

Model Engagement Letter (Short) [Model Legal Services Agreement]

Please make changes to this sample to suit the circumstances of your client and your firm. It is a model for you to adapt.

[Firm letterhead]

Privileged and Confidential

[date]

[name of client, address]

This is a legal services agreement concerning [briefly describe client matter].

Our file number: [#]

Dear [name of client]:

Thank you for choosing our firm to work for you on [specify legal matter that is the subject of the retainer]. As we discussed, you are retaining us to [identify scope of work being undertaken on behalf of client].

The steps involved include [consider listing all the usual steps in this type of legal work so that the client has a full understanding of everything involved].

[With a limited scope retainer, and as appropriate otherwise, specify the work that you will not be undertaking under the terms of this mandate – You are not engaging us to ...]

Communications

We will keep you informed about developments on your file. There may, however, be times when we are waiting for actions or information from others and you will not hear from us. Please remember that part of the costs of our legal services for you is the time we spend replying to your phone calls and e-mail messages. You will save money by limiting these contacts to important and urgent matters.

[My assistant/clerk X] may be able to answer many of your questions. You can reach [X] at [#, e-mail]. If you need to reach me urgently, let [X] know. I will reply as promptly as I am able.

Confidentiality

The information you give to us and the advice we give to you is confidential. The law protects communications between lawyers and clients to make sure that clients are able to talk frankly and freely with their lawyers and get the best advice based on all the facts. We will not disclose your confidential information unless we are required to do so by law or lawyers' professional rules of conduct.

To protect your interests, we advise you to keep our correspondence, including e-mails, in a secure location. You can lose the protected confidential status of our communications to you if you distribute them to other people.

Fees and expenses

I will be the lawyer responsible for your file. My hourly rate is [\$ #]. The hourly rate for work done by X [paralegals, support staff, senior partner, etc.] is [\$ #]. Hourly rates are reviewed annually and may change during the period we are acting for you. If that is the case, changes to hourly rates will be noted in our [monthly, quarterly] bill to you.³⁵⁰

In addition to legal fees, you will have to pay the expenses (disbursements) related to our work for you. These disbursements will include [court filing fee charges, document registration fees, photocopies, courier charges, etc.] We will provide you with a list of these disbursements in our [monthly, quarterly, final] bill to you.

[The cost of our work for you is \$ X.] [or] [The cost of our work for you will range between \$ X and \$ Y. The final amount will depend on [the legal issues involved; the response received from X, at what stage this matter is settled, etc.].

Before we begin work, we will need to receive a retainer of [\$ #] from you. We will deposit this amount in our trust account and will use it to pay the fees and disbursements on your file. We may ask you to add to this retainer from time to time.

We will let you know promptly should we see that our estimate of the costs of our work for you is too low and will ask you for your instructions about how you want to proceed.

If our total fees and disbursements for you are less than the amount you have paid us as a retainer, we will return the remaining money to you.

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³⁵⁰ In some Canadian jurisdictions, changes in hourly rates based on an annual review by the firm must be communicated to the client.

Other clients

As we discussed, our firm may work for other clients who are [your business competitors, taking a different legal position from yours on a similar matter, have an interest that is similar to yours]. You understand that we are able to work for these clients, too, unless their interests are directly in conflict with your interests in the subject matter of this legal services agreement. At this time, we have checked our files and, to the best of our knowledge, we do not have another client whose interests are in conflict with your interests as we understand them today.

We will not take on new work for a client who has an interest that is in conflict with your interests unless you agree to allow us to do so.

End of our work for you

This legal services agreement ends when the work you asked us to do, as set out at the start of this letter, has been completed, or you instruct us to stop working on it. You must pay for all work done for you up until that time. We may also end the agreement as allowed by lawyers' professional rules of conduct.

After the end of our work for you, you will no longer be considered our client and we will be able to take on work for other clients who may have interests that are in conflict with yours.

We always have an obligation to protect your confidential information, even when you are no longer our client.

Joint retainers

[in situations in which you are representing two or more clients with a shared interest –

You have asked me to represent you [both] [or] [all] because you have the same interest and you feel it is desirable to work together on this matter. I am only able to take on this joint retainer when I believe that I can provide you with competent and diligent representation and when you have consented to this arrangement with an understanding of the following limitations.

First, I am not allowed to keep information that I receive from one of you confidential from the [other] [or] [others]. I am representing you jointly and have a duty of undivided loyalty to [both] [or] [all] of you.

Secondly, there is a possibility that as my work for you goes forward something will happen and you will develop separate and conflicting interests. In that case, choose one of these options as appropriate

- I will no longer be able to represent you and you will [both] or [all] have to find another lawyer.
- I will continue to represent X as we have agreed and [name all the other joint clients] will have

to find another [lawyer] or [lawyers].

I understand that you [both] [or] [all] received independent legal advice before agreeing to this joint retainer.

I confirm that I believe that I am able to provide you [both] [or] [all] with competent and diligent representation.

You have directed me to take instructions from [X] on your behalf and I will continue to do so until [both] [or] [all of you] instruct me differently.]

Our legal relationship

The legal obligations we outlined in this letter are our duties to you and not to [other family members, related corporations]. [Include if corporation, or family, or multiple clients – With respect to this file, we will only take our instructions from you unless you tell us in writing to take instructions from someone else.]

Language of retainer letter

In Quebec only, as required by The Charter of the French language: [This legal services agreement has been drafted in English at the express request of the parties. Cette lettre d'entente a été rédigée en anglais à la demande expresse des parties.]

Next steps

To confirm that you want me to go ahead to act for you as set out in this letter, please sign below and return it to me along with the retainer of [\$ #]. I have included a second copy of this letter for your files.

I would be pleased to answer any questions you may have.

I look forward to working for you on this matter.

Sincerely,

[lawyer's signature]

[client's name], please sign here

Date

Elements to Include in a Legal Services Agreement/Letter

This backgrounder identifies the key elements to include in a legal services agreement letter, and includes brief explanatory information. We use the term “legal services agreement” because it is clear language clients can readily understand.

The model legal services agreement is suggested for legal matters that are neither overly complex nor expected to be lengthy.

You may wish to use this outline to draft your own legal services agreement or you may prefer to adapt the sample legal services agreement letter.

Privileged and Confidential

- Protect client interests. The legal services agreement includes personal client information including the reasons for seeking your services. It should be labeled to protect client confidentiality and as a reminder to the client of the special nature of the lawyer/client relationship.

Client

- Identify the client by name. This is especially important when another party is paying your legal fees, when you are representing multiple people or entities, or when you are interacting with, but not representing, an employee or other client representative. You should specify that your representation of the client does not extend to related persons such as shareholders, partners, or other family members. Clarifying with whom you have a lawyer/client relationship is key to protecting you from conflict of interest disputes, as you cannot assess potential conflict situations without knowing the identity of the client to whom you owe a duty.

Scope of the retainer

- Detail the client’s instructions and the scope of the work that you will be undertaking. Include an identifiable end point to the retainer. Consider including a breakdown of the steps that you will be taking to give your client a better understanding of the work involved. It is also important to identify what you will *not* be doing, especially when you have a limited scope retainer. A clear statement of your mandate helps to manage client expectations, minimizes the possibilities of misunderstandings, and limits conflict situations.

Confidentiality

- Define your legal responsibility to maintain client confidentiality, except when required by law or professional and ethical obligations to do otherwise. Let your client know that their actions can destroy the confidential nature of your communications and that they should protect your advice, letters, e-mails, etc. by keeping them private and secure.

Legal fees

- Set out your flat fee. Or, your hourly rate along with the hourly rate of other firm members who may work on the file and the estimated cost range of your work (minimum and maximum expected fees). Explain your billing practice, for example, 5 minute billing increments.
- Explain what might affect the fees, for example, the stage at which the matter is settled, the complexity of legal issues, increases in fees to reflect an annual fee review, etc. Clarity now avoids disputes about money later.

Disbursements (Costs and expenses)

- Describe the type of disbursements that are likely to be made on behalf of the client, for example, document registration, court filing fees, photocopy charges, courier services. Make it clear that these costs are in addition to your fees so that there are no misunderstandings.

Retainer required

- Ask the client to pay a set retainer amount and explain that payment is required before you begin work. Clarify that the retainer is held in trust and that it is used to cover off disbursements and fees. When clients understand that a retainer is an advance on your services it helps them to understand the professional and business nature of a lawyer/client relationship.

Billing arrangements

- Describe your billing approach (for example, monthly, quarterly, at certain stages) and the interest rate you charge on late payments.

Communications

- Tell the client when they can expect to hear from you, your preferred method of communication, and how they may get in touch with you. Provide contact information for key staff in your office. You may want to encourage contact with your support staff as a better, less costly option for the client. You can use this opportunity to manage client expectations concerning your availability and the timeframes in which you will likely be able to answer their phone calls and e-mails.

Representation of other clients

- Clarify your duty of loyalty to the client and your obligation to avoid conflict of interests.
- Note that during your retainer with the client your firm may not represent other clients whose interests are in direct conflict with this client's interests unless the client consents. You could note your representation of a business competitor of the client or another family member is not necessarily a conflict of interest and that you may represent someone else and make arguments for that client that are opposite to the ones you are making for this client.

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- Note that after the work agreed to in legal services agreement retainer has been completed, your firm may represent other clients with conflicting interests but that your obligation to protect your client's confidential information continues forever.
- For more on conflicts of interest and other helpful precedent documents and checklists, see the Conflicts of Interest Final Report, Recommendations and Toolkit [www.cba.org/conflicts]

Joint retainers

- Explain that you can only represent two or more clients on the same matter when (1) you believe you will still be able to provide these clients with competent and diligent representation, and (2) the clients have all consented to the joint retainer, understanding that they might develop separate and conflicting interests and that if that happens your legal representation will have to change.
- Explain that amongst the joint clients you may not keep information from one client confidential from the other client(s).
- Set out what will happen if a conflict among the clients arises. For example, you will no longer be able to represent any of them. Or, one of them will remain your client and the other(s) will have to find another lawyer.
- Advise them to get independent legal advice before they agree to a joint retainer. See the <ILA Checklist> in CBA's Conflicts Toolkit.

End of work

- Define the terminating event for the legal services agreement. For example, the client notifies you in writing of the decision to end the retainer; the completion of the mandate; the sending of the final bill. (Note that you may also have addressed this in the "Scope of the retainer" section.)
- Make sure that the agreement clarifies that further communication from your office about legal developments, for example in a client newsletter, or an invitation to firm events is not a continuation of the lawyer/client relationship. When the end of the lawyer/client relationship is clear, it narrows the possibility of conflict of interest situations arising later.

Instructing client

- Identify the person from whom you will take instructions about the matter covered by the agreement. Clarify that you will not take instructions from, for example, other family members, related corporations, partners, etc.

Language of agreement

- Include the required clause concerning the language of the agreement if you are practicing in Québec. “This legal services agreement has been drafted in English at the express request of the parties. Cette lettre d’entente a été rédigée en anglais à la demande expresse des parties.”

Signatures

- Make sure the client signs the legal services agreement to confirm the terms of your lawyer/client relationship as set out in the agreement.