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# **ASB CLIENT-KEEPER PACKAGE**

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*Communication Tools to Enhance Client Relations  
and Make Your Life a Little Easier*



A manual prepared by the  
**Law Office Management Assistance Program**  
A Member Service  
of the  
Alabama State Bar



## Preface

This manual is provided as a service of the Alabama State Bar's Law Office Management Assistance Program. Our goal is to assist attorneys in improving client relations and minimizing the likelihood of claims for legal malpractice and violations of the Rules of Professional Conduct by helping them to establish quick, consistent, and easy-to-use systems for exchanging information with their clients.

These materials do not establish a standard of care for attorneys. They are not a complete analysis of the topics they cover, nor should they be construed as providing legal advice. They are merely suggestions for setting up and maintaining regular, systematic communications with clients as their cases progress.

These materials were adapted from those contained in the Ohio State Bar Association's *Client Keeper Package*. We are grateful to the Ohio State Bar Association for its permission to use and modify its publication. The Alabama State Bar hereby grants permission for these materials to be reproduced in whole or in part and to be amended and adapted to suit the needs of lawyers for use in their offices and for distribution to clients. The documents contained in this publication may not be reproduced for sale or otherwise used for profit.

Law Office Management Assistance Program



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## **EFFECTIVE CLIENT MANAGEMENT PROCEDURES**

Most clients are thankful to have found a lawyer to handle their case, and they don't complain about the treatment they receive in their lawyer's office until they feel they have been pushed as far as they intend to go. By the time they do complain, the situation is often past the point of repair. The most common client complaints involve unreturned phone calls, unexpected bills, and unannounced changes in the strategy of handling, or the personnel working on, their cases.

Management studies show that it costs a business from seven to ten times more to attract a new customer than it does to retain an existing one. For that reason alone, it makes a lot of sense to try to keep all of your clients satisfied. In addition, a significant number of malpractice claims and grievances filed against lawyers result from the lawyer's failure to follow common sense rules for effective communication with clients.

The first step toward establishing positive client relations is to adopt uniform office policies and procedures regarding all aspects of client communication, and then ensure that all firm members and staff follow them. The documents contained in this manual are designed to create "client friendly" communication procedures which may be adjusted to suit your needs. Include them in your office procedures manual, or copy and distribute them to your staff.

## TELEPHONE PROCEDURES

- Establish an order in which staff members answer the phone. For example, if the receptionist is on a call, the phone should ring at secretary A's station, and she should pick up after a stated number of rings (no more than three or four). Avoid a situation where everyone is responsible for answering the phone, and no one does.
- Tell your support staff *exactly* how you want the telephone answered and what you want said. For example: "Good morning, [firm name]. How may I direct your call?" or "Attorney [name] is [or is not] available. Who may I say is calling, please?" 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. *Always thank clients for calling!*
- Record the names and numbers of everyone whose call is not put through to the attorney or staff person they ask for on a duplicate message pad. Fill out all information completely and press hard to make sure that the information on the copy is legible in case you have to refer to it again. Messages should *always* be put in the same place to be picked up by the attorney or staff member upon his or her return.
- Spell out *who* is to talk to clients and *what* is to be said when the attorney is out of the office or otherwise unable to take calls. Staff should be cautioned to *never 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 [Name] is in court at this time, but I expect him later today. When is a good 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 other clients or the nature of other cases the attorney is working on.)

- **Return all calls 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 should do so by 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 about the placement of those who answer the phone. Be sure clients waiting in the reception area cannot hear the identity of phone callers being announced or other confidential details of the representation.



- Develop procedures for handling *true* emergency calls. You may wish to have your secretary discretely knock on your door and place a note in front of you where no one else can see it.
- *NEVER*, unless you are following emergency procedures, take a call from a client while you are in conference with another client. Even excusing yourself to do so will make them wonder why the other client is more important than they are when they are sitting right in front of you.
- Never discuss confidential client information over a cellular or cordless telephone without the client's knowledge and consent.

## INCOMING MAIL PROCEDURES

- Designate a specific place to receive and open all incoming mail and packages.
- 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 all 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, although the mail opener should compare the date of the postmark with the date of the letter. If a letter was dated substantially before it was mailed, it may be a good idea to save the envelope as proof that your action on the item was timely following receipt, and that any delay was the fault of the sender. If you want the envelopes saved and attached to correspondence, be sure the mail opener knows this.
- Designate one person to enter all court dates and other deadlines into the docketing system as orders and correspondence are received. It is a good idea to have that person stamp and initial the document to indicate that the date has been placed on the calendar.
- After being opened and docketed, mail should then be sorted for each attorney or support staff member. The attorney's secretary should further sort mail into orders and correspondence, periodicals, and junk mail.
- 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 away as soon 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, he or she should designate another local attorney to whom emergency matters can be referred.
- Green cards or other certified mail or registered mail forms should be recorded and attached to the appropriate document in the file.
- Any returned mail or changes of address should be noted and entered into the client database or client file.
- Checks should be recorded as received and immediately given to bookkeeping to process as appropriate. Trust account deposits should be made daily.

# Mail Log

Date	Matter	File #	Nature of Mail	Disposition

## **OUTGOING MAIL PROCEDURES**

- Designate a specific place for processing outgoing mail.
- Designate a specific person to prepare outgoing mail, and train a backup.
- 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. Keep to a regular schedule.
- Maintain client confidentiality for outgoing mail. Do not place it on the receptionist's desk for postal pick-up with client names and addresses exposed.
- If a postage meter is used, a specific person should be responsible for maintaining postage on the meter. Always train a backup.
- Record return receipt letters in a log for easy reference.

## INITIAL CLIENT CONTACT

Before taking on a new client, you must:

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

After initial client screening but before undertaking representation of a client, a lawyer must determine that a conflict of interest will not affect the representation. This exercise is required, and failure to screen for potential conflicts of interest can result in a legal malpractice suit, a complaint for violation of the Alabama Rules of Professional Conduct, or both.

The Comment to Rule 1.7 of the ARPC states that a “lawyer should adopt reasonable procedures appropriate for the size and type of firm or practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.”

Use either a simple card file or a computer database to cross reference current clients, former clients, employees and their families, and adverse parties. Do not rely on memory to provide you with a complete list of each and every client you have ever represented, and do not forget to enter information about both firm members and support staff, and their respective spouses, into the conflict system. *Remember that conflicts can exist between the potential client and the firm as well as between potential and existing clients.* The Conflict Search Form in this manual can help identify possible conflicts of interest.

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

Failure to know and properly apply the law is not one of the greatest causes of malpractice claims. Nonetheless, even though you have screened a case carefully for conflicts and find that there are none, there still may be some situations when you don’t want to take it. When a prospective client seeks services which are outside your area(s) of expertise, you can avoid making a potentially costly mistake by declining the business and referring the case to a lawyer within your network who you know has the expertise to handle it.

Whenever you decline to represent a prospective client after obtaining any information about the case, that name should be added to your conflict of interest system. Keep a file which includes the person’s name, date of inquiry, the nature of the legal matter including opposing and related parties, the reason for the declination and, most importantly, a copy of the letter you sent notifying the person that you were not taking the case, as discussed in the next section. This will help you avoid the situation where you don’t remember speaking with the first party on the phone and suddenly find yourself representing the opposing party. It happens to good lawyers more than you would think, and it is terribly embarrassing.

**INITIAL APPOINTMENT CONFIRMATION LETTER**  
(Short Form)

*Date*

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 *[date]* at *[time]*. It is important that we meet with you as scheduled. Please complete the enclosed Intake Form and bring it with you, along with any other papers, photographs or other items you think may be important to your case.

At this point, we do not yet represent you. After we have met with you and reviewed the information concerning this matter, we will tell you whether or not we will be able to represent you.

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,

*Attorney Name*

Enclosure

# INITIAL APPOINTMENT CONFIRMATION LETTER

(Long Form)

*Date*

Dear ***[Prospective Client]***:

Thank you for selecting me [my firm] for your inquiry regarding ***[specify reason for inquiry]***. I appreciate the confidence you have shown in my professional integrity and ability.

I have scheduled an initial appointment with you on ***[date]*** at ***[time]***. It is important that I meet with you as scheduled. Please feel free to call if you need directions to my office.

I have enclosed, and request that you complete, an Intake Form before you meet with me. This document will help maintain a record of your visit and give me certain necessary information. If I am already representing an opposing or potentially opposing party, this will allow me to let you know before you disclose any confidential information about your case. Please fill it out completely and bring it with you, along with any papers, photographs or other items you think might be important.

My practice is well established and I offer full service representation to a wide variety of clients, many of whom employ me in connection with more than one matter. I attempt to provide quality legal services at reasonable rates. I hope to remain *your* attorney for many years, and appreciate referrals of your family, friends, colleagues or associates who may require legal services. If I cannot help you in a particular type of case, I can probably find another attorney who can

Part of the discussion during our meeting will relate to fees for professional services. I charge an initial consultation fee of \$[ \_\_\_\_\_ ] for most basic consultations. This fee may increase if the time involved goes beyond the normal thirty minutes usually needed for an initial consultation regarding a simple problem. This charge may be waived, depending on your situation.

If, during our initial consultation, we determine that you need professional services, the charge for those services will be determined in one of several ways, depending upon the type of case and the legal services needed.

***[Insert information about your policies on retainers, hourly billing, flat fees, and contingency fees here. You may wish to customize a letter for each type of case you handle.]***

I make every effort to keep my fees competitive, and I am not offended if a potential client wishes to compare my fees to those of another lawyer or firm, however, I do not measure what I charge for certain services against what another practitioner may charge. If you are

“fee shopping” that is perfectly acceptable, but I hope that you will not make your final decision to retain a particular attorney on a low fee alone. Perhaps the less expensive lawyer knows the extent of his or her experience and the value of his or her services, and charges accordingly. If I feel that your matter is beyond the scope of my experience, I will suggest a referral to another attorney who has more knowledge of that particular area of the law. I believe that I have earned the reputation of zealously protecting my client’s interests through the years. My support staff is effective and they are dedicated to assisting me as I help others.

At this point, I do not yet represent you. After I have met with you and reviewed the information concerning this matter, I will tell you whether or not I will be able to handle your case. Should you require professional services and elect to retain me, I believe that you will be pleased with the work I perform on your behalf. I consider the practice of law a calling and the opportunity to serve others in this capacity a blessing and a challenge, unlike any other.

The Alabama State Bar adopted the Lawyer’s Creed in 1992. The Creed is an illustration of what we in this office are committed to accomplish. It is included with your intake form. I hope that my adherence to it will strongly encourage you to consider selecting me as your attorney. I offer the Creed and this letter as an introduction to the services offered by my firm. I will be pleased to answer any questions you may have about your legal matter, as well as questions about my experience and background. I look forward to meeting with you. Again, thank you for calling on me.

Sincerely,

***Attorney Name***

Enclosure



## **ALABAMA STATE BAR LAWYERS' CREED**

To my clients, I offer faithfulness, competence, diligence and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. I will strive to do honor to the search for justice.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.

(Approved by the Alabama Board of Bar Commissioners April 10, 1992)

# CLIENT INTAKE FORM

Name: \_\_\_\_\_ File No. \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Nos: (Home) \_\_\_\_\_ (Office) \_\_\_\_\_ (Fax) \_\_\_\_\_  
(Cell) \_\_\_\_\_ (Beeper) \_\_\_\_\_ (E-mail) \_\_\_\_\_

Date of Birth: \_\_\_\_\_ SSN: \_\_\_\_\_

Spouse's Name: \_\_\_\_\_

Spouse's Address: \_\_\_\_\_  
\_\_\_\_\_

Client's Employer: \_\_\_\_\_

Employer's Add.: \_\_\_\_\_  
\_\_\_\_\_

Nature of Current Matter: \_\_\_\_\_  
\_\_\_\_\_

Potential Adverse Parties: \_\_\_\_\_  
\_\_\_\_\_

Their attorneys, if known: \_\_\_\_\_  
\_\_\_\_\_

Potential Related Parties: \_\_\_\_\_  
\_\_\_\_\_

Their attorneys, if known: \_\_\_\_\_  
\_\_\_\_\_

Have we represented you before? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what matter: \_\_\_\_\_  
\_\_\_\_\_

Who suggested you contact our office about this matter? \_\_\_\_\_  
\_\_\_\_\_

Please list all other names you or your spouse have ever been known by, and the names  
of all businesses you have operated: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Client Name:** \_\_\_\_\_ **File No.** \_\_\_\_\_  
**Contact Name if Different:** \_\_\_\_\_ **Case Type:** \_\_\_\_\_  
**Matter Name:** \_\_\_\_\_

Originating Attorney: \_\_\_\_\_ Responsible Attorney: \_\_\_\_\_

**BILLING INFORMATION:**

**BILLING CYCLE:**

Retainer: \$ \_\_\_\_\_ ( )  
Hourly Rate \$ \_\_\_\_\_  
Fixed Fee: \$ \_\_\_\_\_  
Contingent % \_\_\_\_\_

Monthly \_\_\_\_\_  
End of Case \_\_\_\_\_  
Pro Bono \_\_\_\_\_

Engagement Letter Sent \_\_\_\_\_ or Fee Agreement Signed \_\_\_\_\_

**CALENDAR INFORMATION:**

Statute of Limitations Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Calendared by: \_\_\_\_\_

Other Critical Dates: \_\_\_\_\_

Verified by: \_\_\_\_\_ Calendared by: \_\_\_\_\_

Default Tickle Schedule: \_\_\_\_\_ Every 30 days \_\_\_\_\_ Every 60 days

\_\_\_\_\_ Conflict Check Completed

File Opened By: \_\_\_\_\_ Date: \_\_\_\_\_

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Conflict of Interest Search Form

- Search Only (do not add to system)
- Declined Client (add to system if confidential information was obtained)
- New Client/Matter (add to system)
- Additional Information (add to system)

\_\_\_\_\_  
Client/Potential Client Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Other Names, AKA, DBA: \_\_\_\_\_

\_\_\_\_\_  
Matter (describe nature of requested representation): \_\_\_\_\_

\_\_\_\_\_  
File Name (if any): \_\_\_\_\_  
File Number (if any): \_\_\_\_\_

Adverse Parties:	Relationship:
_____	_____
_____	_____
_____	_____
_____	_____

Other Parties Involved:	Relationship:
_____	_____
_____	_____
_____	_____
_____	_____

Requested by: \_\_\_\_\_ Date: \_\_\_\_\_

No conflict found  
 Conflict found as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Searched and Entered By: \_\_\_\_\_ Date: \_\_\_\_\_

# 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? \_\_\_\_\_

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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: \_\_\_\_\_

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Do you have any service-connected injuries or disabilities? \_\_\_\_\_

If so, give details: \_\_\_\_\_

---

Percentage of disability \_\_\_\_\_

Present condition of service-connected injury or disability \_\_\_\_\_

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Do you receive payments for service-connected injuries? \_\_\_\_\_

If so, give details: \_\_\_\_\_

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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 you have had other claims or lawsuits that is important, because you will not be penalized by a court or jury if the claims are reasonable and genuine. It is making false statements about previous claims and suits that damages your 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 \_\_\_\_\_

*Please use the back of this form for additional claims.*

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** for the development of unfavorable evidence. List here any arrest(s) and state the date, place, charge, court, case number and outcome:

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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? \_\_\_\_\_

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

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13. Date of Injury or Accident \_\_\_\_\_  
***(If you are not certain about the 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 \_\_\_\_\_

*Please use the back of this form for additional doctor visits.*

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 there are none, write the word "none."

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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? \_\_\_\_\_  
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, when, 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? \_\_\_\_\_

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? \_\_\_\_\_

*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 the first meeting.)*

## ENGAGEMENT LETTERS AND FEE AGREEMENTS

Once you have screened a prospective client, checked for conflicts of interest, and gathered information through an initial consultation, you must let the client know whether or not you will provide representation and, if so, on what terms.

You would not lease space for the operation of your law practice without knowing how much your rent was going to be on a monthly basis. Yet despite this common sense attitude toward our own interests, we lawyers often expect our clients to enter into a business relationship with us based on trust alone. It's not surprising that, as a result, disputes regarding fees are one of the single largest causes of ethical complaints against lawyers. And more often than not, complaints of this type are against solo lawyers and those in small firms.

Most of us view asking for money as unpleasant, and we see legal fees as a source of potential conflict between ourselves and our clients. Since we already experience too much conflict on a daily basis we may, subconsciously or perhaps intentionally, avoid discussing fees. Not only do clients properly expect us to bring the matter up, but the Rules of Professional Conduct require us to. It's in our best interests, both professionally and financially, and in the best interests of our clients, to do so and to do so at the earliest opportunity.

Rule 1.5 of the ARPC requires that, when a lawyer has not regularly represented a client in the past, the basis or rate for the fee must be communicated to the client either:

- (a) before the representation begins, or
- (b) within a reasonable time thereafter.

The Rule goes on to state that it is preferable that the fee agreement be in writing in all instances, and that it *must* be in writing in cases involving contingent fees.

The easiest way to cover this type information with a new client is to provide him or her with a written introduction letter, engagement letter or fee agreement. Sometimes all three can be helpful.

An introduction letter serves to welcome a new client, and engagement letters and fee agreements can serve as road maps throughout the representation. They delineate the specific matters to be handled by the attorney or firm, and set forth the terms of the relationship. Being clear up front about what you expect from the client, and what he or she can expect from you, will go a long way toward avoiding problems and misunderstandings in the future.

Likewise, if you have had any conversation whatsoever regarding the facts of someone's case and thereafter you decide not to represent him or her, it is especially important to give that person a written notice indicating that you are not representing them. From a malpractice prevention standpoint, the non-engagement letter should not make any

judgement about the merits of the case, unless you are certain that, no matter what facts could be developed, a cause of action doesn't exist.

The letter should remind the person that time constraints may exist, and urge him or her to immediately seek other counsel to protect his or her legal rights. It is always a good idea to send non-engagement letters by certified mail. If you have received any original documents from the potential client, you should return those by certified mail along with the non-engagement letter.

When a client with whom you have had an ongoing relationship fails to keep his or her part of the bargain, you may want to terminate the relationship, provided that you are able to do so within the requirements of Rule 1.16(b) of the Alabama Rules of Professional Conduct.

A disengagement letter indicates your intention to remove yourself from the matter, and your reason for doing so. It should contain specific information regarding upcoming deadlines that must be met, and a copy of all documents the client will need to obtain other counsel and to continue with the matter.

# ENGAGEMENT LETTER

*Date*

Dear *Client Name*:

I want to take this opportunity to personally thank you for selecting me [my firm] to represent you in ***[Specify the matter and specify in detail what work the firm will perform. If there is any work related to the matter which will not be performed, such as handling an appeal, specifically state it.]*** Any other work or additional related work will be the subject of a separate letter.

The fee arrangement, as agreed, will be based on ***[specify whether a flat fee, hourly rate, contingency, or combination. If applicable, specify the hourly rate or rates, or the method of computing the fee percentage in a contingency case.]***

I (our firm) will bill you monthly for all disbursements and any fees due. Disbursements include: ***[Specify all types of expenses applicable to the type case involved, such as copying, postage, long distance expense, court filing fees, court reporter transcript costs, costs of medical records, travel expenses, etc.]***. This list is an attempt to give you an idea of the types of expenses to expect, but it is not exhaustive. Payment is due upon receipt of our invoice, unless the invoice indicates otherwise. Failure to make timely payments may, upon notice, result in my [the firm's] withdrawal as your counsel in this matter.

The other members of my legal team who will be working on your case are ***[list the names and positions of any associates, paralegals or secretaries who will be working with you on the client's matter.]*** We will keep you informed on the progress of your matter on a regular basis, however, please feel free to call me ***[or another designated staff member]*** if you have any questions.

Again, thank you for this opportunity to be of service. Please sign and return a copy of this letter in the enclosed self-addressed, stamped envelope. If you have any questions regarding this letter, please feel free to call.

Yours very truly,

***Attorney Name***

ACKNOWLEDGED and Agreed to:

\_\_\_\_\_  
***Client Name***

Date:\_\_\_\_\_



## **ENGAGEMENT LETTER**

**(Hourly Fee Arrangement - Evergreen Retainer)**

*Date*

Dear **Client Name**:

The purpose of this letter is to confirm, based upon our conversation/meeting of **[date]**, that **[name of firm]** has agreed to represent you in **[describe matter/case]**. In connection with this matter, we will provide the following services: **[list services to be provided. If any related services are not to be provided, such as handling an appeal, specifically list them]**.

Our charges for legal services are based upon the prevailing hourly rates in effect for our law firm. Currently, these rates range from \$\_\_\_\_\_ to \$\_\_\_\_\_ per hour depending upon the experience and position of the individual attorney(s) involved. My current billing rate is \$\_\_\_\_\_ per hour. Paralegal services, if reasonably required, will be billed at a rate of \$\_\_\_\_\_ per hour. During the period of our representation, it is possible that individual hourly rates of attorneys in the firm may be increased by some modest amount and you will be informed of that immediately upon the change being made.

You will be billed for all of the time spent handling your matter, including but not limited to time spent on **[Specify all types of services applicable, such as telephone conferences, research, general preparation and court appearances]**. You will also be billed for out-of-pocket costs incurred on your behalf such as **[Specify all types of expenses applicable, such as postage, photocopies, filing fees, court reporter transcript costs, costs of medical records, travel expenses, etc.]**.

We require that you pay a retainer of **[enter dollar amount]** before we will commence any work on your behalf. Until we receive this retainer, we are not officially your attorneys. We will bill you **[enter billing cycle period]** for the amount of work that was performed on your file and for out of pocket expenses incurred during the preceding **[period]**, and payment of each bill is expected **[enter grace period for payment]** days after the statement is issued. The retainer funds will only be applied against a statement which remains unpaid for **[state overdue period]** or, upon your instructions, our last statement. If the retainer is not applied to a statement as set forth herein, it will be returned to you at the conclusion of the case. If it becomes necessary to apply the retainer to a statement due to non-payment within the stated grace period, the firm shall have the right to cease work on the case, notify you to obtain other counsel, and withdraw from the matter. The retainer will be held in an interest bearing fund, and all interest earned will be added back to the retainer. The retainer must be received by **[insert date]**. \*

At this time, it is impossible to estimate the exact amount of time and expense that will be necessary to adequately represent you in this matter. **[If you can reasonably give a top range of fees and expenses for the type of case, give it here.]**

Your primary contact for this matter will be ***[lawyer or legal assistant's name]***. If you have any questions regarding this matter, please feel free to contact ***[lawyer or legal assistant's name]*** directly at ***[direct phone number or other instructions]***.

Again, thank you for this opportunity to be of service. Please sign and return a copy of this letter in the enclosed self-addressed envelope. If any of the terms set forth above are not in conformance with your understanding of our agreement, please contact me immediately. We look forward to representing you in this matter.

Sincerely,

***Attorney Name***

ACKNOWLEDGED and Agreed to:

\_\_\_\_\_

***Client Name***

Date: \_\_\_\_\_

*\*If you use this suggested retainer language, calendar the retainer due date. If the retainer is not received by that date, send a non-engagement letter. This will help to avoid a situation in which the potential client forgets or ignores the retainer request but still asserts that an attorney-client relationship exists while the attorney assumes that no relationship exists because the retainer was never received.*

# 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 (six (6) minute increments), 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 services, 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: medical treatment, 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 the hiring of 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 **[specify percentage rate]** percent per month **[specify effective yearly percentage rate]** 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.

This hourly 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: \_\_\_\_\_

## 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 \_\_\_\_\_ more particularly described as follows: \_\_\_\_\_

\_\_\_\_\_ 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 witnesses, 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 mediation, 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 1.16 of the of the Alabama Rules of Professional Responsibility. The Client agrees not to unreasonably reject any settlement offer.

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 record, preparation of appropriate briefs, and oral argument in the reviewing courts, if the same shall be granted.

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 his/her 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 under insured or uninsured situation.

Although no fee may be due to the Attorney as provided above, 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 that 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. A case shall be considered to have been settled following trial if the attorney appears on the client's behalf at the place and time set by the court for trial, regardless of whether or not a jury is seated or evidence is presented.

In the event that Attorney is discharged by Client and Client subsequently recovers money or other property as a result of this claim, Client shall be indebted to Attorney for legal fees based upon the value in **[name of city, Alabama]** of legal services rendered and for all costs and expenses advanced by Attorney and not previously paid by 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: \_\_\_\_\_

# NON-ENGAGEMENT LETTER

*Date*

\*Via Certified Mail

**RE: *[Matter Description]***

Dear *Client Name*:

You recently contacted our firm and requested that we represent you in the ***[describe matter]***. We have now had an opportunity to review the information you provided to us and appreciate the confidence you have expressed in our firm. For various reasons, the firm has decided that we will be unable to represent you in this matter. ***[If you are declining the matter because of failure to receive a retainer by a previously specified date, so state.][We are returning with this letter the documents which you provided to us for review.]***

In declining to accept your matter, we are not expressing an opinion as to the merits of the case. You should be aware that failure to proceed promptly may result in your legal matter being barred by a time limit. \*\* Therefore, we strongly recommend that you immediately contact another attorney regarding this matter.

Thank you for contacting us. If you require legal services in the future, I hope you will consider our firm again.

Sincerely,

***Attorney Name***

*\*NOTE: If the firm is returning documents to the client, it is recommended that the firm send the letter by certified mail.*

*\*\*NOTE: From a malpractice avoidance standpoint, it is preferable not to tell a potential client they don't have a case unless you are certain that, regardless of the facts that might be discovered, no cause of action exists.*

# DISENGAGEMENT LETTER

*Date*

Dear *Client Name*:

When you engaged me [my firm] to represent you concerning **[describe matter]** you signed **[a fee agreement] [an engagement letter]** under the terms of which you agreed to pay for my [our] services and the costs and disbursements advanced or incurred on your behalf. At the present time, our records reflect that you have not paid our invoices in a timely manner as required by our agreement.

Our records reflect that you have paid **[state amount]**, leaving a balance of **[state amount]**, which is now past due. Because of the apparent breakdown in our professional relationship, you will find enclosed a copy of a Motion to Withdraw as Counsel, which I intend to file. I would like to continue to represent you, but I cannot do so if we cannot make acceptable financial arrangements immediately. If you do not contact me by **[specify date]** to make arrangements for the payment of the outstanding balance and the charges for future services, I will file the motion with the Court and will consider my representation of you at an end.

Please remember that your case must be handled in a timely manner, whether by me, by you, or by another attorney. If you fail to act promptly you may **[be barred from pursuing your claim.] [have a judgement taken against you for failure to defend your position.]**

If you don't elect to bring your balance current and make arrangements for the payment of future services, you may contact our office to make arrangements for the return of your file. I will be happy to give it directly to you or forward it to a new attorney as you direct. It is our policy to maintain our copy of a file such as yours for **[specify number]** years, after which it will be destroyed. I look forward to hearing from you by **[specify same date as in paragraph 2 above]** to resolve this problem.

Yours very truly,

*Attorney Name*



## **ADDITIONAL COMMUNICATIONS**

In many instances, client dissatisfaction and client complaints to local grievance committees or the Alabama State Bar result from the failure of the attorney to adequately communicate with the client during the course of the representation. This can include failure to obtain client consent and follow client instructions but, as often as not, may merely result from the attorney's failure to keep the client informed of the progress of the matter or to explain in general terms how the legal process works and to adequately advise the client of how long the case will take and what to expect during that time.

The legal work may be executed flawlessly but if you don't keep in touch with the client he or she will not be happy with the representation, and will not call you to handle their next legal matter. Remember, a case may be only one of many for you, but it is probably the only one the client is worrying about. And he or she is worrying about it a lot.

Even if there is no news to report, and often there is not, a status report lets the client know that you have not lost the file, that the case is important to you, and that you are doing everything possible to move the case forward to resolution as quickly as possible under the circumstances. It also motivates you to get something done on the file. By the same token, monthly statements, even if not much work has been done, serve to keep the client apprised of progress on the matter and also help prevent the client from being shocked by a large bill, representing months of work, at the conclusion of the matter.

The following letters will help you to keep in touch with your clients and provide them with needed information, with a minimum of effort on your part.

## SUBSEQUENT APPOINTMENT CONFIRMATION

*Date*

Dear *Client Name*:

This will confirm your appointment to meet with me in our office on *[date]* at *[time]*. The purpose of our meeting will be *[specify purpose of meeting]*. Please bring *[specify documents, pictures, etc.]* with you when you come.

Please be prepared to spend *[specify time range that you expect meeting to last, e.g., thirty minutes, two hours]*. *[If necessary, indicate that it will be inappropriate for the client to bring his/her children, and suggest that appropriate baby-sitting plans be made ahead of time.]*

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

Very truly yours,

*Attorney Name*

## MONTHLY STATUS LETTER

*Date*

Dear *Client Name*:

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 if you have questions or for more detailed information concerning the progress of your case.

Since our last meeting on *[date]*, the following things have happened:

***[Specify court appearances, discovery, motions filed, etc. Also indicate what actions need to be taken next, and what, if any, help you need from the client.]***

I have enclosed copies of all 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,

***Attorney Name***

Enclosure

## DEPOSITION SCHEDULING LETTER

*Date*

Dear *Client Name*:

Your deposition has been scheduled for *[date]* at *[time]* at *[place]*. A deposition is an opportunity for the opposing attorney to place you under oath and ask you questions about your case.

In order to help you prepare to have your deposition taken, I would like to meet with you at *[time and place]* to discuss what happens during a deposition generally, answer any questions you may have concerning this step in your legal matter, and to discuss specific questions you can expect to be asked during your deposition. ***Please contact my secretary to confirm that you will be able to meet with me at this time or to schedule an alternative time.*** Then carefully review the enclosed Deposition Instructions before we meet, and be prepared to ask me any questions you have concerning having your deposition taken.

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

Very truly yours,

*Attorney Name*

Enclosure

## DEPOSITION INSTRUCTIONS

***[Note: Some of the advice provided below is applicable primarily in personal injury cases. You may wish to tailor these instructions to suit particular types of cases.]***

Under the law, the other lawyer has a right to conduct “discovery” to learn as much as possible about the claims you are making in your law suit. A deposition is one of the methods of discovery. When you have your deposition taken, you will be sworn to tell the truth and the lawyer or lawyers for the other side 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. After the deposition is over, the court reporter will type out all the questions and answers, and both your lawyer and the other lawyer will receive copies. The original may be filed with the court clerk.

If your case goes to trial, your deposition may be used in court, particularly by the other lawyer while cross-examining you, if your testimony at trial is different from your testimony at the time of the deposition. The lawyer will want to show 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 will be helpful if you try to refresh your recollection before you have your deposition taken.

During the deposition the other lawyer may ask you questions that seem as if they are none of his/her business and that may not be admissible in court. This is because the courts allow “discovery” in these depositions, and the lawyer may ask you for “hearsay” 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 a 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:**

Your 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 other persons in the room. You want to make as good an impression on the day of your deposition as you will make in court. 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 intentionally 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 a question, ask the other lawyer to rephrase it so that you do understand it, 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 remember. No one can remember every small detail. 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 TRUTHFULLY ONLY THE QUESTION ASKED.

--STOP!

Do not volunteer anything. Give a full and complete answer to the question asked, but do not anticipate the question being asked or attempt to answer any other question which may be implied. 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 or become upset. He or she may be trying to confuse you, or make you angry so that you will

forget these instructions. We will be there with you and will make certain that 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,” because a nod of your head cannot be recorded by the court reporter who will be making a written record of your testimony. If you become excessively tired or are in pain, please let us know so that we take a short break.

**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 they 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. Clothing which is appropriate for a business meeting or church is usually appropriate for a deposition or court appearance.
2. Treat all persons in the deposition room with respect. Consider this an important and solemn occasion.
3. Come prepared to show any and all injuries which you have suffered.
4. Have with you the facts and figures about your time lost from work, amount of wages lost, doctor bills, hospital bills and all other facts about the losses caused by 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, clearly, and loud enough for everyone in the room to hear your answers.
9. Answer all questions directly, giving concise answers to only the question asked, and then STOP TALKING.
10. NEVER VOLUNTEER any information. Wait until the question is asked, think to make sure you understand it, 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 the answer to a question, 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 you don't really know about. It is VERY IMPORTANT that you be HONEST and STRAIGHT-FORWARD 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 are sure you 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 your answer immediately, and we will instruct you after we object whether 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 deposition you keep in mind the suggestions we have made, you will be taking a great stride toward successful completion of your lawsuit.

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, we have defined them for you here, 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.
COMPLAINT:	The paper filed in court by the plaintiff's lawyers stating how, when, and by whom the plaintiff was injured, and what relief or recovery the plaintiff is seeking.
DAMAGES:	The loss, in money, that the plaintiff claims he or she should be awarded for his/her injury. 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 the court.
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 ruling made by the judge, which ends a part, or all, of a lawsuit.
LEGAL ASSISTANT:	A person on an attorney's staff who has taken classes in the 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 the court to be placed in the court's file.

PARALEGAL:	See LEGAL ASSISTANT
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 Alabama, this date is usually <b>two years</b> from the exact date of the injury. There are some exceptions to this law which may allow the filing more than two years after the actual date of the injury, such as cases in which the injury cannot be discovered until later. Always consult an attorney <b>immediately</b> if you believe that you have a claim. You may have <b>less</b> time than you think to bring your case in court for certain types of claims, so <b>never delay</b> .

## COURT APPEARANCE OR HEARING LETTER

*Date*

Re: *Matter Description and Case Number*

Dear *Client Name*:

Your case has been set for jury trial on *[date]* at *[time]* in the county courthouse, located at *[address or other location description]*. Your case is before Judge *[name]* in Courtroom *[number or other description]*. Please put this date on your calendar immediately.

***[Specify when and where you want the client to meet you on the day of trial, such as your office or at the courthouse. If parking is a problem, give the client suggestions about where to park.]*** Please keep this letter so that you can refer back to it to know where to go on the day of trial and what time to be there.

You can expect the trial to last for up to ***[specify the longest length of time you think the trial will last.]*** You must be present for the entire length of the trial, so you should act immediately to make arrangements to be off from work, for child care, and for any other things that you would normally be obligated to do during this period. I will contact you well in advance of the trial date to set up an appointment for our final pre-trial preparation. If you have any questions in the meantime, please feel free to call.

Very truly yours,

*Attorney Name*

## FILE CLOSING & PURGING PROCEDURES

The Alabama Rules of Professional Conduct do not contain any specific regulations regarding the length of time files must be retained or the method by which they must be disposed of. While there is no obligation to preserve client files forever, your clients and former clients reasonably expect that you will not prematurely or carelessly destroy any of the valuable or useful information in their files. Likewise, they reasonably expect that when you do dispose of their files it will not be in a manner that results in the release of confidential information. Disposition of instruments from a file depends on the specific nature of the instruments and the particular circumstances of a given factual situation.

The best approach is to include information about your file retention and destruction procedures in your engagement letter or employment contract. This will let the client know up front when to expect to receive the contents of the file. Then, when closing a file at the conclusion of the representation, you should make immediate contact with each affected client to determine at once whether the client wants the file returned. This is the most convenient time to resolve this issue because you should be able to easily contact the client, and you can incorporate this process into your file closing procedure. If you fail to address the issue in your engagement letter or to contact the client about file disposition at the end of the representation, you will have to do so later, when contacting the client will probably be much more difficult, time consuming, and expensive.

As soon as a matter is completed, the file should be stripped. The responsible attorney should review it and place everything of value at the front or otherwise mark these items to make certain that they are not accidentally destroyed when the file is later purged and finally disposed of. Stripping also involves the removal of all extraneous material such as pads, pencils, and clips, and the removal and destruction of multiple identical copies of documents. Some firms remove message slips, drafts of briefs, case lists and copies of cases, and other materials of this sort at this time. Whether or not you remove an item at the conclusion of the case should turn on whether or not you reasonably anticipate that either the client might need it at a later date or you might need to produce it for your own protection.

If the client wishes for the file to be returned at the conclusion of the matter, you should copy it before releasing it, and retain the copy for a reasonable period of time, for both your own protection and that of the client. If the client does not want the file returned, you should document that fact and diary the file, in accordance with your firm's file retention policy, for final review and disposition on a date certain. *If you did not resolve the issue of return of the file at the conclusion of the case, you must attempt to contact the client prior to the destruction of a file which has been stored for an extended period of time.*

**The General Counsel has established minimum guidelines for file retention and destruction, and they are found in Formal Opinion No. RO-93-10. A copy of this opinion is available from the Office of the General Counsel or at the Bar's web site at [www.alabar.org](http://www.alabar.org). Although the major points of the opinion, and some additional suggestions, are contained herein, you must contact the Office of the General**

**Counsel if you wish to obtain an informal opinion, which you may later rely on, regarding a specific fact situation.**

- With respect to storage, files may be stored in any facility in which their confidential integrity is maintained. This may be in the lawyer or law firm's office or at some secure off-site location.
- Any medium that preserves the integrity of the documents in the file, whether by maintaining the original paper file, microfilming the file, or by electronically scanning the file, is appropriate.
- When reviewing files to be closed, the contents should be segregated into the following categories:
  - Documents which are clearly the property of the client and which may be of some intrinsic value, whether delivered to the lawyer by the client or prepared by the lawyer for the client. Examples would be wills, promissory notes, deeds, bills-of-sale, children's birth certificates, etc.
  - Documents which have been delivered to the lawyer by the client and which the client would normally expect to be returned. Examples would be original tax returns, bank statements or other original financial or business records.
  - Documents from any source which may be of some future value to the client because of some future development that may or may not occur.
  - Documents which do not fall into any of the other categories. Examples would be phone message records, drafts of briefs or pleadings, copies of cases, etc.
- If the client does not want the file at the conclusion of the representation, those documents which fall into the first category above should be retained for an indefinite period of time or, preferably, should be recorded or deposited with a court, if appropriate.
- Those documents falling into the second and third categories should be retained for a reasonable period of time, at the end of which, if you do not have an agreement with the client to the contrary, reasonable attempts should be made to contact the client and deliver the documents to him or her. Reasonable attempts to locate a client can, and often do, involve certified mail and newspaper notice.
- Documents which fall into the fourth category can normally be destroyed unless you feel that there is some good reason to retain them, either for the client's protection or your own.
- There is no specific length of time which constitutes a reasonable retention period for all files. It depends on the nature of the documents in the file and the attendant

circumstances. The length of time is more a matter of the specifics of the case and the lawyer or firm's policy rather than any external requirement. Certain types of files may need to be retained for longer periods of time than others. In establishing a policy on retention, remember that the statute of limitations under the Alabama Legal Services Liability Act is two years. The statute for filing formal charges in Bar discipline matters is six years. Thought should also be given to the nature of the underlying matter, and what constitutes a reasonable length of time to retain a file in that type of case. What are the chances that the matter will be re-opened at a later date, and what are the client's reasonable expectations?

- Absent unusual circumstances, it is the Disciplinary Commission's view that six years is a reasonable time to maintain a file after the case is completed, although certain types of matters, such as those which deal with the rights of minors, may call for longer file retention times. The following are some suggestions to consider when establishing your minimum retention periods for particular types of files:
  - IRS Records - Retain for seven years. IRS Regulations give six years to pursue any omission of more than 25% of income. Add one year for cushion. Clients should be advised to keep tax returns permanently.
  - Estate Planning - Retain until death of the client plus probate period.
  - Probate - Retain until the estate is settled and all IRS audit periods have passed. Remember to consider statutes which may be based on fiduciary duties.
  - Criminal - Retain until all appeals and post-conviction relief time periods, including habeas corpus, have expired.
  - Divorce - Retain until all designated time periods for support or performance of any terms under court order or settlement agreement have expired. Be sure to consider the dates children reach majority, potential post majority support situations, and retirement issues.
  - Personal Injury - Retain until plaintiff is paid in full or all sources of recovery have been exhausted and payments (including liens) have been fully resolved. Be sure to consider special circumstances, such as rights of minors after reaching majority.
  - Real Estate and Commercial Transactions - Consider potential for future activity, such as exercise of options, extension of leases, etc.
  - Administrative Cases - Many agencies have rules concerning disposition of files; check with the agency or review its regulations for the appropriate time period, and then add a reasonable cushion.

- Before destroying any file, it should always be reviewed again, just to be sure nothing has changed that would cause you to deviate from the schedule for final disposition. It is a good idea to have files microfilmed, microfiched, or scanned and stored on disc, if you feel that issues related to the file, or the client, may continue to arise. The cost to do so is relatively nominal, this reduces storage costs to almost nothing, and you never have to worry that you made a mistake in purging a file too soon.
- Always maintain a complete index of all files destroyed including the date on which they were destroyed. It can sometimes be helpful to maintain a list of items destroyed.
- For protection against claims that you destroyed a file to hide evidence of malpractice or misfeasance, never destroy a file except in strict conformance with your written file destruction policy.
- Remember that, even in the course of destruction, client confidentiality must be maintained. Use appropriate methods for file destruction, such as shredding or incineration.
- Trust account records should be maintained for a minimum of six years.



## FILE CLOSING LETTER

*Date*

Re: *[Matter Description and Case Number]*

Dear *Client Name*:

Thank you for allowing our firm to represent you in this matter. Your case is now concluded and we are closing our file.

We are returning with this letter 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 the file, please let us know as soon as possible. If we do not hear from you within 30 days, we will assume that you do not want the file or any of its contents. We will retain the file for a period of *[specify number]* years. At the end of that time we will destroy the file in accordance with our file destruction policy.

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 satisfaction 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,

*Attorney Name*

Enclosure

# CLIENT SATISFACTION SURVEY

How did you find out about our firm?

- Knew attorney personally
- Referred by someone
- Advertisement in: \_\_\_\_\_
- Other: \_\_\_\_\_

Why did you select our firm?

- Convenient location
- Firm/lawyer reputation
- Personal/business relationship with lawyer or staff
- Other: \_\_\_\_\_

	Yes	No
Did our staff greet you courteously... when you called?	X	X
when you came into the office?	X	X
Were your phone calls returned promptly?	X	X
Did the attorney handling the case fully explain what the firm would do for you?	X	X
Do you feel the legal fees you were charged were fair for the services provided?	X	X
Did you receive regular bills for your case?	X	X
Did you receive regular status reports for your case?	X	X
Do you feel you met with your attorney as often as needed?	X	X
Was your contact with support staff satisfactory?	X	X
Do you feel your attorney cared about your case?	X	X
Overall, were you satisfied with the legal services you received?	X	X
If you were to need legal services again, would you call our firm?	X	X
If a friend were to need an attorney, would you recommend us?	X	X

Please give us any comments or suggestions you think will help us improve our delivery of legal services in the future. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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