

# WILLAMETTE VALLEY INN OF COURT

## September 2009

### Selecting and Interviewing Clients

Lawyers by definition are highly trained and educated professionals. In law school we spend three years learning the substantive and procedural elements of our craft. We learn about contracts, torts, criminal law and even trusts and property law. While few would claim to be expert trial lawyers, many new lawyers are also quite competent at conducting jury trials, given sufficient time to prepare.

Unfortunately, most of us enter into private practice without any training on how to manage the attorney-client relationship beyond the technical requirements of the Rules of Ethical Conduct. Yet, our success as business people and professionals depends primarily on how well we relate to clients and meet their needs in ways they perceive as beneficial. Tonight's program focuses on three aspects of the attorney-client relationship. Three video scenes introduce the topics of initial client interviews and screenings, multiple client conflicts and lawyer referrals.

The following written materials provide a legal and ethical framework for our discussion. Attached are the following items:

1. Client interview checklist
2. Client introduction letter
3. Client termination letter
4. ORPC 1.7 and ORPC 1.5

However, this program is designed to go beyond simply applying ethical rules to hypothetical fact patterns. Instead, we want the Inn members themselves to share their insights into proper client counseling and screening. For example, what information do you want to obtain from a client at the initial meeting? How do you bring up the issue of fees and retainer amounts? When is it appropriate to decline case, and how to you properly decline a case? How do you properly manage clients' expectations regarding their case and your services?

Instead of providing a separate panel of experts, we decided that the Inn would be our experts. The written materials are sparse because we want to focus on practical and real world examples of lawyers dealing with clients.

## **STEP ONE: PREPARATION**

- Research the Law
- Hypothesize about the situation
- Talk to other lawyers
- Arrange where to meet

## **STEP TWO: ICE-BREAKING**

- Greet the client
- Briefly obtain client's background information & make client feel comfortable
- Act as if in an office environment
- Briefly discuss confidentiality & fee schedule

## **STEP THREE: PRELIMINARY PROBLEM IDENTIFICATION**

Attorney provides structural guides

Four topics:

- (1) Client's story
- (2) Client's objectives
- (3) Client's ideas to achieve objectives
- (4) Client's legal and non-legal concerns

## **STEP FOUR: INFORMATION GATHERING**

- Theory of development
- Timeline development
- Converting legal theories to potential evidence
- Effective use of questioning techniques: open-ended, then more focused
- Verification of problem

## **STEP FIVE: TENTATIVE DIAGNOSIS**

- Overview of client's problem and possible solutions/courses of action
- Assessment of time
- Assessment of costs

## **STEP SIX: CLOSURE**

- Confirm scope of representation
- Address client's questions and concerns
- Review client's next steps
- Review attorneys' next steps

*\*Caveat: This is merely a brief checklist for your benefit. There are many resources for learning interviewing and counseling techniques.*

# ENGAGEMENT LETTER

*(Sample – Modify as appropriate)*

Re: [Subject]

Dear [Name]:

The purpose of this letter is to confirm, based on our conversation of [date], that [firm name] will represent you in [describe matter]. We will provide the following services: [list services to be provided].

Attached for your use is information on our billing and reporting procedures. Our fee is [dollar amount] per hour for services performed by lawyers of this firm and [dollar amount] per hour for services performed by our nonlawyer staff. You will also be billed for expenses and costs incurred on your behalf.

Our expectations of you are: [list any expectations concerning payment of bills, responses to requests for information, etc.].

This firm has not been engaged to provide the following services: [list services that are outside the scope of the representation].

I estimate that fees and expenses in this case will be [provide a realistic, worst-case estimate of fees and expenses]. Please keep in mind that this is only an estimate and that, depending on the time required and the complexity of the action, actual fees and expenses may exceed this estimate. You will be billed for actual fees and expenses.

It is very difficult to accurately predict how long it will take to conclude your case. Generally, these cases take [provide a realistic, worst-case estimate of time to be spent on the case]. This is only an estimate, and the actual time required to conclude this matter may be greater than expected.

I have enclosed a copy of the initial interview form. If any of the information on this form is incorrect, please notify [primary contact] immediately. If you have any questions about this information, please call [primary contact].

My goal is to provide you with conscientious, competent, and diligent legal services. However, I cannot achieve this goal without your cooperation. This includes keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making payments as required. It is also important that you promptly notify me of any change of address or telephone number so I will always be able to reach you. In addition, I may suggest that we consult with another attorney about issues in your case. Before I do this, I will discuss the issue with you and ask you to decide whether you want to retain the attorney as a consulting attorney on the case.

I also want to protect your interests in the event of my unexpected death, disability, impairment, or incapacity. To accomplish this, I have arranged with another attorney to assist with closing my practice in the event of my death, disability, impairment, or incapacity. In such event, my office staff or the assisting attorney will contact you and provide you with information about how to proceed.

I will send you pleadings, documents, correspondence, and other information throughout the case. These copies will be your file copies. I will also keep the information in a file in my office. The file in my office will be my file. Please bring your file to all our meetings so that we both have all the necessary information available to us. When I have completed all the legal work necessary for your case, I will close my file and return original documents to you. I will then store the file for approximately 10 years. I will destroy the file after that period of time unless you instruct me in writing now to keep it longer.

I have included a copy of this letter for you to review, sign, and return to me. If any of the information in the letter is not consistent with your understanding of our agreement, please contact me before signing the letter. Otherwise, please sign the enclosed copy and return it to me.

On behalf of the firm, we appreciate the opportunity to represent you in this matter. If you have any questions, please feel free to call.

Very truly yours,

[Attorney]  
[Firm]

I have read this letter and consent to it.

\_\_\_\_\_  
[Client]

\_\_\_\_\_  
[Date]

Enclosures

*[NOTE: This is a sample form only. Use of this letter will help to establish clear expectations and avoid misunderstandings between you and your client. It will not, however, provide absolute protection against a malpractice action.]*

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**ENGAGEMENT LETTER**  
**EXISTING CLIENT WITH NEW MATTER**  
*(Sample — Modify as appropriate)*

Re: [Subject]

Dear [Name]:

The purpose of this letter is to confirm, based on our conversation of [date], that [firm name] will represent you in [describe matter]. We appreciate your continued business and the trust you have placed in [firm name.]

We will handle this matter [in accordance with our normal fee structure and billing procedures] or [for a fee of [dollars per hour] for services performed by lawyers of this firm and [dollars per hour] for services performed by our non-lawyer staff. You will also be billed for expenses and costs incurred on your behalf.] All other aspects of our most current engagement letter will remain in effect.

I have included a copy of this letter for you to review, sign, and return to me. If any of the information in this letter is not consistent with your understanding of our agreement, please contact me before signing the letter. Otherwise, please sign the enclosed copy and return it to me.

On behalf of the firm, I would like to thank you for the opportunity to represent you in this matter. If you have any questions, please feel free to call.

Very truly yours,

[Attorney]  
[Firm]

I have read this letter and consent to it.

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[Client]

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[Date]

Enclosure

*[NOTE: This is a sample form only and presumes the existence of a detailed underlying engagement letter between lawyer and client. Use of this letter will help to establish clear expectations and avoid misunderstandings between you and your client. It will not, however, provide absolute protection against a malpractice action.]*

**DISENGAGEMENT LETTER**  
**CLOSING LETTER**  
*(Sample – Modify as appropriate)*

Re: [Subject]

Dear [Name]:

Thank you for allowing us to represent you in the [describe] matter. To complete this matter, we will [outline any final matters you will take care of]. In addition, you will need to [outline everything the client is responsible for at this time].

Since this case is now closed, we suggest that you keep all information relating to the matter in a safe place where you can easily locate it. We are closing our file, and we are returning your original [records, documents] related to your case. As we discussed in our initial interview, we will store your file for 10 years from now. The file will then be destroyed unless you request that we store it longer. If you wish us to store the file for a longer period of time, you must instruct us to do so in writing, within five days of the date of this letter.

We hope this matter has been concluded to your satisfaction. We would appreciate it if you would fill out and return the enclosed Client Service Questionnaire. The information you provide will help us improve our services.

Thank you for allowing us to represent you in this matter. If we can be of further assistance on this or any other matter, please let us know.

Very truly yours,

[Attorney]  
[Firm]

ENC.: Client Service Questionnaire

\*Include language about file destruction in the engagement letter and again in the disengagement letter. This gives the client an opportunity to grant permission to destroy the file when the client has full knowledge of the case.

[NOTE: This is a sample form only. Use of this letter will help to establish clear expectations and avoid misunderstandings between you and your client. It will not, however, provide absolute protection against a malpractice action.]

(c) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## CLIENT-LAWYER RELATIONSHIP

### Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

### Rule 1.3 Diligence

A lawyer shall not neglect a legal matter entrusted to the lawyer.

### Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### Rule 1.5 Fees

(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(c) A lawyer shall not enter into an arrangement for, charge or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or

(2) a contingent fee for representing a defendant in a criminal case.

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

- (1) the client gives informed consent to the fact that there will be a division of fees, and
- (2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.

(e) Paragraph (d) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments to a selling lawyer for the sale of a law practice pursuant to Rule 1.17.

### Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
- (2) to prevent reasonably certain death or substantial bodily harm;
- (3) to secure legal advice about the lawyer's compliance with these Rules;
- (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (5) to comply with other law, court order, or as permitted by these Rules; or
- (6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

### Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer

shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

### Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) While representing a client in connection with contemplated or pending litigation, a lawyer