

ETHICAL ISSUES IN ENGAGEMENT LETTERS

By Joe Weinstein and John Reed

Anchorage
Bellevue
Los Angeles

New York
Portland
San Francisco

Seattle
Shanghai
Washington, D.C.



Who is the Client? (DWT Engagement Letter, Page 1)

[The sending of an Engagement Letter is required within two weeks of client acceptance (Central Records Section of Office Manual). Please send the Records Auditor a copy of the engagement letter you send to the client. Other sample forms are available for new clients, pro bono, and contingent work.]

November 9, 2010

Dear :

Thank you for selecting Davis Wright Tremaine LLP to represent you in your legal matters. This letter confirms our representation of you.

Scope of Representation

We understand that we will be representing you in connection . Based on our discussions to date, we expect that our services will include: *[more specific description of anticipated legal services]*.

Who is the Client?

(DWT Standard Terms, Page 1)

Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

It is our policy that our client is the person or entity that is identified in our engagement letter and does not include any affiliates or constituents of such person or entity (i.e., if you are a corporation or partnership, any parents, subsidiaries, employees, officers, directors, shareholders or partners of the corporation or partnership, or commonly owned corporations or partnerships; or, if you are a trade association, any members of the trade association).

Accordingly, for conflict of interest purposes, we may represent another client with interests adverse to any such affiliate or constituent without notifying you or obtaining your consent.

Consent to Electronic Communications

In order to increase our efficiency and responsiveness, we intend to use state of the art communication devices (e.g. email, document transfer by computer, wireless telephones, facsimile transfer and other devices which may develop in the future). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe that the efficiencies involved in the use of these devices outweigh the risk of accidental disclosure. By agreeing to these terms you consent to the use of these electronic communication devices.

Who is the Client? (nonstandard engagement letter)

- It is XXXX's policy that, notwithstanding ABA Ethics Opinion 95-390 (January 25, 1995), outside counsel's representation of XXXX includes XXXX Financial, Inc. and each of its subsidiaries and affiliates such that a conflict with any subsidiary is deemed a conflict with the parent, and vice versa. In transactional matters, consents will ordinarily be approved where it is clear that XXXX's interests will not be impaired. In litigation matters, XXXX will not consent to adverse representation except in the most unusual circumstances. Under any circumstances, the primary consideration in granting a consent will be a reasonable belief that the dual representation will not adversely affect outside counsel's duty of loyalty to the Company. Consents will be granted on a case-specific basis; subject matter or prospective consents will rarely be granted.

Who is the Client? (nonstandard engagement letter)

- It is the responsibility of Company X Law and Corporate Affairs Department to provide high quality and cost-effective legal representation and advice to Company X management. This task includes the selection and retention of outside counsel when necessary. Only the Law and Corporate Affairs Department has authority to retain outside counsel on behalf of Company X. When your firm is retained, a Company X attorney will be identified as the managing attorney for each case. **Except with the prior approval of the managing attorney, you and your firm should communicate only with the managing attorney about the project. The managing attorney will, in turn, communicate directly with the internal Company X client. The purpose of this is to ensure that we render consistent and cost-effective advice to our clients.** Legal work performed on projects should be reviewed in advance with the managing attorney, with particular attention focused on the scope of work, level of effort required, and the personnel and other resources needed to complete the matter. The managing attorney should be copied on all correspondence, research, pleadings and other important documents.

Scope of Work (DWT Engagement Letter, Page 1)

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Duration of Engagement (DWT Standard Terms, Page 5)

Termination; Retention and Disposition of Documents

You may terminate our representation at any time, with or without cause. Our right or obligation to terminate our representation is subject to the rules or codes of professional responsibility for the applicable jurisdiction in which we practice, which list several types of conduct or circumstances that require or permit us to withdraw from a representation, including, for example, nonpayment of fees or costs, misrepresentation or failure to disclose material facts, failure to cooperate, action contrary to our advice and conflict of interest with another client. We will try to identify in advance and discuss with you any situation which may lead to our withdrawal and if we decide to withdraw, we usually give written notice of our withdrawal.

It is our policy that, unless previously terminated by you or us, the attorney-client relationship will be considered terminated upon our sending you our final statement for any services that you have retained us to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be revived subject to these terms of engagement, as they may be supplemented at that time.

Advance Consent (DWT Standard Terms, Page 2)

Consent Relating to Future Adverse Representation on Unrelated Matters

As you are aware, our firm represents many other companies and individuals. It is possible that one or more of our present or future clients will have disputes or transactions with you during the course of our representation of you. You agree that we may represent any existing or new clients in any matter, including litigation, that is not substantially related to our work for you, even if the interests of such clients in those matters are directly adverse to you. We agree, however, that your prospective consent to conflicting representation set forth in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained confidential information that, if known to our other client, could be used in the matter adverse to you and your material disadvantage and we have not taken, or are unable to take, adequate steps to screen such information from the lawyers representing the other client in the matter adverse to you.

Who Will Provide the Legal Services

Customarily, each client of the firm is served by a principal attorney contact. The principal attorney should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal attorney at any time. Subject to the supervisory role of the principal attorney, your work or parts of it may be performed by other lawyers and legal assistants in the firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area, or lawyers who are licensed in a state in which a particular issue arises, or for the purpose of providing services on an efficient and timely basis. Whenever practicable, we will advise you of the names of those attorneys and legal assistants who work on your matters.

Advance Consent (nonstandard engagement letter)

Prospective Waivers. XXX does not make a practice of providing blanket or prospective waivers and rarely will make an exception to this practice.

Representing Significant Competitors (nonstandard engagement letter)

- XXXX may conclude that an actual conflict of interest exists if Outside Counsel or Outside Counsel's law firm represents a significant competitor of XXXX or its subsidiaries or affiliates. A list of XXXX's principal subsidiaries is attached as Exhibit D. As a pre-condition of engagement, Outside Counsel must disclose in writing the identity of any national or regional _____ or any significant competitors of XXXX or its subsidiaries or affiliates (see Exhibit E for examples) that the Outside Counsel firm represents, together with a general description of the type of legal services that the Outside Counsel firm provides to such client(s). If Outside Counsel concludes that it would be improper to provide this information to the Company, Outside Counsel should decline the engagement.

Ownership of Files; Document Mgmt Policy (DWT Standard Terms, Page 6)

Upon your request after the earlier of the termination of the attorney-client relationship or conclusion of the matter, we will return to you any original documents and other property you provided to the firm in connection with the matter. If you do not request your documents, unless you make written arrangements with us to the contrary (such as to retain your original will or other documents in our vault or otherwise), we reserve the right to destroy or otherwise dispose of them for various reasons, including the minimization of unnecessary storage expenses, or for no reason, without further notice to you at any time after ten years following the date of the final invoice to you with respect to the matter.

The remainder of the file pertaining to the matter will be retained by the firm and will remain its property. If, upon your request, we agree to provide you with copies of certain documents from our file pertaining to the matter, you agree to pay the copying costs.

You agree that for various reasons, including the minimization of unnecessary storage expenses, or for no reason, we may destroy or otherwise dispose of the firm's file pertaining to the matter at any time after ten years following the date of the final invoice to you with respect to the matter.

Ownership of Files (nonstandard engagement letter)

- All materials, in whatever form, generated or prepared in the course of representing XXX and all copyrights therein shall belong to XXX, and should be given proper attention to their confidentiality.

Indemnification and Release (nonstandard engagement letter)

- Contractor shall defend, indemnify and hold _____, its officers and directors, employees and Clients harmless from and against any and all claims, demands, causes of action, suits and other litigation and related damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from the services performed or failed to be performed by Contractor or anyone for whose acts Contractor may be liable. Contractor shall reimburse _____ for all expenses, including but not limited to attorney's fees, paid or otherwise incurred to enforce the provisions of this paragraph if either Contractor or Contractor's insurer refuses to so defend, indemnify or hold _____ harmless as provided above.

Hourly Rates (nonstandard engagement letter)

- As previously stated, XXXX is committed to fee arrangements other than hourly billing, including fixed fees and fee caps. However, if hourly rates or alternative fee arrangements based on hourly rates such as discounted hourly rates or blended hourly rates are agreed upon for a particular matter, your firm's charges should be based on 0.1 (or 0.25, if agreed in advance) increments of the hourly rate applicable to each professional working on a matter. You must provide to the lead inside counsel at the time of the engagement a schedule showing the firm's standard hourly billing rate and any agreed upon discounted billing rate for each timekeeper assigned to the engagement. Once agreed to, these billing rates remain in effect for the duration of the engagement unless XXXX approves a rate change. Rates are not to be increased without consultation with the lead inside counsel at least 30 days in advance of the proposed effective date. For the avoidance of doubt, unless an express exception is granted by the lead inside counsel or the XXXX Relationship Partner, rates shall not increase for the duration of any engagement with respect to any timekeeper due to (i) a change in calendar/fiscal year; and /or (ii) a change in the applicable class year designation or other classification of a timekeeper. Preferred provider firms may be subject to different requirements pursuant to their respective master engagement letters. XXXX reserves the right to withhold payment of fees based on incurred hourly rates unless notice has been given and approval obtained. In this regard, XXXX will maintain a record of its firm's rates and will not allow more than one increase in any two year period absent written approval from the Company.

Confidentiality (nonstandard engagement letter)

- During the course of any engagement, it is expected that outside counsel (and people related, retained or affiliated with outside counsel) will receive confidential or proprietary information about XXXX or its clients and customers. Accordingly, all XXXX matters must be treated as strictly confidential absent contrary instruction from the lead inside counsel. Outside counsel are reminded of their confidentiality obligations under, for example, ABA Model Rule of Professional Conduct 1.6 and must act accordingly. Prior to disclosing any information obtained during outside counsel's representation of XXXX, outside counsel must secure approval from lead inside counsel, or the XXXX Relationship Partner, which may be withheld in XXXX's sole and absolute discretion. This shall include identifying XXXX to third parties as a client or former client and disclosure of any XXXX representation, past or present, in any seminar, speech or discussion with third parties.