attorney for the defendant must disclose to the court and the parties the amount paid for the annuity contract, after any rebates or other discounts.

(b) If the defendant will make the future payments directly, "present value" is the amount that an entity of the same financial standing as the defendant would pay for an annuity contract. The court may appoint an independent expert to certify the "present value" as defined in this paragraph. The court may base its findings on the expert's testimony or affidavit.

(D) Agreements for Lower Fees. An attorney may enter into contingent fee arrangements calling for less compensation than that allowed by subrule (B).

(E) Advice to Client. An attorney must advise a client, before entering into a contingent fee arrangement, that attorneys may be employed under other fee arrangements in which the attorney is compensated for the reasonable value of the services performed, such as on an hourly or per diem basis. The method of compensation used by an individual attorney remains the attorney's option, and this rule does not require an attorney to accept compensation in a manner other than that chosen by the attorney.

(F) Agreements to be in Writing. Contingent fee arrangements made by an attorney with a client must be in writing and a copy provided to the client.

(G) Applicability. This rule does not apply to agreements reduced to writing before May 3, 1975. The one-third provision of subrule (B) applies to contingent fee agreements entered into after July 9, 1981. Earlier agreements are subject to the rule in effect at the time the agreement was made.

(Current as of 04/04/2006)

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES

3

To be used in conjunction with YLS program 4/06

Rule 5.313 Compensation of Attorneys

(A) Reasonable Fees and Costs. An attorney is entitled to receive reasonable compensation for legal services rendered on behalf of a personal representative, and to reimbursement for costs incurred in rendering those services. In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a). The court may also take into account the failure to comply with this rule.

(B) Written Fee Agreement. At the commencement of the representation, the attorney and the personal representative or the proposed personal representative must enter into a written fee agreement signed by them. A copy of the agreement must be provided to the personal representative.

(C) Records. Regardless of the fee agreement, every attorney who represents a personal representative must maintain time records for services that must reflect the following information: the identity of the person performing the services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services.

(D) Notice to Interested Persons. Within 14 days after the appointment of a personal representative or the retention of an attorney by a personal representative, whichever is later, the personal representative must mail to the interested persons whose interests will be affected by the payment of attorney fees, a notice in the form substantially approved by the State Court Administrator and a copy of the written fee agreement. The notice must state:

- (1) the anticipated frequency of payment,
- (2) that the person is entitled to a copy of each statement for services or costs upon request,
- (3) that the person may object to the fees at any time prior to the allowance of fees by the court,
- (4) that an objection may be made in writing or at a hearing and that a written objection must be filed with the court and a copy served on the personal representative or attorney.

(E) Payment of Fees. A personal representative may make, and an attorney may accept, payments for services and costs, on a periodic basis without prior court approval if prior to the time of payment

- (1) the attorney and personal representative have entered a written fee agreement;
- (2) copies of the fee agreement and the notice required by subrule (D) have been sent to all interested persons who are affected;
- (3) a statement for services and costs (containing the information required by subrule [C]) has been sent to the personal representative and each interested person who has requested a copy of such statement; and
- (4) no written, unresolved objection to the fees, current or past, has been served on the attorney and personal representative.

In all other instances, attorney fees must be approved by the court prior to payment. Costs may be paid without prior court approval. Attorney fees and costs paid without prior court approval remain subject to review by the court.

(F) Claims for Compensation, Required Information. Except when the compensation is consented to by all the parties affected, the personal representative must append to an accounting, petition, or motion in which compensation is claimed a statement containing the information required by subrule (D).

(G) Contingent Fee Agreements under MCR 8.121. Subrules (C), (E), and (F) of this rule do not apply to a contingent fee agreement between a personal representative and an attorney under MCR 8.121.

(Current as of 04/04/2006)

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES

4

To be used in conjunction with YLS program 4/06

1. DISENGAGEMENT

With the occurrence of *[describe event resulting in end of representation, e.g. court decision, transaction completed, signed release, client request, etc.]*, our representation of you in this matter has concluded. We have appreciated having the opportunity to work with you, and hope there will be other opportunities in the future.

Our records show an account balance of \$XXX on this matter. Costs and disbursements may arrive late, and we will advise you if that occurs. Your attention to clearing the account balance would be appreciated.

We will be closing our file. For your information, under the Firm's record retention policy, closed files are stored for xxx years, after which they are destroyed.

2. DECLINATION LETTER

I am writing to confirm that we will not represent you in [matter].

I would also like to point out that any opinions that I may have expressed to you during the course of our meeting were made on the basis of the factual circumstances as I understood them and my recollection of the relevant legal doctrines. Since I had neither an opportunity to investigate the facts underlying your claim nor to research the law, no reliance should be placed on any of the opinions or views expressed by me. Moreover, you should not assume that our decision to decline your case represents an expression as to the merits of your case.

You should be aware that there may be deadlines that, once passed, will prevent your case from being heard or entertained by the courts. Accordingly, I suggest that you consult with other counsel regarding your [matter] as soon as possible as we accept no responsibility to advise or represent you.

3. DECLINATION LETTER

You have contacted this firm and requested that I evaluate whether the firm will represent you in [matter]. I met with you yesterday and reviewed various documents you left with me. I enclose those documents for your file.

I appreciate the confidence you have expressed in our firm, but for various reasons the firm has decided not to represent you in this matter. If you have a need in the future for legal assistance, I hope you will again consider our firm.

You should be aware that there may be deadlines that, once passed, will prevent your case from being heard or entertained by the courts. Accordingly, I

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

**ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES**

5

To be used in conjunction with YLS program 4/06

suggest that you consult with other counsel regarding your [matter] as soon as possible as we accept no responsibility to advise or represent you.

In declining to undertake this matter, the firm is not expressing an opinion on whether you will prevail in [matter]. You should not refrain from seeking legal assistance from another firm because of any interpretation you may place on this firm's decision not to go forward with this matter.

Since we are not expressing an opinion in this instance, we are not charging you for any legal fees or expenses for evaluating this matter.

4. DECLINATION – NO RETAINER

You will recall that when we met on _____ to discuss your case, I explained that we would be willing to represent you on certain conditions. One of those conditions was that you provide our office with an initial retainer of \$ _____. I made it clear that the retainer was due before we would begin work. To date we have not received the retainer, and therefore we will not be representing you in this matter. Since we never received the retainer, no client-attorney relationship was created and we never became your counsel. Enclosed please find the materials you left in our office.

5. CLIENT IDENTITY

You have asked us to represent [entity]. We are not undertaking the representation of [any individual partner, member, stockholder etc.] and will not do so unless provided under separate engagement.

6. SCOPE OF REPRESENTATION

You have retained us for the purpose of [describe the scope of representation]. We are to serve as your attorneys with respect only to this specific matter and for no other purpose. It is our understanding that we will have no responsibility for [disclaimer] unless you specifically request that we address such matters, or unless covered by a separate engagement. Once this engagement has been completed, our services under this agreement will be completed. We have not agreed to provide advice or services with regard to any other matter except as specifically provided in this engagement, or in a subsequent written agreement.

I agree to represent you in connection with the allegations that are currently pending in [court]. Unless otherwise specifically stated in this agreement, my representation does not cover any hearings or proceedings before any administrative bodies or professional licensing agencies. My representation does not include any post-judgment, retrial, or appellate proceedings. If you desire such additional representation, it shall be covered by separate agreement.

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

**ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES**

6

To be used in conjunction with YLS program 4/06

7. CLIENT COOPERATION

You agree to fully cooperate with us in your representation by providing information, records, attending meetings, depositions, and court hearings as arise, promptly responding to our communications and timely paying our billing statements. You will keep us apprised of how to locate you throughout the representation, including changes of address, vacations, and persons to contact if you are not reachable.

You agree your cooperation is essential to my ability to best advance your interests. Accordingly, you agree to keep appointments, attend hearings, and otherwise cooperate, and you realize that your failure to cooperate will constitute grounds for me to seek to withdraw.

8. GUARANTEES

You recognize that we cannot predict the outcome of our representation or guarantee the achievement of a successful result, and that payment of our fees and costs is not conditioned upon achieving any particular result.

You understand that we make no guarantees regarding any particular result. The only guarantee we make is to diligently seek to protect your rights, and that you will receive the best possible representation this office can offer.

9. TERMINATION

Client may terminate this agreement and our representation at any time, but of course will be responsible to pay for all legal services performed and costs incurred prior to such termination as provided in this agreement. We may terminate this agreement and our representation of Client if Client fails to comply with its obligations under this agreement, or if we are otherwise required or permitted to withdraw in accordance with the rules of professional conduct governing attorneys as adopted by the Michigan Supreme Court.

10. COSTS AND EXPENSES

Client will pay all out-of-pocket expenses and disbursements incurred in connection with this matter. These shall include items such as filing fees, witness fees, travel expenses, expenses of depositions and transcripts, investigative expenses, expert fees, and other incidental expenses. The firm will, at its option, either pay such expenses on your behalf and submit statements for reimbursement, or forward statements for the expenses to Client for direct payment to third parties owed such expenses.

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES

7

To be used in conjunction with YLS program 4/06

Client understands that Firm may advance any expenses and court costs that Firm incurs on behalf of Client in connection with ***. These expenses and costs are Client's responsibility and, in the event of recovery, will be deducted from any gross recovery. If there is no recovery, Client is nevertheless responsible for payment of expenses and costs.

11. TIMELY PAYMENT

We will send billing statements on a monthly basis. The statements are due and payable upon receipt. You agree to advise me of any claimed errors or discrepancies within 15 days of receiving the bill. Clients whose statements are not paid by the end of the month following the month in which the statement is dated may be assessed a later charge on the unpaid balance at an annual rate of 7%.

12. FIXED FEES

We will perform these services for a fixed fee of \$_____. Of that amount \$_____ will be required before we begin work. When *** has been completed another \$_____ will be required. The balance will be billed at the conclusion of the representation.

13. CASE RETAINER

Our representation will not commence until we receive from Client a certified or cashier's check in the amount of \$_____. Those funds will be deposited in our client trust account, and we will draw against those funds to satisfy our monthly statements, copies of which will be sent to you for your information. You agree to advise us of any questions or disputes concerning any invoice item within 15 days of the date of the invoice. Upon depletion of the retainer we will advise you, and you agree to pay all further statements upon receipt.

14. LAST PAY RETAINER

Client has agreed to provide Firm with an initial retainer in the amount of \$_____. During the representation you will receive monthly statements of account, which you agree to pay upon receipt. You agree to advise us of any questions or disputes concerning any invoice item within 15 days of the date of the invoice. The retainer funds will remain in our client trust account for the duration of our representation, then shall be applied to the final billing statement. If the total legal fees and expenses incurred are less than the retainer amount, the balance will be refunded at the conclusion of our representation.

15. EVERGREEN RETAINER

Client has agreed to provide Firm with an initial retainer in the amount of \$_____. At the end of each month, the retainer shall be applied against

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES

8

To be used in conjunction with YLS program 4/06

actual legal services performed and for costs and expenses incurred, for which Client has not given timely notice of dispute. If the total legal fees and expenses incurred are less than the retainer amount, the balance will be refunded at the conclusion of our representation. If the retainer is depleted before the representation is concluded, Client agrees to replenish it to the initial amount as many times as necessary until the representation is concluded.

16. NONREFUNDABLE RETAINER

Client understands that this case presents circumstances that will require special scheduling, resources, and/or expertise. For this matter I charge a nonrefundable fee of \$_____. Client understands that the retainer is a condition of taking the engagement, and is not related to any future services that may be rendered on the matter. Future services will be billed monthly at the rate of [insert payment arrangement].

You will pay this firm a NONREFUNDABLE fixed fee of \$_____. You understand that I have not been retained as your attorney and will not begin work on your matter until you have paid the fee. You understand that this fee is based not only on the complexity of the case but also on my experience and expertise in handling such matters and on the fact that this case will require our office to set aside a considerable block of time to protect your interests.

17. CONTINGENT FEE

Client agrees to pay the firm a fee contingent upon the outcome of this matter. If we recover money on Client's behalf, Client will pay the firm _____% of all sums recovered, after deducting all costs and expenses incurred in prosecuting the action. Costs, attorneys' fees and interest recovered, if any, shall be included in the amount of gross recovery for the purpose of calculating our fee. If we do not recover any sums on your behalf, you will not owe us any amount for legal fees, but you will be responsible for payment of costs and expenses as discussed below. We will provide a written statement at the conclusion of our representation, showing how the fee is calculated. You understand that other lawyers may offer other fee arrangements, and you have agreed to hire us on this contingent fee basis.

Client agree to pay lawyer a fee of 1/3 of all monies received in the claim, whether by compromise, settlement, litigation or otherwise, computed on the net sum recovered after deducting any costs, expenses, or payroll taxes. In computing the fee, the costs as taxed, any court-awarded attorney fees, and any interest included in or on the amount of a judgment will be deemed part of the amount recovered.

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES

9

To be used in conjunction with YLS program 4/06

17. PRESENT VALUE

If a settlement is payable in installments, the fee will be computed using the present value of the future payments. If Client obtains reemployment through lawyer's efforts, lawyer will receive an amount equal to ___% of client's anticipated gross salary for ___ years.

18. INSTALLMENT PAYMENTS

Should any legal proceedings instituted on client's behalf be resolved by settlement resulting in payment to client or client's heirs of sums to be paid over a period of time rather than as a single, complete, sum, client will pay lawyer ___% of the settlement's total present value, which will be disbursed from the payments as follows:

ALTERNATES

- i. attorney fee paid from first principal payment
- ii. 1/3 attorney fee paid from each of first three installments

19. MINIMUM FEE

If this matter is favorably resolved between client and the employer through client's reinstatement to an acceptable position with the employer, the minimum attorney fee under this claim will be \$_____. This fee will be due and owing from client on the date client is reinstated.

20. LIENS

In order to ensure payment of fees owed, Client agrees that lawyer may secure payment of fees through security interests or liens, as appropriate, on any asset owned or due to Client, including real or personal property, for such outstanding amount/balance that is due and payable to lawyer. You agree that your signature below shall constitute your express agreement to these terms.

Client authorizes and directs lawyer to deduct from the gross recovery and to pay directly any unpaid balances due any doctor, hospital, or other creditor of client who has provided services during the course of this claim.

Lawyer will have all general, possessory, or retaining liens and all special or charging liens permissible under Michigan law and the Michigan Rules of Professional Conduct on any sum recovered, whether by compromise, settlement, litigation or otherwise.

21. DIVISION OF FEES

Client understands that the legal fees generated on this matter will be divided between lawyer and [other lawyer], and does not object. Client's obligation under this agreement will not be affected by the division of fees between the lawyers.

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.

**ANATOMY OF ENGAGEMENTS AND FEE AGREEMENTS
FORM LANGUAGE SAMPLES**

10

To be used in conjunction with YLS program 4/06

22. THIRD PARTY PAYOR

At your request, we will submit billing statements directly to [3rd party] on your behalf for payment on your behalf. You understand that we cannot guarantee that a court of competent jurisdiction will determine that information sent to [3rd party] retains its confidential status. Further, you understand that although we have agreed to accept payment on your behalf from [3rd party], you remain obligated to pay any charges that [3rd party] fails to timely pay or refuses to pay.

23. ADR

You and we agree, as a condition of our undertaking your representation, that any controversy, dispute, or question arising out of, in connection with, or in relation to this Agreement or its interpretation, performance or nonperformance, or any breach thereof, shall be determined by arbitration conducted in accordance with the then-existing rules of the American Arbitration Association or the Federal Mediation and Conciliation Service and any decision rendered by the Arbitrator shall be final and binding upon the parties; and Judgment upon any arbitration award, including an award of damages, may be entered in any court having jurisdiction. The Arbitrator may not amend, modify, or substitute any of the terms or conditions of this Agreement and his jurisdiction is thereby limited.

Contract language presented here is form language for purposes of educational discussion, and should only be used in client engagements if independently selected by the responsible lawyer.