



The State Bar of California

SAMPLE WRITTEN FEE AGREEMENTS FORMS INSTRUCTIONS AND COMMENTS

I. INTRODUCTION

The Committee on Mandatory Fee Arbitration of the State Bar has prepared three sample attorney client fee agreements which the Board of Trustees has approved. They are advisory only, are not required, and are not binding on the Courts, the State Bar of California, the Board of Trustees, any persons or tribunals charged with regulatory responsibility or any members of the State Bar.

The three attached agreements are: (1) an hourly litigation agreement (2) an hourly non-litigation agreement and (3) a contingency fee agreement. There is another document entitled "Optional Clauses and Disclosure Forms" which lists optional provisions and disclosure forms which an attorney may need to consider in certain situations.

II. OVERVIEW

A. Intended Purpose and Limitations

Attorneys who are admitted to practice in California may use the attached sample agreements but should also use their own independent legal and business judgment when creating their attorney-client fee agreement. The samples are prepared in a formal contract style but the provisions can be incorporated into a letter fee agreement if the attorney chooses to use that format. Attorneys are encouraged to modify the samples to fit their needs, provided such modifications do not conflict with Business and Professions Code sections 6146 et seq. or the Rules of Professional Conduct.

B. Summary of Statutes and Rules of Professional Conduct

- Non-Contingent Fee Agreements—Business and Professions Code Section 6148

Business and Professions Code section 6148 governs non-contingent fee agreements. It requires attorneys to have a written agreement whenever it is reasonably foreseeable that the client's total expense, including attorneys' fees, will exceed \$1,000. A written fee agreement is not required when services are rendered in an emergency to avoid prejudice to the client or where the writing is otherwise impractical, when the client is a corporation, when the client, after full disclosure, makes a written waiver of the benefits of section 6148, or when the fee agreement is implied in fact by prior services of the same general kind having been rendered to and paid for by the client.

The agreement must state: (a) any basis for compensation including, but not limited to hourly rates, statutory or flat fees and other standard, rates and charges; (b) the general nature of the legal services to be provided; and (c) the responsibilities of attorney and client under the agreement. The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

Section 6148(b) also requires attorneys to provide their clients with written bills. A client may request a bill at intervals of 30 days or greater. The attorney must provide the bill within 10 days after the demand. All bills must state the amount, rate and basis for calculation or other method of determining the attorney's fees and costs.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- **Contingent Fee Agreements—Business and Professions Code Section 6147**

Business and Professions Code section 6147 governs contingent fee agreements. It contains the same requirements as the Non-Contingent Fee Agreements discussed in the section above, and the following additional requirements:

- (a) A statement of the contingency fee percentage amount.
- (b) A statement as to how disbursements and costs will affect the contingency fee and the client's recovery.
- (c) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee agreement. This may include any amounts collected for the client by the attorney.
- (d) Unless the claim is subject to the provisions of Business and Professions Code section 6146 (Claim Against Health Care Provider) a statement that the fee is not set by law but is negotiable between the attorney and client.
- (e) If the claim is subject to section 6146, a statement that the rates set forth for that section are the maximum limits for the contingency fee and that the attorney and client may negotiate a lower rate.

The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.

Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.

- **Disclosure Concerning Professional Liability Insurance—California Rule of Professional Conduct 1.4.2**

California Rule of Professional Conduct (CRPC) 1.4.2 requires attorneys who know or reasonably should know that they do not have professional liability insurance to inform the client in writing

at the time the client hires the attorney that the attorney does not have professional liability insurance. The attorney must disclose he/she is not insured whenever it is foreseeable the representation will exceed four hours or when, during the course of representation, the attorney no longer carries professional liability insurance. In the sample agreements, there is a provision to disclose whether you have professional liability insurance or not.

III. INSTRUCTIONS FOR USE OF FORMS

A. Form No. 1: Hourly Litigation

- Conditions (Par. 1) and Effective Date (Par. 17)

Paragraph 1 (Conditions) and paragraph 17 (Effective Date) work together and outline various conditions which must be met before the fee agreement is binding on the parties. If the conditions are not met, the agreement may not take effect but the attorney may still be entitled to recover a reasonable fee. (Bus. & Prof. Code § 6148(a), 6148(c).)

- Scope of Services and Attorney's Duties (Par. 2) and Client's Duties (Par. 3)

The attorney should fill in a detailed description of the services to be provided. This may be a statutory requirement. (Bus. & Prof. Code § 6148(a)(2).) This paragraph excludes representation in an appeal, collection proceedings after judgment or proceedings regarding renewal of a judgment. It also provides that a separate written agreement is required for these services and any other services not provided in the description. Paragraph 3 lists all the duties the client must fulfill during the attorney-client relationship, which may be a statutory requirement. (Bus. & Prof. Code § 6148(a)(3).)

- Deposit (Par. 4)

Although a deposit is not required, if the attorney chooses to require a deposit, he or she should keep this clause in the agreement and fill in the amount of the initial deposit and the date it must be paid. Rule of Professional Conduct 1.15(a) requires that advances for fees, costs and expenses must be deposited into the attorney's client trust account. Since an attorney cannot withdraw funds from the trust account without the client's authorization, an authorization is included in this paragraph. There is also a recitation that the deposit is not an estimate of the total fees and costs to be charged.

When the initial deposit is exhausted, the provision permits the attorney to require a further deposit and the attorney should fill in the amount. Finally, in the "Optional Clauses" document there is a provision for a "Replenishing Deposit" which permits the attorney to require the client replenish the deposit each month.

- Legal Fees (Par. 5)

Since Business and Professions Code section 6148(a)(1) requires the attorney to list hourly rates, the attorney should fill in the rates for each attorney and the attorney's personnel. The

provision also states that rates are subject to change on 30 days written notice to the client. The attorney may withdraw from the representation if the client declines to pay the increased rate and if permitted under the California Rules of Professional Conduct. The paragraph also contains a list of various tasks for which an attorney may charge the client. The agreement provides for a minimum charge of one-tenth of an hour. This list may be modified.

- Costs and Other Charges (Par. 6); Other Fees and Costs (Par. 7)

In paragraph 6 there is a list of common costs and expenses in a litigation matter. The attorney can add to or delete from the list and should fill in the rates for certain charges to comply with the statute. (If applicable, Bus. & Prof. Code § 6148(b).) The provision also allows the attorney to hire experts and consultants and to obtain the client's consent before a certain amount is incurred. The attorney should fill in the amount in subparagraph (d).

Paragraph 7 describes the situation where the Court awards attorney's fees and costs to another party after trial or arbitration and states it is the obligation of the client to pay these fees and costs. It also recites the client understands that any award for attorney's fees to the client does not affect the amount of fees and costs the client owes the attorney under the fee agreement.

- Bills (Par. 8)

Paragraph 8 complies with the statute regarding billing requirements. (Bus. & Prof. Code § 6148(b).) The attorney should fill in when payment is due. It also highlights the client's obligation to review each bill and communicate any objections, questions or concerns so the issue can be resolved promptly.

- Client Approval for Settlement (Par. 9)

Paragraph 9 recites the client has the absolute right to accept or reject settlement and the attorney will not settle or compromise the client's claim without the client's consent.

- Discharge and Withdrawal (Par. 10)

California Rule of Professional Conduct 1.16 recites the circumstances in which an attorney can or must withdraw from the representation. Paragraph 10 lists these circumstances and whether the attorney may recover attorney fees and costs after withdrawal.

- Conclusion of Services (Par. 11)

This paragraph states that final payment is due on completion of the attorney services, when an attorney is discharged or withdraws. It also contains a description concerning return of the client's original file under CRPC 1.16(e)(1) and whether the file will be maintained or disposed of when the client does not request its return. The attorney should fill in the period the attorney will keep the file. If the client wants the file to be retained for a different period of

time, the provision requires that agreement to be in writing and specify who will bear the cost of storage.

- Disclaimer of Guarantee (Par. 12)

This paragraph states the attorney makes no guarantee about the outcome of the client's matter and any statements the attorney makes should not be construed as a guarantee. It also provides that any client deposit or attorney statements about fees and costs are not a limitation on fees or any guarantee they will not exceed the deposit or estimate. Since this is an important provision, the attorney and client should initial it acknowledging their understanding and agreement.

- No Tax Advice (Par. 14)

Since many documents an attorney prepares may have significant tax implications, this paragraph provides the attorney has not been retained to give tax advice and the client should consult with tax advisors regarding the matter. This paragraph should be deleted when the client hires the attorney to provide tax advice.

- Construction Clauses (Par. 15-18)

Paragraphs 15-18 are standard provisions concerning the construction of the agreement.

B. Form No. 2: Hourly Non-Litigation

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Hourly Non-Litigation Sample with the following exceptions:

- Scope of Services (Par. 2)

The references to litigation services are deleted.

- Client's Duties (Par. 3)

The references to legal proceedings are deleted.

- Deposit (Par. 4)

The references to trial and arbitration are deleted.

- Legal Fees (Par. 5)

The references to litigation fees are deleted.

- Costs and Other Charges (Par. 6)

The references to litigation costs are deleted.

- Other Costs and Fees (Par. 7)

The paragraph entitled “Other Costs and Fees” is deleted.

C. Form No. 3: Contingency

The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Contingent Fee Agreement with the following exceptions:

- Scope of Services (Par. 2)

This paragraph excludes the defense of the client in any matter and the representation of the client on a cross-complaint or cross-claim.

- Legal Fees (Par. 4)

This paragraph complies with the statutory requirements of Business and Professions Code section 6147, which governs contingent fee agreements. It also recites the attorney fee is based on the net recovery depending on the stage at which the settlement or judgment is reached. Since the amount of the fee is subject to negotiation, this provision can be changed. The optional clauses document contains other arrangements. The paragraph also addresses the situation where the Court orders another party to pay the client’s attorney’s fees and costs. It recites that the award is considered part of the client’s recovery. Finally, the paragraph lists thirteen (13) factors from Rule of Professional Conduct 1.5 that are considered when determining whether an attorney is entitled to a fee when the attorney fails to comply with the requirements of section 6147, when the attorney is discharged or when the attorneys withdraws with justifiable cause.

- Negotiability of Legal Fees (Par. 5)

Business and Professions Code section 6147 requires this provision.

- Costs and Litigation Expenses (Par. 6)

This paragraph requires the client to pay for the costs of litigation and lists various costs which can be charged. It also states that any award of fees and costs as a discovery or other sanction or under a contract or statute shall belong to the attorney. If the Court assesses monetary sanctions against the client for bad faith, this provision states the client must pay the sanction.

- Lien (Par. 10)

This paragraph provides the attorney has a lien on all claims that are the subject of the attorney’s representation. While under current law an attorney’s lien in a contingency fee agreement (in contrast to an hourly engagement or a combination of hourly and contingency) is not an adverse interest as defined in Rule of Professional Conduct 1.8.1, it is recommended that the paragraph recite the client may wish to seek the advice of an independent attorney before

agreeing to this provision. It is also recommended that both client and attorney should initial this paragraph to acknowledge their understanding.

IV. OPTIONAL CLAUSES AND DISCLOSURE FORMS

A. Optional Clauses

There are many additional clauses an attorney may include in the fee agreement. Below is a compilation of additional clauses which are all optional. In addition, there are several disclosure forms an attorney may need to consider included in this section.

1. Arbitration Clause

An attorney may want to consult the firm's malpractice insurance carrier regarding its position on arbitration and particular arbitration provisions, including any award of attorney's fees.

The suggested clause is appropriate for binding arbitration of all claims other than fee disputes which are subject to non-binding arbitration under Business and Professions Code sections 6200 et seq. The agreement provides for full disclosure to the client of the ramifications of those choices and the comparative advantages and disadvantages of other alternatives. This clause advises the client of the right to have an independent attorney review.

2. Mediation Clause

This is an optional clause. However, if used, Evidence Code section 1129(a) requires that attorneys provide written disclosure to the client regarding mediation confidentiality and that communications between the attorney and client made in preparation for the mediation, or during the mediation, are confidential and cannot be disclosed or used even if the client decides to sue attorney for malpractice because of something that happens during the mediation.

Under Business and Professions Code section 6200, a mediation option may be offered to the parties after the attorney or client files a request for fee arbitration with some local bar association or the State Bar fee arbitration programs.

The attorney may want to consider this in determining whether to include a pre-filing mediation clause such as the suggested clause.

3. Interest Clause

It is legally and ethically proper to charge interest on fees. If the attorney elects to do so, this clause provides appropriate language. Please keep in mind that interest, if charged, must be reasonable so as not to violate either the prohibition against unconscionable fees nor the usury provisions of the California Constitution. A periodic interest rate that does not exceed 10% per annum simple interest should not violate California's usury law. Generally, interest should

begin running only after a certain specified period, i.e., thirty, sixty or ninety days after the billing invoice is rendered, if not paid within that time.

4. Replenishing Deposit

This is an alternative to Par. 4 in Forms 1 and 2, and provides for an automatically replenishing deposit.

5. Attorneys' Fees

An attorneys' fees clause is permitted, except that attorneys' fees are not recoverable in fee arbitrations under Business and Professions Code sections 6200 et seq. Further, an attorney may not usually recover fees for representing him or herself. If this clause and an arbitration clause are both used, the attorney's fee provisions should be the same. Inclusion of this clause should be cleared with the attorney's malpractice insurance carrier.

6. Other Payor—Insurance

This clause may be used when an insurance company pays for some or all of the client's attorney fees. It also provides that if the insurance company refuses to pay the fees or only pays some of the fees, the client is still responsible for payment.

7. Flat Fee

This clause is a suggested alternative to Paragraph 5 (Legal Fees and Billing Practices) where the work is being performed on a fixed fee basis. Flat fees are governed by rules 1.5(e) and 1.15(b) of the Rules of Professional Conduct, which require certain written disclosures and acknowledgment by the client where a flat fee paid in advance of performing the services will be deposited into the lawyer or law firm's operating account instead of a client trust account.

8. Division of Contingency Fees

This clause is required under California Rule of Professional Conduct 1.5.1 if the attorney wants to associate another attorney who is not a member of his or her firm and will split the contingency fee with the other attorney. The associated attorney should sign the fee agreement or other writing acknowledging the fee division.

9. "Other Attorney"—Hourly

This clause is required under California Rule of Professional Conduct 1.5.1. This clause may be appropriate where the attorney contemplates working with another attorney who is not a partner, associate or shareholder of the attorney. Charging associate counsel fees as a cost in an hourly fee case is appropriate, but is a suspect practice in contingency fee litigation. Separate sample clauses are therefore offered for hourly and contingency fee cases.

10. Payment of Referral

This clause is required under California Rule of Professional Conduct 7.2(b) and provides that the payment of the referral fee to the referring attorney will not increase the client's legal fees.

11. Lien—Hourly Fee Agreement

This clause satisfies the requirements set forth in the Supreme Court case, *Fletcher v. Davis* (2004) 33 Cal.4th 61. In that case the court held an attorney who wishes to secure payment of hourly legal fees and costs with a lien must comply with California Rule of Professional Conduct 1.8.1. That rule requires the attorney must advise the client in writing of the adverse consequences of the lien and advise the client of his or her right to obtain an independent attorney to review the lien provision before the client signs the fee agreement.

The attorney should have the client initial this clause.

12. Excluded Services

An attorney may limit or exclude certain services in the fee agreement and this clause provides for the exclusion. Under *Nichols v. Keller* (1993) 15 Cal.App.4th 1672 the attorney must alert the client of the possible need to employ other counsel to handle the excluded services. Pursuant to *Meighan v. Shore* (1995) 34 Cal.4th 1025, an attorney also must alert the client's spouse of a possible claim for loss of consortium and whether the attorney will be handling the loss of consortium claim.

13. Contingency Language Options

There are a variety of ways an attorney can represent a client in a contingent fee. These various clauses describe the various options including how the fee is paid, whether the client or the attorney advances cost and how it affects the client's recovery.

14. Consent to Use of E-mail and Cloud Services

This clause informs the client that attorney will communicate with e-mail and store electronic documents using cloud computing services.

B. Disclosure Forms

1. Third Party Payor Forms

A Third Party Payor agreement is appended. It can be used when someone other than the client pays the client's attorney's fees and costs. There is a selection to be made when completing the form. One selection allows an attorney to share information regarding the representation with the Third Party payor and the other selection prohibits sharing information.

2. Joint/Multiple Client Disclosure and Consent Form

This form may be appropriate for use when an attorney represents more than one individual/entity and wants to disclose potential conflicts of interest and obtain waivers.

3. Mediation Notification and Acknowledgement Form – Evidence Code Section 1129(a)

Under Evidence Code section 1129(a), you are required to provide a Mediation Notification Disclosure form to your client prior to attending a mediation. When using this form, it must be (1) on one page; (2) not attached to any other document given to the client; (3) be printed in at least 12 point font; (4) be in the client's preferred language; (5) be dated; and (6) include the names and signatures of the attorney and client.

V. CONCLUSION

These forms are disseminated in the hope that they will be useful to attorneys in their practice. Attorneys are urged to make alterations to these forms so that they conform to the attorney's practice and the needs and requirements of the attorney and clients, subject always to satisfying the statutory requirements for fee agreements and the Rules of Professional Conduct.

Form No. 1
Sample Written Fee Agreement¹
Hourly Litigation

LAW FIRM
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] ("Attorney") and [CLIENT] ("Client") hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

2. SCOPE OF SERVICES AND ATTORNEY'S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not withhold information. Further Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client

¹ This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. DEPOSIT

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposits, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's fees and costs ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to withdraw the amount that is identified in the objection shall be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within ____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] at any time before a trial or arbitration date is set. Once a trial or arbitration date is set, Client will pay all sums then owing and deposit the Attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit.

5. LEGAL FEES AND BILLING PRACTICES

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____	/hour
Partners	_____	/hour
Associates	_____	/hour
Paralegals	_____	/hour
Law clerks	_____	/hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client, witnesses, opposing counsel, court personnel or other persons. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.] Time is billed in minimum increments one-tenth (.1) of an hour. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, translator/interpreter fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE RATE] cents per page; (3) facsimile charges – [] [PROVIDE RATE] cents per page; (4) postage at cost; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged _____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or

investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

(d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

7. OTHER FEES AND COSTS

Client understands that if Client's case proceeds to court action or arbitration, the court may award attorney fees as well as some or all of the type of costs enumerated in Paragraph 6 above to the other party or parties. Payment of such attorney fees and costs shall be the sole responsibility of Client. Similarly, other parties may be required to pay some or all of the fees and costs incurred by the Client. Client acknowledges that any such determination does not in and of itself affect the amount of the fees and costs to be paid by Client to Attorney pursuant to this agreement.

8. BILLS

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

10. DISCHARGE AND WITHDRAWAL

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

11. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____, [PROVIDE LENGTH OF TIME] after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client materials and property as defined in Rule 1.16(e)(1) of the California Rules of Professional Conduct.

12. DISCLAIMER OF GUARANTEE AND ESTIMATES

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by Client, or estimate of fees given by Attorney, are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

13. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2(a), I am informing you in writing that I ____ have ____ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

14. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

16. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

17. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

18. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____
ATTORNEY

Form No. 2
Sample Written Fee Agreement²
Hourly Non-Litigation

LAW FIRM
ADDRESS
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] ("Attorney") and [CLIENT] ("Client") hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit called for under Paragraph 4; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect retroactive to [DATE].

2. SCOPE OF SERVICES AND ATTORNEY'S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. A separate written agreement for these services or services in any other matter not described above will be required.

3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not to withhold information, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents.

² This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code section 6148 but may not address varying contractual obligations, which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

4. DEPOSIT

Client agrees to pay Attorney an initial deposit of \$_____ [PROVIDE DEPOSIT AMOUNT] by _____ [DATE] which will be deemed an advance deposit for fees and costs to be incurred in this matter. The hourly charges and costs will be charged against the Deposit. The initial Deposit, as well as any future deposit, will be held in Attorney's Client Trust Account. Client authorizes Attorney to use that deposit to pay the fees and other charges. Client acknowledges that the deposit is not an estimate of total fees and costs to be charged by Attorney, but merely an advance.

Client agrees that Attorney's right to recover fees and costs from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorneys' fees and costs ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed fees and/or costs from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney shall not be required to redeposit the disputed fees and/or costs into the Client Trust Account during the pendency of the dispute.

Client agrees to pay all deposits after the initial deposit within ____ [PROVIDE NUMBER] days of Attorney's demand. In the event there is any money from any deposit remaining in Attorney's Client Trust Account after Attorney's final bill is satisfied, that money will be promptly refunded to Client.

Whenever the deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT OF FURTHER DEPOSIT] .

5. LEGAL FEES AND BILLING PRACTICES

Client agrees to pay by the hour at Attorney's rates as set forth below for all time spent on Client's matter by Attorney and Attorney's legal personnel. Current hourly rates for legal personnel are as follows:

Senior partners	_____ /hour
Partners	_____ /hour
Associates	_____ /hour
Paralegals	_____ /hour
Law clerks	_____ /hour

The rates on this schedule are subject to change on 30 days written notice to Client. If Client declines to pay increased rates, Attorney will have the right to withdraw as attorney for Client

if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time Attorney spends on telephone calls, e-mails and other electronic communications relating to Client's matter, including calls and e-mails with Client and other parties and attorneys. [OPTIONAL: The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent]. Time is billed in minimum increments of one-tenth (.1) of an hour. Attorney will charge for waiting time and for travel time, both local and out of town.

6. COSTS AND OTHER CHARGES

- (a) Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include notary fees, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, translator/interpreter fees, consultants' fees and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Attorney's cost. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [PROVIDE RATE] cents per page; (3) facsimile charges – [PROVIDE RATE] cents per page; (4) postage at costs; and (5) computerized legal research at cost.
- (b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and Attorney's personnel. Client will also be charged _____% [PROVIDE RATE] of the hourly rates for the time legal personnel spend traveling.
- (c) Experts, Consultants and Investigators. To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.
- (d) Attorney will obtain Client's consent before incurring any costs in excess of \$_____ [PROVIDE AMOUNT].

7. BILLS

Attorney will send Client periodic bills for fees and costs incurred. Each bill will be payable within _____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills

for the fee portion of the bill will include the amount, rate, basis for calculation, or other method of determination of the Attorney's fees. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

8. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client's claims without Client's prior approval. Client retains the absolute right to accept or reject any settlement.

9. DISCHARGE AND WITHDRAWAL

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's fees or costs as required by this Agreement. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rates for all services provided and to reimburse Attorney for all costs advanced.

10. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter, a separate written agreement must be made between Attorney and Client, which agreement may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfer possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file. The case file includes Client materials and property as defined in Rule 1.16(e)(1) of the California Rules of Professional Conduct.

11. DISCLAIMER OF GUARANTEE AND ESTIMATES

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of

opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of fees given by Attorney are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

12. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2.(a), I am informing you in writing that I ____ have ____ do not have [CHECK APPROPRIATE ENTRY] professional liability insurance.

13. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

15. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

16. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

17. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

ATTORNEY OR LAW FIRM

By: _____
ATTORNEY

Form No. 3
Sample Written Fee Agreement³
Contingency Fee Agreement

LAW FIRM
ADDRESS
CITY, STATE, ZIP
PHONE NUMBER

(Date)

ATTORNEY-CLIENT FEE AGREEMENT

[LAW FIRM OR ATTORNEY] ("Attorney") and [CLIENT] ("Client") hereby agree that Attorney will provide legal services to Client on the terms set forth below.

1. CONDITIONS

This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until: (a) Client returns a signed copy of this Agreement; (b) Client pays the initial deposit for costs, if any, called for under Paragraph 7; and (c) Attorney acknowledges acceptance of representation by counter-signing this Agreement and returning a fully executed copy to Client. Upon satisfaction of these conditions, this Agreement will be deemed to take effect as of [DATE].

2. SCOPE OF SERVICES AND ATTORNEY'S DUTIES

Client hires Attorney to provide legal services in the following matter: [PROVIDE DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in collection proceedings after judgment or proceedings regarding renewal of a judgment. A separate written agreement for these services or services in any other matter not described above will be required. Attorney is representing Client only in the matter described above.

This Agreement also does not include defending Client against, or representing Client in, any claims that may be asserted against Client as a cross-claim or counter-claim in Client's case. If any such matters arise later, Attorney and Client will either negotiate a separate agreement if Client and Attorney agree that the Attorney will perform such additional legal work or Client

³ This sample written fee agreement form is intended to satisfy the basic requirements of Business & Professions Code Section 6147 but may not address varying contractual obligations which may be present in a particular case. The State Bar makes no representation of any kind, express or implied, concerning the use of these forms.

will engage separate counsel with respect to the cross-claim or counter-claim or additional legal work.

3. CLIENT'S DUTIES

Client agrees to be truthful with Attorney and not to withhold information. Further, Client agrees to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney by timely providing necessary information and documents. Client agrees to appear at all legal proceedings when Attorney deems it necessary, and generally to cooperate fully with Attorney in all matters related to the preparation and presentation of Client's claims.

4. LEGAL FEES

Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph 6.

The fee to be paid to Attorney will be a percentage of the "net recovery," depending on the stage at which the settlement or judgment is reached. The term "net recovery" means: (1) the total of all amounts received by settlement, arbitration award or judgment, including any award of attorney's fees, (2) minus all costs and disbursements set forth in Paragraph 6. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award will be part of Client's net recovery and the contingent fee will be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs. Net recovery will also include the reasonable value of any non-monetary proceeds.

Attorney's fee will be calculated as follows:

- (a) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery;
- (b) If the matter is resolved prior to ____ [PROVIDE NUMBER] days before the initial trial or arbitration date, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery; and
- (c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be _____ [PROVIDE RATE] percent (____%) of the net recovery.

In the event of Attorney's discharge, or withdrawal with justifiable cause, as provided in Paragraph 13, Client agrees that, upon payment of the settlement, arbitration award or judgment in Client's favor in this matter, Attorney will be entitled to be paid by Client a

reasonable fee for the legal services provided. Such fee will be determined by considering the following factors:

- (1) Whether the Attorney engaged in fraud or overreaching in negotiating or setting the fee;
- (2) Whether the Attorney failed to disclose material facts
- (3) The amount of the fee in proportion to the value of the services performed
- (4) The relative sophistication of the Attorney and the Client;
- (5) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
- (6) The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;
- (7) The amount involved and the results obtained;
- (8) The time limitations imposed by the Client or by the circumstances;
- (9) The nature and length of the professional relationship with the Client;
- (10) The experience, reputation, and ability of the Attorney;
- (11) Whether the fee is fixed or contingent;
- (12) The time and labor required;
- (13) The informed consent of the Client to the fee.

5. NEGOTIABILITY OF LEGAL FEES

Client understands that the rates set forth above are not set by law, but are negotiable between Attorney and Client.

6. COSTS AND LITIGATION EXPENSES/OTHER ATTORNEY'S FEES

Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with this matter, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney.

Costs, disbursements and litigation expenses commonly include court fees, jury fees, service of process charges, court and deposition reporters' fees, interpreter/translator fees, outside photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking,

mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, arbitrator and/or special master fees and other similar items. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) in-house printing and photocopying – [] [PROVIDE RATE] cents per page; (3) facsimile charges – [] [PROVIDE RATE] cents per page; (4) messenger services – at cost; (5) postage at cost; and (6) computerized legal research at cost.

Client understands that, as set forth in Paragraph 7 below, a deposit for costs may be required before the expenditure is made by Attorney.

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Attorney will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of persons chosen and their charges.

Client authorizes Attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in Attorney's judgment.

Attorney will obtain Client's consent before incurring any costs in excess of \$ _____ [PROVIDE AMOUNT].

A. Client's Responsibility for Prevailing Party or Court Ordered Fees and Costs to Other Party

Client understands that if Client's case proceeds to court action or arbitration and Client loses or is not the prevailing party, the court may award Attorney fees as well as some or all of the type of costs enumerated in this Paragraph 6 to the winning or prevailing party or parties. Payment of such attorney fees and costs will be the sole responsibility of Client.

If an award of fees and/or costs to be paid by another party is sought on Client's behalf in this action, Client understands that the amount which the court may order as fees and/or costs is the amount the court believes the party is entitled to recover, and does not determine what fees and/or costs Attorney is entitled to charge Client or that only the fees and/or costs which were allowed were reasonable.

B. Allocation of Court Award for Statutory or Contract Fees and Costs

Client agrees that any award of fees and costs that may be awarded pursuant to contract or statute will belong exclusively to Attorney. Client further agrees that, whether or not attorney's fees or costs are awarded by the court in Client's case, if there is a recovery other than an award of fees and costs pursuant to contract or statute Client will remain responsible for the payment, in full, of the attorney's fees and costs in accordance with this Agreement. However, any payment of court-awarded fees and/or costs by a third party will be credited against the amount of fees and/or costs owed by Client under this Agreement. Therefore, Client agrees that the attorney's fees and costs payable to Attorney pursuant to this

Agreement shall be the greater of: (i) the amount otherwise owed to Attorney under this Agreement if the award of attorney's fees and costs were disregarded; or (ii) the amount of the court ordered award of attorney's fees and costs.

C. Responsibility For and Allocation Of Sanctions

Client agrees that any award of fees and costs that may be awarded as discovery or other sanctions shall not be considered part of the Client's recovery and shall belong exclusively to Attorney as additional compensation for extraordinary time and effort.

The court may assess monetary sanctions, (including attorney fees and costs) against Client for bad faith conduct, including of discovery proceedings prior to trial, or inappropriate conduct during or even after trial. Any such award will be entirely the responsibility of Client.

7. DEPOSIT

Client agrees to pay Attorney an initial deposit for costs of \$_____ [PROVIDE AMOUNT], to be returned with this signed Agreement. Attorney will hold this initial deposit in a trust account. Client hereby authorizes Attorney to use that deposit to pay the costs, disbursements and other expenses incurred under this Agreement.

Client agrees that Attorney's right to recover costs and expenses from the Deposit or any subsequent deposit held in Attorney's Client Trust Account becomes fixed ____ [PROVIDE NUMBER] days after the date a bill is sent to Client. Client therefore authorizes Attorney to withdraw the funds from Attorney's Client Trust Account to pay Attorney's costs and expenses ____ [PROVIDE NUMBER] calendar days after the date a bill is sent to Client. If Attorney receives a written objection from Client within ____ [PROVIDE NUMBER] days of sending the bill, Attorney's right to recover the amount that is identified in the objection will be deemed to be disputed, and Attorney will not withdraw the disputed costs and/or expenses from the Client Trust Account until the dispute is resolved. If Attorney receives an objection from Client more than ____ [PROVIDE NUMBER] days after the date the bill is sent and after the funds have been withdrawn, Attorney will not be required to redeposit the disputed costs and/or expenses into the Client Trust Account during the pendency of the dispute.

When Client's deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of \$_____ [PROVIDE AMOUNT].

Once a trial or arbitration date is set, Attorney will require Client to pay all sums then owing, and to deposit the costs Attorney estimates will be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees likely to be assessed. Those sums may exceed the maximum deposit.

Client agrees to pay all deposits required under this Agreement within ____ [PROVIDE NUMBER] days of Attorney's demand. Any deposit that is unused at the conclusion of Attorney's services will be promptly refunded to Client.

8. BILLS FOR COSTS AND EXPENSES

Attorney will send Client periodic bills for costs and expenses incurred. Except as provided in Paragraph 7 (“Deposit”), each bill is to be paid in full within ____ [PROVIDE NUMBER] days of its mailing date. Client may request a bill at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. Bills for the cost and expense portion of the bill will clearly identify the costs and expenses incurred and the amount of the costs and expenses. Client agrees to promptly review all bills rendered by Attorney and to promptly communicate any objections, questions, or concerns about their contents.

9. CLIENT APPROVAL NECESSARY FOR SETTLEMENT

Attorney will not make any settlement or compromise of any nature of any of Client’s claims without Client’s prior approval. Client retains the absolute right to accept or reject any settlement.

10. LIEN

Attorney has a lien on any and all claims that are the subject of Attorney’s representation under this Agreement. Attorney’s lien will be for any sums owing to Attorney for any unpaid costs, or attorney’s fees, at the conclusion of Attorney’s services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. In the event Attorney withdraws from representing Client without cause, Attorney will not be entitled to any lien for fees. The lien will exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph 6. Because a lien may affect Client’s property rights, Client may seek the advice of an independent lawyer of Client’s own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

_____(Client initials here) _____(Attorney initials here)

11. PROFESSIONAL LIABILITY INSURANCE DISCLOSURE

Pursuant to California Rule of Professional Conduct 1.4.2.(a), Attorney is informing Client in writing that Attorney ____has ____ does not have [SELECT APPROPRIATE RESPONSE] professional liability insurance.

12. NO TAX ADVICE

Attorney has not been retained to provide Client with any tax advice concerning any of the services described in paragraph 2. Any documents prepared by Attorney may have specific tax ramifications. To be sure Client understands and is certain of all the potential tax consequences, Client should consult with tax advisors regarding these matters.

13. DISCHARGE AND WITHDRAWAL

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Attorney may withdraw are: (a) with the consent of Client; (b) Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively; and/or (c) Client fails to pay Attorney's costs and expenses as required by this Agreement. Notwithstanding the discharge and provided there is a recovery, Client will remain obligated to pay Attorney at a reasonable rate for all services provided and to reimburse Attorney for all costs advanced.

Notwithstanding Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs and expenses incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge. In the event Attorney voluntarily withdraws from representing Client without cause, Attorney waives, and will not be entitled to be paid, any fees by Client but will be entitled to be reimbursed for any costs and expenses already advanced by Attorney.

14. CONCLUSION OF SERVICES

When Attorney's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for costs and expenses will be due and payable immediately. Client may have access to Client's case file at Attorney's office at any reasonable time. At the end of the engagement, Client may request the return of Client's case file. If Client has not requested the return of Client's file, and to the extent Attorney has not otherwise delivered it or disposed of it consistent with Client's directions, Attorney will retain the case file for a period of _____ [PROVIDE LENGTH OF TIME], after which Attorney is authorized by this agreement to have the case file destroyed. If Client would like Attorney to maintain Client's case file for more than _____ [PROVIDE LENGTH OF TIME] after the conclusion of Attorney's services for Client on a given matter have concluded, a separate written agreement must be made between Attorney and Client, which may provide for Client to bear the cost of maintaining the file. In the event Client requests that Attorney transfers possession of Client's case file to Client or a third party, Attorney is authorized to retain copies of the case file at Attorney's expense. The case file includes Client materials and property as defined in Rule 1.16(e)(1) of the California Rules of Professional Conduct.

15. RECEIPT OF PROCEEDS

All proceeds of Client's case will be deposited into Attorney's trust account for disbursement in accordance with the provisions of this Agreement.

16. DISCLAIMER OF GUARANTEE

Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of this matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by client or estimate of costs and expenses given by Attorney will not be a limitation on costs and expenses or a guarantee that costs and expenses will not exceed the amount of the deposit or estimate. Actual costs and expenses may vary significantly from estimates given.

17. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

19. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both parties.

20. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of the Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. THE CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: _____

CLIENT

Address: _____

Telephone: _____

E-mail Address: _____

DATED: _____

LAW FIRM NAME

By: _____
ATTORNEY

Optional Clauses and Disclosure Forms

1. ARBITRATION

A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE

Any dispute between the parties [Attorney and Client] regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this Agreement (except as provided in Paragraph B below) shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person [Option: or agree upon a 3-person panel] to hear and determine the dispute.

Option: The arbitration provider shall be _____ [fill in the name of the arbitration provider] whose rules shall govern the arbitration.

Option: If the parties cannot agree on the selection of an arbitrator, a party may petition the Superior Court of _____ [fill in name of county] County and the procedures set forth in Code of Civil Procedure Section 1281.6 for Appointment of Arbitrators shall apply. The court will choose an impartial arbitrator and the court's decision shall be final and conclusive on all parties.

Option: Attorney and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05.

Option: Each party shall bear its own costs, expenses, attorney's fees and an equal share of the arbitrators' and administrative fees.

The venue for the arbitration and any post-award proceeding to confirm, correct or vacate the award shall be _____ [fill in name of county] County, California.

Client and Attorney confirm that they have read and understand subparagraphs A above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client may consult with an independent lawyer of Client's choice to review these arbitration provisions, and this entire agreement, prior to signing this Agreement.

B. MANDATORY FEE ARBITRATION

Notwithstanding subparagraph A above, the parties acknowledge that in any dispute **over attorney's fees, costs or both subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses**, Client has the right to elect arbitration pursuant to

procedures as set forth in California Business and Professions Code Sections 6200-6206 (the Mandatory Fee Arbitration Act). If, after receiving a Notice of Client's Right to Fee Arbitration, Client does not elect to proceed under the Mandatory Fee Arbitration Act procedures by failing to file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous paragraph A. Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. The Mandatory Fee Arbitration Act procedures permit a court trial after non-binding arbitration, or a subsequent binding contractual arbitration if the parties have agreed to binding arbitration, if either party rejects the award within 30 days after the award is mailed to the parties.

2. MEDIATION

Attorney and Client agree to try to settle all disputes between them through private mediation before initiating any arbitration, litigation or other dispute resolution procedure. The disputes which are subject to mediation include without limitation the following: claims regarding the construction, application or performance of services, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and attorney's fees and costs. Any party to the agreement may initiate mediation through service of a written demand in person or by mail or, if agreed to by the parties in advance, by e-mail to the opposing party. The mediation session will occur at a time mutually agreed upon by the parties in consultation with a mutually selected mediator, though no later than ____ days after the date of services of the initial notice, unless otherwise agreed by the parties and mediator. Each party shall bear its own fees and costs for the mediation. Under Evidence Code section 1129(a), Attorney is required to provide notice and have Client acknowledge certain confidentiality restrictions prior to participating in mediation. Attorney will provide Client with the Notice and Acknowledgement form.

3. INTEREST CHARGES

If a bill is not paid when due, interest will be charged on the principal balance (consisting of any unpaid fees, costs, and/or expenses) shown on the bill. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10% PER ANNUM]). The unpaid balance will bear interest until paid.

4. REPLENISHING DEPOSIT

To commence the representation, Client has provided [must provide] Attorney with a \$_____ deposit. Attorney will hold the deposit in Attorney/Client Trust Account and apply it to each bill when rendered by Attorney. Client will pay any additional balance in an amount necessary to return the deposited amount to \$_____. At the conclusion of the matter, the deposit will be applied to the final bill, in which event Client will be responsible for any remaining amount due over and above the deposit. If no amount remains due after the

deposited funds have been applied to the final invoice, and should any deposited funds remain, Client is entitled to and will have those funds returned in a timely manner.

5. ATTORNEY'S FEES

The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code Sections 6200-6206, will be awarded reasonable attorney's fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

6. OTHER PAYOR- INSURANCE

Client has informed Attorney that Client may have insurance coverage which may pay for some or all of Attorney's fees and costs that may become due under this Agreement. Attorney will make a claim on Client's behalf with the insurer requesting that the insurer pay for the Attorney's services and costs incurred. It is understood, however, that if the insurer refuses or fails to pay Attorney for any reason, Client will remain responsible for all Attorney's bills as they are rendered upon the billing and payment terms set forth in this Agreement. Should the insurer pay only a portion of the fees and costs, Client will be responsible for the balance.

7. FLAT FEE

OPTION 1: FLAT FEE PAID UPON COMPLETION OF SERVICES; OR, PAID IN ADVANCE AND HELD IN CLIENT TRUST ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client [Alternative 1: when the work is completed]; [Alternative 2: in advance of the services to be rendered on (*insert date*) and will be withdrawn after the work is completed]; [Alternative 3: in equal installments of \$_____ due on _____].

OPTION 2: WHERE FLAT FEE PAID IN ADVANCE EXCEEDS \$1,000 AND ATTORNEY SEEKS CLIENT AGREEMENT TO DEPOSIT IN AN OPERATING ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client in advance of the services to be rendered on [*insert date*].

Client has the right to (1) require that the flat fee be deposited into Attorney's Client Trust Account until the fee is earned; and (2) a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the flat fee has been paid are not completed. Having been informed of these rights, Client hereby agrees to the flat fee being deposited into Attorney's operating account.

_____ (Client signature here); or: Client does not agree to the flat fee being deposited into Attorney's operating account and instead requires that the fee be deposited into Attorney's Client Trust Account. _____ (Client signature here).

OPTION 3: WHERE FLAT FEE PAID IN ADVANCE IS \$1,000 OR LESS AND ATTORNEY SEEKS TO DEPOSIT IN AN OPERATING ACCOUNT

Client agrees to pay a flat fee of \$_____ for Attorney's services under this Agreement. This fee is fixed and constitutes complete payment for the performance of services under this Agreement and does not depend on the amount of work performed. Client acknowledges that this fee is negotiated and is not set by law. The fee shall be paid by Client in advance of the services to be rendered on [insert date]. The fee will be deposited into the Attorney's operating account.

Attorney hereby discloses to Client that Client has the right to (1) require that the flat fee be deposited into Attorney's Client Trust Account until the fee is earned; and (2) a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the flat fee has been paid are not completed.

8. DIVISION OF CONTINGENCY FEES

Client agrees that Attorney may associate other attorneys to assist in the representation. Client's legal fees under this agreement will not increase by reason of this association. The associated attorneys will receive _____ (fill in fraction or other method) of the fee and this firm will receive _____ (fill in fraction or other method).

By signing this agreement, Client has read and understands the above and confirms his/her/its consent to the terms of the association of counsel and division of fees.

9. "OTHER ATTORNEY"—HOURLY

OPTION 1 BILLED AS A COST

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated by Attorney on an hourly basis at a rate of \$_____ per hour. These charges will be billed by Attorney to Client as a cost as defined in this Agreement.

OPTION 2 DIRECT BILLED

It is agreed that Attorney will associate with another attorney, [name], who will assist Attorney regarding the representation. [Name] will be compensated on an hourly basis at a rate of \$_____ per hour. These charges will be billed directly to Client by attorney [name].

[NOTE: This language was not created for use in contingency cases.]

10. PAYMENT OF REFERRAL FEE

Client acknowledges that attorney _____ (fill in name) who referred the case to this Attorney/firm will receive a referral fee of _____ (fill in percentage) of all sums paid in this matter. Client's legal fees will not be increased by reason of the referral fee.

By signing this agreement, Client confirms his/her/its consent to the terms of the payment of the referral fee.

11. LIEN—HOURLY FEE AGREEMENT

Client hereby grants Attorney a lien on any and all claims that are the subject of Attorney's representation under this Agreement. Attorney's lien will be for any sums owing to Attorney for any unpaid costs, or attorney's fees, at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Attorney may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Attorney has been discharged before the end of the case. The lien shall exist and attach to any recovery only for costs already advanced by Attorney pursuant to Paragraph __ [insert paragraph number pertaining to Costs]. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Attorney will have a lien as specified above.

_____(Client initials here) _____(Attorney initials here)

12. EXCLUDED SERVICES

Attorney's representation does not include independent or related matters that may arise, including, among other things, claims for property damage, workers' compensation, disputes with a health care provider about the amount owed for their services, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy. [Expand as necessary.]

13. OPTIONAL CONTINGENCY LANGUAGE

A. NO RECOVERY LANGUAGE

If no recovery is obtained, Client will be obligated to pay only for costs, disbursements and expenses, as described in Paragraph __ [insert paragraph number pertaining to Costs]. These may include Client's obligation to pay attorney fees and costs of the type enumerated in Paragraph __ [insert paragraph number pertaining to Costs] to any prevailing party, either pursuant to statute or court order.

B. ATTORNEY ADVANCING COSTS LANGUAGE

Client will not be obligated to pay Attorney for costs, disbursements or expenses advanced by Attorney. However, if Client is not the prevailing party the court may award attorney fees and costs of the type enumerated in Paragraph __ [insert paragraph number pertaining to Costs] to any prevailing party and payment of such attorney fees and costs will be the sole responsibility of Client.

C. NET RECOVERY OPTIONS

OPTION 1A

STRAIGHT PERCENTAGE OF NET RECOVERY

The fee to be paid to Attorney will be _____ percent (____%) of the "net recovery". The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert paragraph number pertaining to Costs].

OPTION 1B

NET RECOVERY INCLUDING COURT ORDERED FEES

The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert paragraph number pertaining to Costs]. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, that award shall be part of Client's net recovery and the contingent fee shall be based on the Client's total recovery, including the amount of the court ordered award of attorney's fees and/or costs.

OPTION 1C

NET RECOVERY GREATER OF NET OR COURT ORDERED FEES:

The term "net recovery" means (1) the total of all amounts received by settlement, arbitration award or judgment, (2) minus all costs and disbursements set forth in Paragraph __ [insert

paragraph number pertaining to Costs]. If another party is ordered by the court to pay Client's Attorney's fees and/or costs, Client agrees that the attorney's fees and costs payable to Attorney pursuant to this Agreement shall be the greater of: (i) the amount otherwise owed to Attorney under this Agreement if the award of attorney's fees and costs were disregarded; or (ii) the amount of the court ordered award of attorney's fees and costs.]

D. GROSS RECOVERY OPTIONS

OPTION 2A

STRAIGHT PERCENTAGE OF GROSS RECOVERY

The fee to be paid to Attorney will be _____ percent (____%) of the "gross recovery." The term, "gross recovery" means a percentage of the total of all amounts received by settlement, arbitration award or judgment before deducting any litigation costs and expenses set forth in Paragraph ____ [insert paragraph number pertaining to Costs] which have been either advanced or incurred by Attorney on behalf of Client.

OPTION 2B

SCALED PERCENTAGE OF GROSS RECOVERY

The fee to be paid to Attorney will be a percentage of the "gross recovery", depending on the stage at which the settlement or judgment is reached. The term, "gross recovery" means a percentage of the total of all amounts received by settlement, arbitration award or judgment before deducting any litigation costs and expenses all costs and disbursements set forth in Paragraph 6 which have been either advanced or incurred by Attorney on behalf of Client.

Attorney's fee shall be calculated as follows:

- (a) If the matter is resolved before filing a lawsuit or formal initiation of proceedings, then Attorney's fee will be _____ percent (____%) of the gross recovery;
- (b) If the matter is resolved prior to ____ days before the date initially set for the trial or arbitration of the matter then Attorney's fee will be _____ percent (____%) of the gross recovery; and
- (c) If the matter is resolved after the times set forth in (i) and (ii), above, then Attorney's fee will be _____ percent (____%) of the gross recovery.

14. CONSENT TO USE OF E-MAIL AND CLOUD SERVICES

In order to provide Client with efficient and convenient legal services, Attorney will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there

may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, Client is consenting to such e-mail transmissions with Client and Client's representatives and agents.

In addition, Attorney uses a cloud computing service with servers located in a facility other than Attorney's office. Most of Attorney's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

Disclosure and Consent-Third Party Payor Payment of Attorney's Fees and Costs

Under California Rules of Professional Conduct 1.8.6 an attorney may not accept compensation from one who is not the client without: (1) assuring the arrangement does not interfere with the attorney's independence or professional judgment on behalf of the client or with the attorney-client relationship, (2) providing for protection of client confidential information and secrets under Business & Professions Code Section 6068(e), (3) providing the client with a written disclosure of the relevant circumstances and the actual and foreseeable adverse consequences arising from the arrangement and (4) obtaining the client's informed written consent.

The potential adverse consequences of having a Third Party Payor responsible for payment of attorney's fees and costs is that the Third Party Payor may: (1) attempt to interfere with the attorney-client relationship between the attorney and client, (2) attempt to interfere with the attorney's exercise of independent professional judgment on behalf of the client, or (3) seek access to client confidential information or secrets contrary to the wishes of the client.

By signing this Agreement, Third Party Payor [insert name or entity] agrees to pay for all legal services which attorney provides to client and costs incurred in the representation of client. Client will remain responsible for and will pay attorney's bills in the event that third party payor fails for any reason to pay attorney's bills as they become due. If a refund is due at the conclusion of the representation, the refund will be paid to the person or entity who paid the fees and costs.

Third Party Payor [insert name or entity] acknowledges this agreement to pay for attorney's fees and costs does not make Third Party Payor a client of Attorney and that an attorney-client relationship will exist only between Attorney and Client. Third Party Payor further agrees that they will not interfere with the attorney-client relationship and will not interfere with the Attorney's exercise of independent professional judgment on behalf of the client. In furtherance of the independent nature of the attorney-client relationship, Third Party Payor acknowledges that it has no right to direct Attorney's handling of Client's matter.

SELECT ONE:

____ It is also understood and acknowledged that Third Party Payor [insert name or entity] will have no right to information regarding the representation and Attorney will not disclose any confidential or privileged information to Third Party Payor, unless client gives written permission to discuss some or all of the Client's matter with Third Party Payor.

OR

____ Client has asked Third Party Payor to participate in consultations with Attorney and may continue to do so with the understanding that Third Party Payor's involvement in any communications with Attorney is solely to further the interests of Client. Communications involving Third Party Payor [insert name], are therefore intended to remain confidential and privileged as against persons or entities other than Attorney, Client and Third Party Payor. It is further understood and agreed that Attorney may share confidential information with Third Party Payor except when Client directs Attorney to keep information confidential. To the extent Client desires communications and information to remain confidential, Third Party Payor agrees

that payment and receipt of Client confidential information or secrets shall not in any way limit Client's confidentiality rights or waive any privilege.

By signing this Agreement, Client and Third Party Payor [insert name or entity] acknowledge they have: (1) read and fully understand this disclosure and consent form, (2) agreed that Attorney may accept compensation from [insert name or entity] to provide legal services to Client under the terms and conditions of this Agreement and (3) that [insert name or entity] has been represented and advised by counsel in entering into this Agreement or has waived their right to such representation and advice.

[Name of Client] _____ [Date signed] _____

[Name of Client] _____ [Date signed] _____

[Name of Attorney] _____ [Date signed] _____

Joint/Multiple Client Disclosure and Consent Form

Clients **[NAME]** and **[NAME(s)]** (“Joint Clients”) have asked Attorney to jointly represent them in **[DESCRIBE MATTER]**. While joint representation may result in economic or tactical advantages, it also involves risks and potential conflicts of interest. The California Rules of Professional Conduct require that before an attorney may concurrently represent two or more clients in a matter, the attorney must: (1) inform each client in writing of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the each client arising from the proposed joint representation, and (2) obtain the informed written consent of each client.

The purpose of this disclosure is to set forth potential conflicts of interest relating to the proposed joint representation, and what Attorney perceives to be the relevant circumstances and the actual and/or reasonably foreseeable adverse consequences. Assuming that both **[OR ALL IF MORE THAN TWO CLIENTS]** Clients provide their informed written consent, Attorney agrees to represent Joint Clients in **[DESCRIBE MATTER]**. Attorney understands that this arrangement is desired by Joint Clients as a means of securing the economic and tactical advantage of joint representation.

California law and Rule 1.7 of the Rules of Professional Conduct require Attorneys to provide written disclosure of any actual and reasonably foreseeable adverse consequences arising from the proposed joint representation, and to obtain all clients’ informed written consent to the joint representation. While Attorneys do not perceive any actual or reasonably foreseeable adverse consequences at this time, Clients should consider the following potential adverse consequences prior to consenting to the proposed joint representation:

- (1) When an attorney represents only one client, there is no concern regarding shared or divided loyalties; rather all of the attorney’s efforts are focused on representing the interests of that one client. When an attorney represents two or more clients in the same matter, the attorney acts to protect the interests of each client, which may result in divided, or at least shared, attorney-client loyalties. Issues may arise as to which Attorney’s representation of any one client may be limited by Attorney’s representation of any other joint client. While neither Attorney nor Clients are aware of any such issues at this time, divided loyalty is always a risk in the event of joint representation.
- (2) Attorneys owe clients a duty to preserve secrets and confidential communications, unless that duty is excused by the State Bar Act, the Rules of Professional Conduct or other law. When an attorney represents more than one client in a matter, pursuant to Evidence Code §962 and California case, law there is no attorney-client privilege with respect to communications that take place between any of the Joint Clients and the attorney should any of the Joint Clients ever have a dispute in which those communications are relevant. Attorney has a duty to keep all of the Joint Clients reasonably informed of significant developments. Any information either of the Joint Clients discloses to Attorney during the course of the joint representation may be disclosed to the jointly represented clients during the course of the joint representation.
- (3) Conflicts may arise in particular with regard to: (a) litigation strategies that can impact different clients differently; and (b) settlement issues, inasmuch as Joint Clients may each have different ideas regarding the propriety of settlement. At this point, Attorney does not have sufficient information to evaluate whether a potential settlement presents a conflict between the Joint Clients’ interests. If Attorney perceives there is a

conflict with respect to a settlement demand or litigation strategy, there may be a need for Joint Clients to consult independent counsel.

(4) Joint representation may also create an issue regarding custody, or control, of the original file when an attorney-client relationship ends. By signing this agreement, each of you agree that if Attorney stops representing one of you, but continues to represent the other(s), the client(s) represented by Attorney is entitled to maintain custody or control of the original file. The other party or parties is/are entitled to a copy of Client materials and property as defined in Rule 1.16(e)(1) of the Rules of Professional Conduct.

(5) In the event of a dispute or conflict between any of the Joint Clients, there is a risk that Attorney may be disqualified from representing one or more of the Joint Clients or that it may otherwise be inappropriate for Attorney to continue with the joint representation absent written consent from each of the Joint Clients.

SELECT ONE

(6) [FOR USE WHEN REPRESENTING MULTIPLE PLAINTIFFS]

If there is insufficient insurance or assets to cover the damages of each client, there may be disputes regarding how to allocate the insurance proceeds or assets between the Joint Clients.

OR

(6) [FOR USE WHEN REPRESENTING MULTIPLE DEFENDANTS]

If there is a judgment against any of the Joint Clients which is not covered by insurance, that client may have rights of indemnity against one or more of the other parties. If any disputes should arise between the Joint Clients, Attorney will not advise or represent any of the clients in connection with any claim for contribution or indemnity that it may have against any of the other clients.

[OPTION RE PUNITIVE DAMAGES]

The complaint includes a claim for punitive damages, which presents the potential for a conflict inasmuch as an award of punitive damages is not insurable. Attorney will endeavor to keep each of the Joint Clients advised as to their potential risks and exposure with respect to the punitive damage claim, or with respect to any over policy limits claims should one ever be made.

Because there is currently no conflict of interest, Attorney may jointly represent Joint Clients in connection with the **[DESCRIBE MATTER]** provided that Joint Clients both/all give your informed consent in writing. Each Joint Client should feel free to consult with independent counsel before finalizing your decision to proceed with the joint representation, including whether or not to sign this conflict disclosure and waiver. Attorney emphasizes that each Joint Client remains free to seek independent counsel at any time even if they decide to sign this consent.

Notwithstanding the foregoing, it is Attorney's current understanding that each of the Joint Clients desires to have Attorney jointly represent them in the **[DESCRIBE MATTER]**. By signing this Disclosure and Consent, each client expressly acknowledges that he/she or it (acting through its authorized representative): (1) has

carefully read and fully understands the disclosures set forth above; (2) has carefully considered all of the circumstances and potential conflicts described above; (3) has had the opportunity to consult with independent counsel regarding the disclosures and consent in this agreement; and (4) agrees to the joint representation by Attorney of Clients in [**DESCRIBE MATTER**].

[Name of Client] _____ [Date signed] _____

[Name of Client] _____ [Date signed] _____

[Name of Attorney] _____ [Date signed] _____

Mediation Disclosure Notification and Acknowledgement

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

I, _____ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

NOTE: This disclosure and signed acknowledgement does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

[Name of Client] _____ [Date signed] _____

[Name of Client] _____ [Date signed] _____

[Name of Attorney] _____ [Date signed] _____



The State Bar of California

Rule 1.13 Organization as Client (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.
- (b) If a lawyer representing an organization knows* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows* or reasonably should know* is (i) a violation of a legal obligation to the organization or a violation of law reasonably* imputable to the organization, and (ii) likely to result in substantial* injury to the organization, the lawyer shall proceed as is reasonably* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.
- (c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).
- (d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably* imputable to the organization, and is likely to result in substantial* injury to the organization, the lawyer shall continue to proceed as is reasonably* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.
- (e) A lawyer who reasonably believes* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.
- (f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows* or reasonably should know* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent

shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The Entity as the Client

[1] This rule applies to all forms of private, public and governmental organizations. (See Comment [6].) An organizational client can only act through individuals who are authorized to conduct its affairs. The identity of an organization's constituents will depend on its form, structure, and chosen terminology. For example, in the case of a corporation, constituents include officers, directors, employees and shareholders. In the case of other organizational forms, constituents include the equivalents of officers, directors, employees, and shareholders. For purposes of this rule, any agent or fiduciary authorized to act on behalf of an organization is a constituent of the organization.

[2] A lawyer ordinarily must accept decisions an organization's constituents make on behalf of the organization, even if the lawyer questions their utility or prudence. It is not within the lawyer's province to make decisions on behalf of the organization concerning policy and operations, including ones entailing serious risk. A lawyer, however, has a duty to inform the client of significant developments related to the representation under Business and Professions Code section 6068, subdivision (m) and rule 1.4. Even when a lawyer is not obligated to proceed in accordance with paragraph (b), the lawyer may refer to higher authority, including the organization's highest authority, matters that the lawyer reasonably believes* are sufficiently important to refer in the best interest of the organization subject to Business and Professions Code section 6068, subdivision (e) and rule 1.6.

[3] Paragraph (b) distinguishes between knowledge of the conduct and knowledge of the consequences of that conduct. When a lawyer knows* of the conduct, the lawyer's obligations under paragraph (b) are triggered when the lawyer knows* or reasonably should know* that the conduct is (i) a violation of a legal obligation to the organization, or a violation of law reasonably* imputable to the organization, and (ii) likely to result in substantial* injury to the organization.

[4] In determining how to proceed under paragraph (b), the lawyer should consider the seriousness of the violation and its potential consequences, the responsibility in the organization and the apparent motivation of the person* involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, the lawyer may ask the constituent to reconsider the matter. For example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably* conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the

organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. For the responsibility of a subordinate lawyer in representing an organization, see rule 5.2.

[5] In determining how to proceed in the best lawful interests of the organization, a lawyer should consider the extent to which the organization should be informed of the circumstances, the actions taken by the organization with respect to the matter and the direction the lawyer has received from the organizational client.

Governmental Organizations

[6] It is beyond the scope of this rule to define precisely the identity of the client and the lawyer's obligations when representing a governmental agency. Although in some circumstances the client may be a specific agency, it may also be a branch of government or the government as a whole. In a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. In addition, a governmental organization may establish internal organizational rules and procedures that identify an official, agency, organization, or other person* to serve as the designated recipient of whistle-blower reports from the organization's lawyers, consistent with Business and Professions Code section 6068, subdivision (e) and rule 1.6. This rule is not intended to limit that authority.



The State Bar of California

Rule 1.7 Conflict of Interest: Current Clients (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer shall not, without informed written consent* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent* from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person,* or by the lawyer's own interests.
- (c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written* disclosure of the relationship to the client and compliance with paragraph (d) where:
 - (1) the lawyer has, or knows* that another lawyer in the lawyer's firm* has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
 - (2) the lawyer knows* or reasonably should know* that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm,* or has an intimate personal relationship with the lawyer.
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
 - (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; and
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
- (e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons,* or a discrete and identifiable class of persons.*

Comment

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. The duty of undivided loyalty to a current client prohibits

undertaking representation directly adverse to that client without that client's informed written consent.* Thus, absent consent, a lawyer may not act as an advocate in one matter against a person* the lawyer represents in some other matter, even when the matters are wholly unrelated. (See *Flatt v. Superior Court* (1994) 9 Cal.4th 275 [36 Cal.Rptr.2d 537].) A directly adverse conflict under paragraph (a) can arise in a number of ways, for example, when: (i) a lawyer accepts representation of more than one client in a matter in which the interests of the clients actually conflict; (ii) a lawyer, while representing a client, accepts in another matter the representation of a person* who, in the first matter, is directly adverse to the lawyer's client; or (iii) a lawyer accepts representation of a person* in a matter in which an opposing party is a client of the lawyer or the lawyer's law firm.* Similarly, direct adversity can arise when a lawyer cross-examines a non-party witness who is the lawyer's client in another matter, if the examination is likely to harm or embarrass the witness. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require informed written consent* of the respective clients.

[2] Paragraphs (a) and (b) apply to all types of legal representations, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners* or a corporation for several shareholders, the preparation of a pre-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an "uncontested" marital dissolution. If a lawyer initially represents multiple clients with the informed written consent* as required under paragraph (b), and circumstances later develop indicating that direct adversity exists between the clients, the lawyer must obtain further informed written consent* of the clients under paragraph (a).

[3] In *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422 [86 Cal.Rptr.2d 20], the court held that paragraph (C)(3) of predecessor rule 3-310 was violated when a lawyer, retained by an insurer to defend one suit, and while that suit was still pending, filed a direct action against the same insurer in an unrelated action without securing the insurer's consent. Notwithstanding *State Farm*, paragraph (a) does not apply with respect to the relationship between an insurer and a lawyer when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

[4] Even where there is no direct adversity, a conflict of interest requiring informed written consent* under paragraph (b) exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities, interests, or relationships, whether legal, business, financial, professional, or personal. For example, a lawyer's obligations to two or more clients in the same matter, such as several individuals seeking to form a joint venture, may materially limit the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the other clients. The risk is that the lawyer may not be

able to offer alternatives that would otherwise be available to each of the clients. The mere possibility of subsequent harm does not itself require disclosure and informed written consent.* The critical questions are the likelihood that a difference in interests exists or will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably* should be pursued on behalf of each client. The risk that the lawyer's representation may be materially limited may also arise from present or past relationships between the lawyer, or another member of the lawyer's firm*, with a party, a witness, or another person* who may be affected substantially by the resolution of the matter.

[5] Paragraph (c) requires written* disclosure of any of the specified relationships even if there is not a significant risk the relationship will materially limit the lawyer's representation of the client. However, if the particular circumstances present a significant risk the relationship will materially limit the lawyer's representation of the client, informed written consent* is required under paragraph (b).

[6] Ordinarily paragraphs (a) and (b) will not require informed written consent* simply because a lawyer takes inconsistent legal positions in different tribunals* at different times on behalf of different clients. Advocating a legal position on behalf of a client that might create precedent adverse to the interests of another client represented by a lawyer in an unrelated matter is not sufficient, standing alone, to create a conflict of interest requiring informed written consent.* Informed written consent* may be required, however, if there is a significant risk that: (i) the lawyer may temper the lawyer's advocacy on behalf of one client out of concern about creating precedent adverse to the interest of another client; or (ii) the lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case, for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients' informed written consent* is required include: the courts and jurisdictions where the different cases are pending, whether a ruling in one case would have a precedential effect on the other case, whether the legal question is substantive or procedural, the temporal relationship between the matters, the significance of the legal question to the immediate and long-term interests of the clients involved, and the clients' reasonable* expectations in retaining the lawyer.

[7] Other rules and laws may preclude the disclosures necessary to obtain the informed written consent* or provide the information required to permit representation under this rule. (See, e.g., Bus. & Prof. Code, § 6068, subd. (e)(1) and rule 1.6.) If such disclosure is precluded, representation subject to paragraph (a), (b), or (c) of this rule is likewise precluded.

[8] Paragraph (d) imposes conditions that must be satisfied even if informed written consent* is obtained as required by paragraphs (a) or (b) or the lawyer has informed the client in writing* as required by paragraph (c). There are some matters in which the conflicts are such that even informed written consent* may not suffice to permit representation. (See *Woods v. Superior Court* (1983) 149 Cal.App.3d 931 [197 Cal.Rptr.

185]; *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; *Ishmael v. Millington* (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].)

[9] This rule does not preclude an informed written consent* to a future conflict in compliance with applicable case law. The effectiveness of an advance consent is generally determined by the extent to which the client reasonably* understands the material risks that the consent entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably* foreseeable adverse consequences to the client of those representations, the greater the likelihood that the client will have the requisite understanding. The experience and sophistication of the client giving consent, as well as whether the client is independently represented in connection with giving consent, are also relevant in determining whether the client reasonably* understands the risks involved in giving consent. An advance consent cannot be effective if the circumstances that materialize in the future make the conflict nonconsentable under paragraph (d). A lawyer who obtains from a client an advance consent that complies with this rule will have all the duties of a lawyer to that client except as expressly limited by the consent. A lawyer cannot obtain an advance consent to incompetent representation. (See rule 1.8.8.)

[10] A material change in circumstances relevant to application of this rule may trigger a requirement to make new disclosures and, where applicable, obtain new informed written consents.* In the absence of such consents, depending on the circumstances, the lawyer may have the option to withdraw from one or more of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See rule 1.16. The lawyer must continue to protect the confidences of the clients from whose representation the lawyer has withdrawn. (See rule 1.9(c).)

[11] For special rules governing membership in a legal service organization, see rule 6.3; and for work in conjunction with certain limited legal services programs, see rule 6.5.



The State Bar of California

Rule 1.8.1 Business Transactions with a Client and Pecuniary Interests Adverse to a Client (Rule Approved by the Supreme Court, Effective November 1, 2018)

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 each of the following requirements has been satisfied:

- (a) the transaction or acquisition and its terms are fair and reasonable* to the client and the terms and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in writing* to the client in a manner that should reasonably* have been understood by the client;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the client's choice or the client is advised in writing* to seek the advice of an independent lawyer of the client's choice and is given a reasonable* opportunity to seek that advice; and
- (c) the client thereafter provides informed written consent* to the terms of the transaction or acquisition, and to the lawyer's role in it.

Comment

[1] A lawyer has an "other pecuniary interest adverse to a client" within the meaning of this rule when the lawyer possesses a legal right to significantly impair or prejudice the client's rights or interests without court action. (See *Fletcher v. Davis* (2004) 33 Cal.4th 61, 68 [14 Cal.Rptr.3d 58]; see also Bus. & Prof. Code, § 6175.3 [Sale of financial products to elder or dependent adult clients; Disclosure]; Fam. Code, §§ 2033-2034 [Attorney lien on community real property].) However, this rule does not apply to a charging lien given to secure payment of a contingency fee. (See *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38 [108 Cal.Rptr.3d 455].)

[2] For purposes of this rule, factors that can be considered in determining whether a lawyer is independent include whether the lawyer: (i) has a financial interest in the transaction or acquisition; and (ii) has a close legal, business, financial, professional or personal relationship with the lawyer seeking the client's consent.

[3] Fairness and reasonableness under paragraph (a) are measured at the time of the transaction or acquisition based on the facts that then exist.

[4] In some circumstances, this rule may apply to a transaction entered into with a former client. (Compare *Hunnicutt v. State Bar* (1988) 44 Cal.3d 362, 370-71 ["[W]hen an attorney enters into a transaction with a former client regarding a fund which resulted from the attorney's representation, it is reasonable to examine the relationship between the parties for indications of special trust resulting therefrom. We conclude that if there is evidence that the client placed his trust in the attorney because of the representation, an attorney-client relationship exists for the purposes of [the predecessor rule] even if the representation has otherwise ended [and] It appears that [the client] became a

target of [the lawyer's] solicitation because he knew, through his representation of her, that she had recently received the settlement fund [and the court also found the client to be unsophisticated].”] with *Wallis v. State Bar* (1942) 21 Cal.2d 322 [finding lawyer not subject to discipline for entering into business transaction with a former client where the former client was a sophisticated businesswoman who had actively negotiated for terms she thought desirable, and the transaction was not connected with the matter on which the lawyer previously represented her].)

[5] This rule does not apply to the agreement by which the lawyer is retained by the client, unless the agreement confers on the lawyer an ownership, possessory, security, or other pecuniary interest adverse to the client. Such an agreement is governed, in part, by rule 1.5. This rule also does not apply to an agreement to advance to or deposit with a lawyer a sum to be applied to fees, or costs or other expenses, to be incurred in the future. Such agreements are governed, in part, by rules 1.5 and 1.15.

[6] This rule does not apply: (i) where a lawyer and client each make an investment on terms offered by a third person* to the general public or a significant portion thereof; or (ii) to standard commercial transactions for products or services that a lawyer acquires from a client on the same terms that the client generally markets them to others, where the lawyer has no advantage in dealing with the client.



The State Bar of California

Rule 1.8.6 Compensation from One Other than Client (Rule Approved by the Supreme Court, Effective November 1, 2018)

A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

- (a) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship;
- (b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
- (c) the lawyer obtains the client's informed written consent* at or before the time the lawyer has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably* practicable, provided that no disclosure or consent is required if:
 - (1) nondisclosure or the compensation is otherwise authorized by law or a court order; or
 - (2) the lawyer is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public.

Comment

[1] A lawyer's responsibilities in a matter are owed only to the client except where the lawyer also represents the payor in the same matter. With respect to the lawyer's additional duties when representing both the client and the payor in the same matter, see rule 1.7.

[2] A lawyer who is exempt from disclosure and consent requirements under paragraph (c) nevertheless must comply with paragraphs (a) and (b).

[3] This rule is not intended to abrogate existing relationships between insurers and insureds whereby the insurer has the contractual right to unilaterally select counsel for the insured, where there is no conflict of interest. (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society* (1984) 162 Cal.App.3d 358 [208 Cal.Rptr. 494].).

[4] In some limited circumstances, a lawyer might not be able to obtain client consent before the lawyer has entered into an agreement for, charged, or accepted compensation, as required by this rule. This might happen, for example, when a lawyer is retained or paid by a family member on behalf of an incarcerated client or in certain commercial settings, such as when a lawyer is retained by a creditors' committee involved in a corporate debt restructuring and agrees to be compensated for any services to be provided to other similarly situated creditors who have not yet been identified. In such limited situations, paragraph (c) permits the lawyer to comply with this rule as soon thereafter as is reasonably* practicable.

[5] This rule is not intended to alter or diminish a lawyer's obligations under rule 5.4(c).



California Rules of Court

(Revised January 1, 2024)

Rule 3.36. Notice of limited scope representation and application to be relieved as attorney

(a) Notice of limited scope representation

A party and an attorney may provide notice of their agreement to limited scope representation by serving and filing a *Notice of Limited Scope Representation* (form CIV-150).

(Subd (a) amended effective September 1, 2018.)

(b) Notice and service of papers

After the notice in (a) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served, papers in the case must be served on both the attorney providing the limited scope representation and the client.

(c) Procedures to be relieved as counsel on completion of representation

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form CIV-150) may use the procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

(Subd (c) amended effective September 1, 2018.)

(d) Application

An application to be relieved as attorney on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-151).

(Subd (d) amended effective September 1, 2018.)

(e) Filing and service of application

The application to be relieved as attorney must be filed with the court and served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-152).

(Subd (e) amended effective September 1, 2018.)

(f) No objection

If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-151) is served on the client, the attorney making the application must file an updated form CIV-151 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-153). The clerk must then forward the order for judicial signature.

(Subd (f) amended effective September 1, 2018.)

(g) Objection

If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-152). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and the attorney.

(Subd (g) amended effective September 1, 2018.)

(h) Service of the order

If no objection is served and filed and the proposed order is signed under (f), the attorney who filed the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form CIV-151) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

(Subd (h) amended effective September 1, 2018.)

Rule 3.36 amended effective September 1, 2018; adopted effective January 1, 2007.

**GENERAL CIVIL
LIMITED SCOPE
REPRESENTATION**

**RISK MANAGEMENT
MATERIALS**

**Limited Representation Committee
California Commission on Access to Justice**

**Civil
Limited Scope Representation**

Draft Risk Management Materials

**Limited Representation Committee
California Commission on Access to Justice**

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PREAMBLE

These materials are suggested forms, guidelines and handouts which have been developed to use in limited scope representation matters. They offer a variety of suggestions that you should tailor to your particular practice. Each case, each client, and each opportunity for limited scope representation presents its own unique professional and ethical issues and nothing in these materials is intended to be a substitute for your own professional judgment and opinion.

**General Civil Limited Scope Representation
Risk Management Package
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INSTRUCTIONS FOR USING THIS SET OF CIVIL RISK MANAGEMENT MATERIALS

Attached is a package of general civil risk management materials designed to help you document your file and ensure that you and the client are in agreement on the limitations on the scope of your representation, which tasks you are going to perform and, more importantly, which ones you are NOT going to perform. They are designed as templates which should be tailored to your needs. Since limited scope arrangements can be fluid, it is essential that you document not only the limitations in scope, but ALL changes to the scope and the representation's ultimate conclusion. They include a number of checklists to document the limitations, and note any changes, which are designed to allow you and your staff to easily track these issues so nothing is overlooked. The following information and materials may be adapted for use in other types of matters such as bankruptcy, probate guardianships, small claims preparation, landlord/tenant, or traffic infractions, but keep in mind that not every type of legal proceeding is appropriate for limited scope representation.

Use your judgment in tailoring the forms. You may use some or all of them, modify others, and select which ones best suit a given limited scope arrangement. A brief overview of the materials and their intended use follows:

1. **Limited Scope Representation Description (Client Handout).** This form was designed to educate the client about the options available for limited scope representation. Modify it to reflect your practice. Many clients will initially be unfamiliar with the many ways in which they can participate in their own representation. This form, or a variation, will help you educate them on the ways you can assist them in a limited scope context. Use it as a basis for discussion as you conduct your intake and evaluate their legal needs. Give them a copy and note on the tickler checklist the date on which you did so.
2. **Best Practices Tips.** These are designed to assist you in flagging the areas of special concern in limited scope representation. Read them carefully and add to them as new issues arise in your practice. Check for updates at selfhelpsupport.org.
3. **Flow Charts.** There are three flow charts designed to visually set forth the steps from both the client's and the attorney's perspective. Use the client flow chart as a handout as part of educating your client on the options for limited scope. Use the attorney one as a tool to document your own file. A third flow chart contains a simplified diagram of the common steps in civil litigation.
4. **Sample Intake Sheet.** Tailor this form for use as an intake tool for every new limited scope client. Note the topics discussed, included related topics about which you advised them, and use it to document your discussions about the nature and scope of your representation. Before the client leaves, you should each initial it, and then give the client a copy. Do a new one each time a new issue comes up.
5. **Sample Tasks to be Apportioned/Issues to be Apportioned Checklists.** Use these forms to document the issues you discussed with the client, the apportionment of responsibility, and to identify the areas where the client agrees you are not to assume responsibility. You should each initial it and the client should take a copy. *Do a new one each time the scope changes*, initial and date it, give a copy to the client and note on the Tickler Checklist the date on which you did this. If you're defining the limited scope in an attachment to your fee agreement rather than in the body, use these as attachments and modify them as needed. Attach these forms as the exhibits to Fee Agreement 4 at page 40, or any other fee agreement where the limitation on scope is in an attachment rather than the body of the agreement.

6. **Sample Fee Agreements.** Sample fee agreements are contained in Section 6, each tailored to a different form of limited scope representation, from a single appointment/single task to coaching, ongoing consulting, document preparation, and making court appearances. ***Do not perform services until you have a signed agreement limiting the scope of your involvement. If the scope changes, do a new agreement.*** If the form of agreement you use includes a checklist to define the scope, do a new checklist to document the changed scope, sign and date (both attorney and client). Don't just send a confirming letter to the client. If the scope changes, attach the tasks/issues checklists. Check for others at the following website: <http://www.selfhelpsupport.org>.
7. **Sample Change of Scope Letter.** This is a sample letter to send the client when the scope changes. The change in scope usually occurs either when a new issue arises which was unanticipated in the initial allocation of tasks, or the client finds s/he is unable to competently perform the tasks s/he has undertaken and asks the attorney to handle them.
8. **Sample Follow Up Checklist.** This form is designed to keep track of who is responsible for performing which tasks in an ongoing limited scope representation. Fill it out as you talk to your client about responsibilities, give a copy to the client and retain one for your records. Use it as often as necessary.
9. **Sample Tickler Checklist.** This is the key to keeping track of all of the above. Tailor it to your specific needs, photocopy it on brightly colored paper and keep it on top of your file. Note the dates on which you obtained each of the checklists, retainer letters, documentation of changes in scope, and file closing. Add other tasks and forms which you find recur in your practice and train your staff to keep the checklist current.
10. **Other Handouts.** You will do your clients a service if you collect or create other handouts which will assist them in performing their agreed-upon tasks. A list of suggested additional client handouts is included. Consider gathering these materials and making them available to your clients. They augment others which you may have developed for internal use, such as descriptions of how a civil case proceeds, discovery deadlines, and other similar issues which recur frequently. When creating them, include mapquest directions to your local court and self-help centers, and information on self-help web sites, and applicable programs (*pro bono*, legal aid, modest means panels and the like). If you offer services to non-English speaking or limited English proficient clients, provide these materials in the language in which you communicated with the client. One place to obtain basic information is on the AOC's self-help website www.courtinfo.ca.gov/selfhelp/. A Spanish version of the website can be found at www.sucorte.ca.gov.
11. **Sample Closing Letter.** It is equally important to document your exit from the case as it is to document your entry into the case. When you have performed all the tasks for which you were engaged, tailor the Sample Closing Letter to clearly communicate that fact to the client. Invite the client to advise you immediately if s/he disagrees that all tasks for which you were engaged are completed. If you have made an appearance as part of your representation, file a Substitution of Attorney.
12. **Notice of Limited Scope Representation** If your agreement with your client requires you to appear in court, you should use form MC-950 to put both the court and opposing parties on notice of the limitation on the scope of your representation.

SECTION 1

Limited Scope Representation Description (Client Handout)

LIMITED SCOPE REPRESENTATION DESCRIPTION

What is limited scope representation?

Limited scope representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. For example:

1. You can consult with an attorney to prepare or review your paperwork, but attend the hearing yourself;
2. You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
3. You can do the preparation yourself and hire an attorney just to make the court appearance for you;
4. You may want to do your own investigation of the facts (“discovery”) and ask the attorney to assist you in putting the information in a format which is useful to the court;
5. You may ask the attorney to be on “standby” while you attend the settlement conference yourself.

With limited scope assistance, you may be able to handle the whole case yourself, except for a few technical areas, such as “law and motion,” where an attorney can help you. It really is between you and your attorney to decide how much of your case you hire him or her to do. If you do this, it is important to **keep returning to the same attorney**. Otherwise, you are paying someone new to get up to speed on your case each time you consult.

Some areas of the law and procedure are *extremely technical* and it is rare for non-attorneys to effectively handle them. Among these are motions to compel discovery, motions attacking the pleadings or summary judgment motions, and preparing trial briefs. Also included are substantive areas of law that generally require legal expertise or cases where the offers of proof or burden of proof may be difficult or complicated, such as someone’s intent, a breach of the duty of care in a professional negligence suit, the existence of a verbal agreement, competing claims to title to real property, etc. You will almost certainly need extensive assistance from, or often full representation by, an attorney if your case involves any of these issues.

Why it is important to discuss your case thoroughly with your attorney

It is important to thoroughly discuss **all aspects** of your case (even those which **you** think are simple) with your attorney before deciding which parts you want to do yourself and which ones the attorney will assist you with. It is equally important to realize that there may be important issues presented by your case of which you are not even aware. You could be at serious legal risk about an issue you don’t even realize exists. If you don’t discuss all potential legal issues with your attorney, how will you know?

Never make assumptions about the law that applies to your case. **The law programs you’ve seen on TV are rarely accurate**, and just because you’ve “seen it on TV,” doesn’t mean it is correct, or even “legal.” The **only** way you can be sure is to talk it over with a qualified attorney.

Sometimes new issues will pop up after your case is started. If they do, it is important to advise your attorney and discuss them, so that you know the potential legal consequences. Remember that your attorney can only advise you on matters you tell him/her about, so it is essential that you provide complete information about your case.

Remember, you and your attorney are working as a team. That means good communication and a clear understanding of each person’s assignments is essential.

SECTION 2

**Best Practices for
Limited Scope/Discrete Task Legal Services
Looking at Issues of Liability and Good Practice**

Best Practices for Limited Scope/Discrete Task Legal Services: Looking at issues of liability and good practice

Limited Scope/Discrete Task Legal Services (sometimes called “unbundling”) refers to matters in which a client hires an attorney to assist with specific elements of a matter such as legal advice, document preparation or document review, and/or limited appearances. The client and attorney agree on the specific discrete tasks to be performed by the client and the attorney. Depending on the nature of the attorney's involvement, the attorney may or may not enter an appearance with the court. The client represents him/herself in all other aspects of the case.

The special issues governing limited scope fall into four general categories:

- 1. The limitations on scope must be informed and in writing;**
- 2. They must be reasonable under the circumstances;**
- 3. Changes in scope must be documented;**
- 4. An attorney has an affirmative duty to advise the client on related matters, even if not asked.**

The following guidelines are designed to assist attorneys in addressing and avoiding malpractice liability in a limited scope/discrete task representation. Limited scope representation does not differ substantially from the rest of your practice, and most of the suggestions which follow are equally applicable to full scope service. However, there are some specialized issues which require consideration.

It is important to note that limiting the scope of your representation does not limit your professional obligations to the client, including the duty to maintain confidentiality, the duty to act competently, the duty not to communicate with another person known by you to be represented by legal counsel in the matter (absent written permission from counsel to do so), and the duty to avoid conflicts of interest. It is also important to note that limiting the scope of your representation does not limit your exposure to liability for work you have agreed to perform, nor is such a limitation permissible.

Deciding whether to take the case

- 1. Work within your expertise.** As with full scope service, strongly consider rejecting a limited scope matter in areas of law in which you or your firm have little or no experience. Taking a case for the “learning experience” is unwise in any representation, but particularly risky in limited representation. It takes significant expertise in particular areas of law to be able to anticipate what issues will arise in a matter, and it is necessary to give good advice and avoid liability. **Even where your representation is limited to particular tasks, you may still owe a duty to alert the client to legal problems outside the scope of your representation that are reasonably apparent and that may require legal assistance. Therefore, you should inform the client not only of the limitation of your representation, but of the possible need for other counsel regarding issues you have not agreed to handle.**

2. **Don't be pressured by emergencies.** Pay particular attention to prospective clients who have last-minute emergencies and seek limited scope representation. Limited scope representation does not mean that you do not have to provide competent assistance or zealous advocacy. Being pressured to conduct a “quick document review” because of an upcoming deadline is much riskier if you will only be involved in that brief transaction. Consider advice on ways to move the deadline, if possible, to allow adequate time for review or representation.
3. **Be wary of clients who take a “musical chairs” approach to finding legal help.** Consider carefully the requests from prospective limited scope clients who have involved multiple attorneys in the same case. Bouncing around may be an indicator that the client is searching for the “right” answer after being given what s/he believes are unsatisfactory responses to previous analyses of her/his situation. You should avoid helping to facilitate situations in which a client may blame you for his/her discontent with the outcome. *On the other hand*, you may find that previous attorneys were uncomfortable with taking a “piece” of the case and that your prospective client simply had trouble finding an attorney like yourself who was willing to work effectively with him/her on a limited scope basis. The client may have been viewed as “difficult” because s/he was seeking more of a partnership relationship than the traditional full scope representation envisions.
4. **Be careful of clients who have unrealistic expectations.** A prospective client may be unrealistic about what s/he can achieve alone or about the nature of your limited scope representation. Part of your obligation in offering limited scope services is to teach the client about the legal system and the available remedies. Few non-attorneys will arrive on your doorstep with totally realistic expectations. Their beliefs are likely to have been shaped by what they have seen on TV, what they believe is fair, or what they have been told by neighbors or friends. You bring to the relationship your knowledge and experience with the legal system. If you believe that you will not be successful at reining in a client's unrealistic expectations, you should decline the representation. It is important that the *pro se* litigants “hear” your advice in order to partner successfully with you in the representation and carry out a plan with your guidance. Not every client is temperamentally suited to representing him/herself.
5. **Clients with limited capacity or language barriers may not be good candidates.** Since limitations on scope by definition must be informed and in writing, clients who lack the capacity to give informed consent or assist in their own representation should be avoided. If the limitation is mental, the client is probably not a good candidate. If the limitation is one of language (and many potential limited scope clients have limited English skills) special issues are presented. If you are not bilingual yourself, you should insist on a translator. It is your responsibility to ensure that the client understands the limitations on scope and has the capacity to assist in his/her own representation. This is an individualized assessment. Be creative in your fees or look for sources of *pro bono* or low cost assistance for those facing these challenges.

6. **Identify those with hidden motives.** Be wary if the prospective client has trouble focussing on the legal outcome even after you have carefully explained the possible remedies available to her/him. Emotional needs may be driving the request for assistance. While many cases involve an emotional component, *pro per* litigants who seek revenge are likely to be unhappy with the limited results that the legal system provides and even unhappier with limited scope services. Clients who require a lot of hand holding are also unsuited to limited scope representation.
7. **Make sure the limitation on the scope of your services is reasonable.** Although you and your client have substantial latitude in determining the scope of your representation, the limitation must be reasonable under the circumstances and the client must give informed consent. If you conclude that a short-term limited representation would not be reasonable under the circumstances, you may offer advice to the client but must also advise the client of the need for further assistance of legal counsel.
8. **Clearly address the fee structure and its relation to services.** If during your initial interview you find that the prospective client is reluctant to discuss or agree on fees, be cautious. It is critical that the client understands that limited scope services not only limit your fees but *also* limit the services that you will perform. If anything, your fee arrangement must be clearer in limited scope representation than in full service. You must ensure that there is no misunderstanding about what limited services you have agreed to perform. In limited scope representation, it is crucial to be on a “pay as you go” basis, as you may never see the client again.
9. **A good diagnostic interview is critical.** It is critical to perform a good diagnostic interview to pick up all the potential issues in the case. Both experienced and inexperienced attorneys will find a checklist of issues in the relevant practice area to be extremely helpful in conducting a good diagnostic interview.
10. **Develop and use an intake form.** A good form should list the key issues and allow room to insert unusual ones. Give a completed copy to the client. It is a contemporaneous record which documents your file, reminds you to ask about related issues, memorializes the limitations on scope, and educates the client. Use and tailor the forms which appear in these materials to make them work for you.
11. **Advise the client of their right to seek advice on issues outside the scope of the limited assignment.** It is probably a good idea to include in your intake sheet or handouts a statement that the client has been advised of the right to seek counsel on other issues.

After you take the case

12. **Use checklists.** Checklists are a good way to document who is going to do what before the next meeting or event in the case. Give a copy to the client. Sample checklists have been included in these materials. Tailor them to your specific practice, fill them out while the client is present, and make sure that you and your client each have an initialed copy.
13. **Use a clear fee agreement detailing the scope of representation.** A good limited services fee agreement will spell out exactly what you are doing for the client, and even more importantly, what you are *not* doing, and will detail what responsibilities the client will assume. There should be no confusion about the scope of the representation. Check the resources available at www.selfhelpsupport.org. Sample fee agreements are included for situations in which you consult on a single occasion, ongoing consulting, drafting and assistance with strategy and paperwork, and making an appearance for part of the case. Tailor them to each case and to your individual practice. A fee agreement which puts the limitations and checklist in an attachment is probably better suited to a case where you anticipate there may be a change in scope.
14. **Create a support group of experienced colleagues.** Minimal experience with handling limited scope representation poses special challenges for newer attorneys or those new to a particular practice area. An experienced practitioner can confirm your analysis, suggest additional issues to explore or divert you from a problematic proposed course of action. You might want to locate colleagues who are experienced with offering limited scope representation, and consider creating a study group, list serve, referral sources, or general references for each other. Meet with them periodically to discuss common problems and solutions. Most of the issues which will come up in a limited scope practice are practical rather than ethical, and it can be immensely helpful to talk to other practitioners who have faced the issues and developed solutions.
15. **Practice defensively and document all decisions.** This is good advice in any type of legal work. It is particularly essential to document instances in which you offer advice on a particular path for the *pro per* litigant to take. Use the "Follow Up Checklist" in the materials to document your file and educate the client easily and cost-effectively.
16. **Memorialize any changes in the scope of your limited representation as they occur.** *Never* do work outside the scope of the original retention without a new limitation signed by the client. Checklists that attach to the fee agreement are a simple and reliable way to do this. A confirming letter that the client doesn't sign will probably be insufficient to effectively document informed consent to the new limit in scope. Be sure that you and the client both sign off on any changes in scope. Use the "Tickler Checklist" in the materials to make sure you've done this. Adapt it for your full service cases as an additional risk management device.
17. **Use prepared handouts.** Many of you will already have prepared handouts on common questions which arise in your practice. It is helpful to have one which describes limited scope representation and details the specific options available. Note on your intake sheet which handouts you gave to the client and on what date. A sample client handout on limited scope representation is included in the materials.

18. **Explain the “why.”** Limited scope matters are pursued in partnership with the client. A client who understands the “big picture” and the tradeoffs will not only be more successful in self-representation but also less likely to blame you for unwanted outcomes.
19. **Making non-client laypersons part of your team is hazardous.** Limited scope representation may create an informal feeling to the attorney-client relationship. Remember that, despite the apparent informality, this is an attorney-client relationship. It is between you and your client, not you, your client, Aunt Mary, and others the client may want to have involved. Allowing third parties to participate may waive the attorney-client privilege. If the client insists on utilizing laypersons as part of their team, clearly advise them, in writing, in advance, of the risks involved.
20. **Refrain from providing forms with no assistance or review.** Some of the forms which will be required are simply too complicated for a *pro per* litigant to complete without assistance. Your expert assistance in the completion of these forms is not only a best practice but will also reduce any potential liability.
21. **Do not encourage a *pro per* litigant to handle a matter that is too technical or difficult.** A prime example of this problem is bringing or opposing a motion for summary judgment, or a motion to compel discovery. Part of your responsibility as an attorney is to counsel a person *against* handling such a matter in *pro per* and to help them understand the cost/benefit analysis of using their litigation budget wisely to acquire the expert assistance in the areas where they most need it. This is an individualized assessment.
22. **Do not expose a client to possible Rule 11 or CCP §128.7 sanctions.** A best practice is to satisfy yourself that the pleading you assist the client to prepare would withstand §128.7 scrutiny if your name were on it; or if not, at least advise the client about his/her responsibilities under §128.7

Ending the relationship

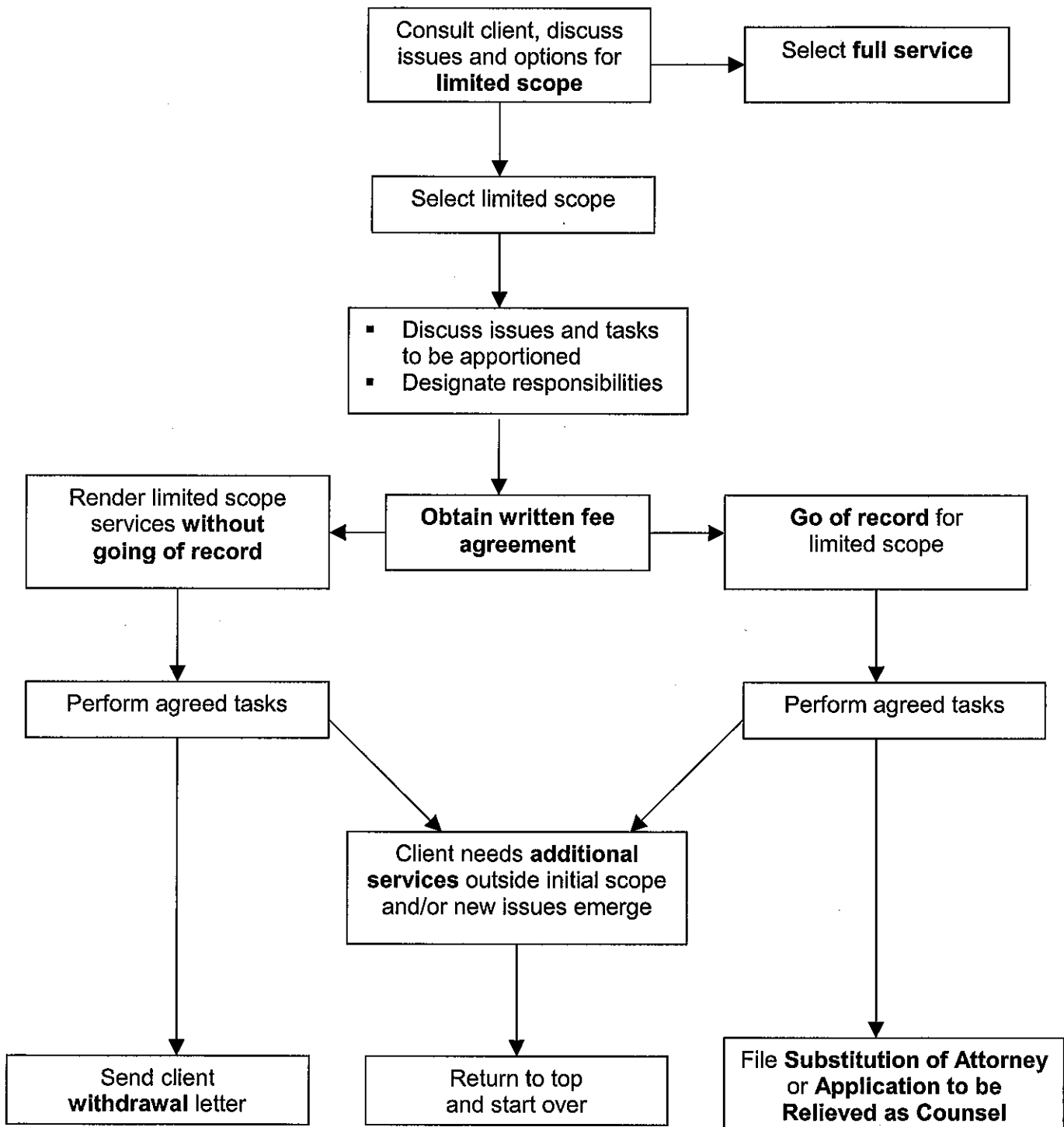
23. **Let the client know when your involvement has ended.** There should be no surprises either to you or the client about when your involvement in the matter has ended, and no unstated expectations of continued participation on your part. Send out a notice at the end of your involvement in a matter that involves a series of steps. See the sample “closing letter” in the materials. Notify the client that you believe you have completed your part and advise him/her to get in touch with you immediately if s/he disagrees.
24. **If you have entered an appearance, let the court know about ending the relationship as well.** The best practice is to use a substitution of attorney (civil) to advise the court and opposing party of the end of your involvement. If that is unavailable, use the simplified procedures and forms MC-955k MC-956 and MC-958 to be relieved as counsel. If you file a motion to be relieved as counsel, don’t attach your limited scope representation agreement to your application to be relieved, since that is a confidential communication.

Use good judgment. Many of these suggestions apply equally to full service representation. Your limited scope clients are likely to be more satisfied than your full service clients if you follow these simple practices. These suggestions don’t take much effort and will document your file and educate your clients in ways which substantially increase the likelihood of a satisfactory relationship for each of you.

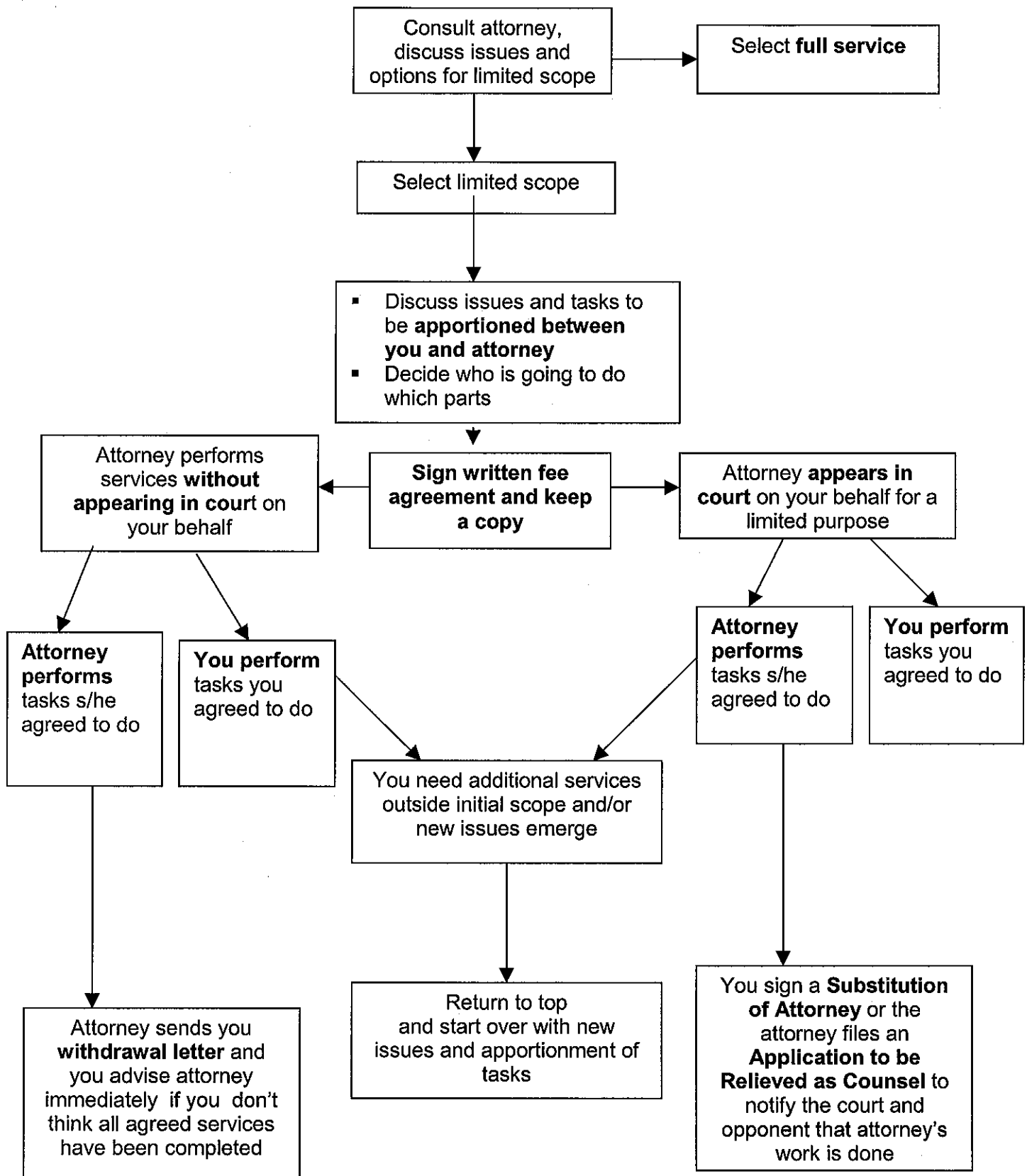
SECTION 3

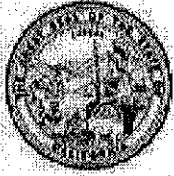
Flow Charts

LIMITED SCOPE REPRESENTATION FLOW CHART FOR ATTORNEYS



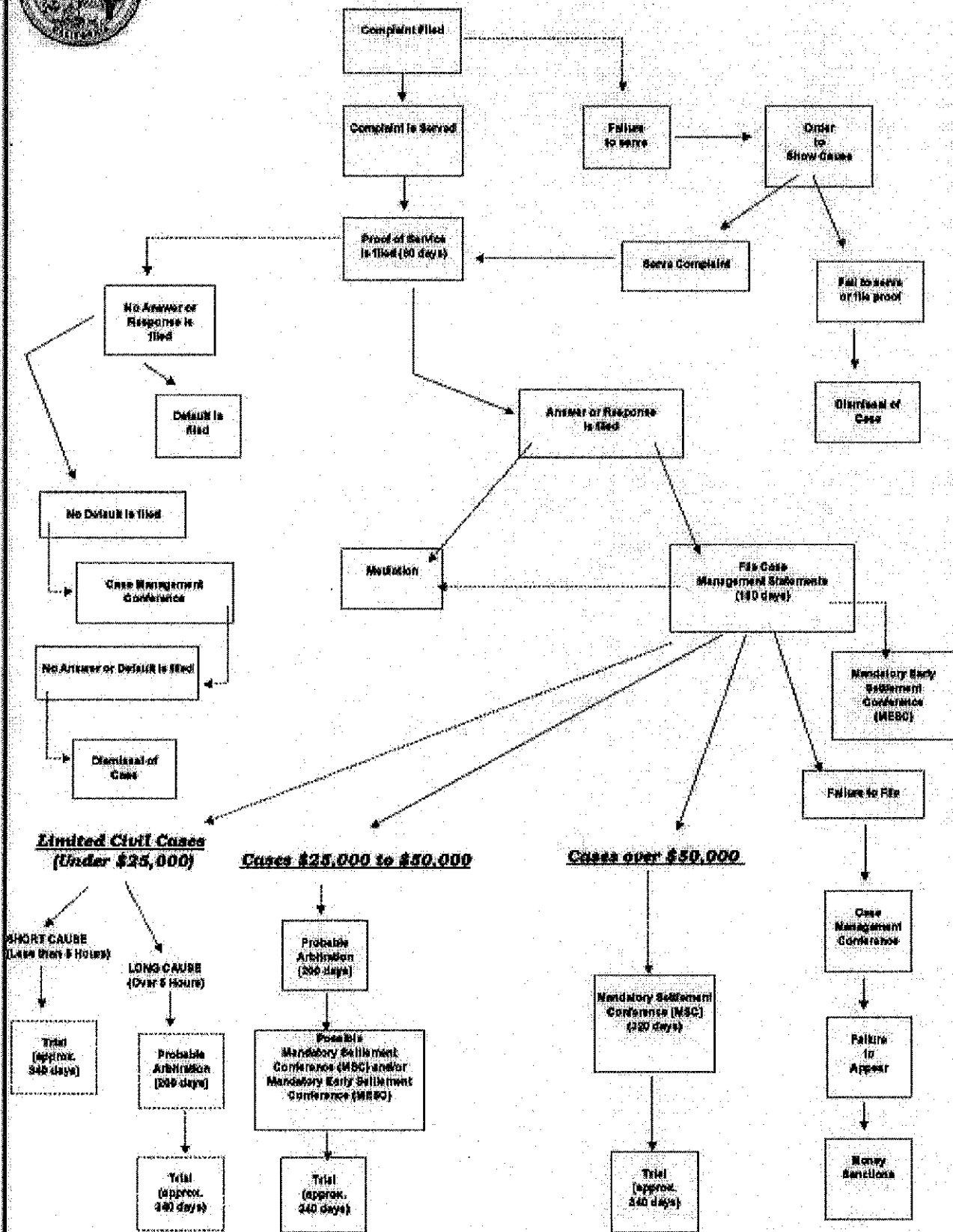
LIMITED SCOPE REPRESENTATION FLOW CHART FOR CLIENTS





Superior Court of California

Life & Times of a Standard Track Civil Case



CIVIL 2000/WHM/jk

SECTION 4

Initial Interview Checklist

INITIAL INTERVIEW CHECKLIST

I met with _____ on _____, 200__
regarding _____

I performed a conflicts check on:

We discussed the following issues:

Date of Incident/Occurrence

Statute of Limitations

Legal Theories/Causes of
Action/Elements of Claim or
Defense

Burdens of Proof

Costs of Litigation

Evidence

Motions Attacking the Pleadings

Defenses

Possible Settlement

Duration of Case

Ability to Collect Judgment

Witnesses

Alternatives to Litigation

Other Related Matters (i.e. relationship of parties)

Underlying Goals

Challenges of Case

Likely Response from Other
Side

Ability to Self-Represent

Possible Insurance Coverage

Possible Bankruptcy (either debtor or creditor)

Possible Service of Process Challenges

Discovery

Possible Demand for Bill of Particulars

Jurisdictional options (i.e. small claims, limited
civil, general civil)

Proper notice given to tenant

Rent control issues

Lease terms

Habitability defenses

Other tenant defenses

Advised client of right to seek counsel on issues outside the scope:

Other:

We discussed the following coaching options:

I gave the client the following materials:

Issues checklist

Tasks checklist

Fee agreement #

Client information handouts

Handout re preparing evidence

Handout re unlawful detainer cases

Blank court forms:

Other:

Attorney initials:

Client initials:

SECTION 5

Tasks/Issues to be Apportioned

Tasks/Issues to be Apportioned

Two checklists follow. They address the two ways in which limited scope representation arrangements break down. In the first, the client and attorney agree which tasks are to be performed by each of them. This is by far the most common arrangement. In the other model, the attorney handles one or more discrete issues from start to finish, with the client assuming responsibility for the other issues.

The checklists should be tailored to your practice and to each case and may be used in two ways:

1. Use them as part of your intake to memorialize your discussions with the client regarding the limitations on scope, and complete a new one each time the scope changes (as it often does).
2. Use them as exhibits to the fee agreement of your choice, and replace them each time the scope changes.

Tasks to Be Apportioned May Look Like This:

Client instructs attorney not to conduct informal discovery, and undertakes the information gathering role, but has the attorney prepare formal evidence as needed;
Client asks attorney to draft moving or responsive pleadings for a hearing the client attends in *pro per*;

Client consults with attorney on strategy and tactics;

Client appears at the hearing and asks the attorney to draft the order;

Client asks attorney to review correspondence or pleadings that the client has drafted;

Client asks attorney to prepare or respond to formal discovery and/or prepare a motion to compel;

Client asks attorney to write a brief to be filed in *pro per*;

Client asks attorney to respond to law and motion either by drafting opposition papers, or drafting opposition and appearing in court;

Issues to Be Apportioned May Look Like This:

Attorney represents client in connection with matters raised in a cross-complaint, client handles defense of underlying lawsuit;

Attorney represents client in connection with emergency injunctive orders, client handles the rest of the case.

Attorney prepares and organizes the exhibits and scripts the presentation and questions for the opposing party's witnesses, but does not appear at court.

Attorney drafts pleadings and provides instructions on service and filing, while the client is responsible for court appearances;

Attorney advises client on possible settlement alternatives and coaches on negotiation strategy. Client attends the settlement conference in *pro per* and the attorney is on telephone standby in the event of questions regarding acceptability of settlement offers.

Note: Each limited scope arrangement is different, and *must* be tailored to the client, case and issues presented. These checklists are designed to be flexible and should be tailored to each case.

**ATTACHMENT TO LIMITED SCOPE FEE AGREEMENT
TASKS TO BE APPORTIONED**

Use this form to allocate tasks between attorney and client. Attach this form to your revised fee agreement if the scope of representation changes.

TASK	ATTORNEY TO DO:	DATE COMPLETED	CLIENT TO DO:
Draft initial demand prior to filing suit			
Draft papers to start/respond to suit			
File and serve papers			
Draft Motions / Respond to Motions			
Draft Written Discovery			
Respond to Written Discovery			
Analyze case and advise of legal rights			
Procedural advice			
Formulating strategy and tactics			
Investigate facts; which issues?			
Obtain documents; which ones?			
Draft correspondence			
Review correspondence and pleadings			
Appear in court			
Prepare Case Management Statement			
Prepare subpoenas for documents			
Take depositions			
Review depositions and documents obtained from others			

Attorney Initials _____

Client Initials _____

TASKS TO BE APPORTIONED, cont'd

TASK	ATTORNEY TO DO:	DATE COMPLETED	CLIENT TO DO:
Legal research and analysis			
Contact witnesses			
Draft or analyze settlement proposals			
Contact expert witnesses			
Draft orders and judgments			
Outline testimony			
Trial or negotiation preparation			
Prepare for Judicial Arbitration, Mediation or Voluntary Settlement Conference			
Appear at Judicial Arbitration, Mediation or Voluntary Settlement Conference			
Review orders and judgments that client drafts			
Draft orders			
Draft disclosure documents, including witness and evidence lists			
Draft Proposed Jury Instructions			
Issue subpoenas for witnesses to appear at trial			
Conduct trial			
Advise regarding appeal			
Enforce orders			
Draft other papers as necessary			
Other:			
Other:			
Other:			
Dated:	Dated:		
Attorney signature	Client signature		

**ATTACHMENT TO LIMITED SCOPE FEE AGREEMENT
ISSUES TO BE APPORTIONED**

ISSUE	ATTORNEY TO DO:	DATE COMPLETED	CLIENT TO DO:
Prosecuting complaint			
Answering/defending complaint			
Prosecuting Cross-Complaint			
Answering/defending Cross-Complaint			
Seeking injunctive orders			
Opposing request for injunctive orders			
Compelling arbitration or ADR			
Opposing petition to compel arbitration or ADR			
Enforce judgments or orders (describe)			
Pursue an appeal or writ			
Other issues:			
Other issues:			
Other Issues:			
Dated:	Dated:		
Attorney signature	Client signature		

Attorney Initials _____

Client Initials _____

SECTION 6

Sample Fee Agreements

**FEE AGREEMENT #1
SINGLE CONSULTATION AGREEMENT**

On _____, 200_, _____ (Client) consulted with _____ (Attorney), who performed a conflicts check on _____ for limited scope assistance and advice. At that time, attorney provided the following services:

	Review of court documents (describe)
	Information about document preparation:
	Assistance with document preparation:
	Advice regarding client's rights and responsibilities
	Advice about the law and strategy relevant to issues as identified by Client
	Information about fact gathering and discovery
	Guidance about procedural information, filing and service of documents
	Advice about negotiation and the preparation and presentation of evidence
	Advice about law and strategy related to an ongoing mediation/negotiation or litigation
	Legal Research
	Advising on trial or negotiating techniques
	Advising regarding property rights
	Review and analysis of Client's case or trial strategy
	Other (specify):
<p>Client has paid Attorney for her/his time. All tasks which Client requested of Attorney have been completed and no further services are requested or expected from Attorney. Neither Client nor Attorney contemplates or expects a further professional relationship. Client acknowledges that he/she has been advised of the Client's right to seek separate legal advice from other counsel of the client's choice with regard to all legal matters that are outside the scope of the specific limited services provided by Attorney under this agreement.</p> <p>Dated: _____</p>	

Client signature	Attorney signature

FEE AGREEMENT #2
CONSULTING SERVICES AGREEMENT

Identification of Parties: This agreement, executed in duplicate with each party receiving an executed original, is made between _____,
hereafter referred to as "Attorney," and _____,
hereafter referred to as "Client."

Nature of Case: Client consulted Attorney in the following matter:

- 1. Client Responsibilities and Control:** Client will remain responsible for and in control of his/her own case at all times. This means that Client will be responsible for understanding the issues, resolution options and potential consequences of those resolution options. In addition, Client agrees to:
- a. Cooperate with Attorney or his/her office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services.
 - b. Inform Attorney of the specific parts of the case that Client requests Attorney's assistance with.
 - c. Review and evaluate all information provided by Attorney.
 - d. Keep Attorney or his/her office advised of Client's concerns and any information pertinent to Client's case.
 - e. Provide Attorney with copies of all correspondence to and from Client relevant to the case.
 - f. Notify Attorney of any pending negotiations, hearings, contractual deadlines or litigation.
 - g. Keep all documents related to the case in a file for review by Attorney.
 - h. Sign all relevant papers, agreements or findings relative to the case.
 - i. Immediately notify Attorney of any changes of work or home addresses or telephone numbers of the Client.
 - j. Immediately notify Attorney if the Client receives any new pleading, motion, letter, or other documents from the other party, the other party's lawyer, any expert, appraiser, or evaluator hired by either party or appointed by the Court, or any Special Master, or any documents from the Court, or from any other court, such as a bankruptcy court, and provide the Attorney with a copy of the item received, as well as the date it was received by the Client.

- 2. Scope of Services:** Client requests Attorney to perform or *not to perform* the following services related to the legal issues identified here or on the following page or attachment hereto:

(Indicate *Yes* or *No* in box)

a.	<input type="checkbox"/>	Advice about law and strategy related to an ongoing mediation, negotiation or litigation
b.	<input type="checkbox"/>	Information about document preparation
c.	<input type="checkbox"/>	Assistance with document preparation
d.	<input type="checkbox"/>	Information about fact gathering and discovery
e.	<input type="checkbox"/>	Assistance with drafting discovery requests
f.	<input type="checkbox"/>	Assistance with law and motion matters
g.	<input type="checkbox"/>	Guidance and procedural information regarding filing and serving documents
h.	<input type="checkbox"/>	Advice about negotiations and the preparation and presentation of evidence
i.	<input type="checkbox"/>	Legal research
j.	<input type="checkbox"/>	Coaching on trial or negotiating techniques
k.	<input type="checkbox"/>	Review and analysis of Client's trial strategy
l.	<input type="checkbox"/>	Advice about an appeal
m.	<input type="checkbox"/>	Procedural assistance with an appeal
n.	<input type="checkbox"/>	Assistance with substantive legal argument
o.	<input type="checkbox"/>	Other:

3. Limitation of Attorney's Responsibilities: Attorney will perform the specific legal tasks identified by the word "**Yes**" in paragraph 2 above consistent with Attorney's ethical and professional responsibilities, including observing strict confidentiality, and based on the information available to Attorney. In providing those services, Attorney *will not*:

- a. Represent, speak for, appear for, or sign papers on Client's behalf.
- b. Provide services in paragraph 2 which are identified with the word "No."
- c. Make decisions for Client about any aspect of the case.
- d. Determine likely outcomes of disputed matters in court
- e. Determine an appropriate settlement of the case.
- f. Litigate Client's case on Client's behalf
- g. Protect Client's property or position by means of restraining orders while discovery and/or negotiations are in progress.

Attorney will NOT perform any services identified by the word "NO" in paragraph 2 above. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement, and initiated and dated by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact, and the Attorney's additional responsibilities in the Client's case.

Right to Seek Advice of Other Counsel: Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in paragraph 2 which are identified with the word "**no**" at any time during or following this limited consulting services agreement.

4. Method of Payment for Services:

- a. **Hourly Fee:** The current hourly fee charged by Attorney for services under this agreement is \$ _____. Unless a different fee arrangement is established in clause 4b of this Paragraph, the hourly fee will be payable at the time of service. Attorney will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest tenth of an hour. The hourly fee will be payable at the time of the service.

- b. **Payment from Deposit:** For a continuing consulting role, Client will pay to Attorney a deposit of \$_____, to be received by Attorney on or before _____, and to be applied against Attorney's fees and costs incurred by Client. This amount will be deposited by Attorney in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as they are incurred by Client. Any interest earned will be paid, as required by law, to the State Bar of California to fund legal services for indigent persons. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by Client for Attorney's fees and costs is less than the amount of the deposit, the difference will be refunded to Client.
- c. **Costs:** All costs payable to third parties in connection with Client's case including filing fees, investigation fees, deposition fees and the like shall be paid directly by Client. Attorney will not advance costs to third parties on Client's behalf.

Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this agreement.

5. **Discharge of Attorney:** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services after receipt of the notice. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided prior to such discharge.
6. **Withdrawal of Attorney:** Attorney may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following:
- a. The Client consents,
 - b. The Client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively, and
 - c. The Client fails to pay Attorney's fees or costs as required by his or her agreement with the Attorney.

Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided. At the termination of services under this agreement, Attorney will release promptly to Client on request all of Client's papers and property.

7. **Disclaimer of Guarantee:** Although Attorney may offer an opinion about possible results regarding the subject matter of this agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee.
8. **Arbitration of Fee Dispute:** If a dispute arises between Attorney and Client regarding Attorney's fees or costs under this agreement and Attorney files suit in any court other than small claims court, Client will have the right to stay that suit by timely electing to arbitrate the dispute under Business and Professions Code sections 6200-6206, in which event Attorney must submit the matter for such arbitration.

9. Entire Agreement: This Agreement is the complete Agreement between the Client and the Attorney. If the Client and the Attorney decide to change or amend this Agreement in any way, the change must be in writing and attached to this Agreement.

10. Effective Date of Agreement: The effective date of this agreement will be the date when, having been executed by Client, one copy of the agreement is received by Attorney and Attorney receives the deposit required by Paragraph 4b. Once effective, this agreement will, however, apply to services provided by Attorney on this matter before its effective date.

The foregoing is agreed to by:

(Client)

(Attorney)

(Date)

(Date)

FEE AGREEMENT #3
ONGOING CONSULTING AGREEMENT

Identification of Parties: This agreement, executed in duplicate with each party receiving an executed original, is made between _____, hereafter referred to as "Attorney," and _____, hereafter referred to as "Client."

- 1. Nature of Case:** The Client is requesting ongoing consulting services from Attorney in the following matter:

- 2. Client Responsibilities and Control.** Client shall remain responsible for the conduct of the case and understands that he/she will remain in control of and be responsible for all decisions made in the course of the case. Client agrees to:

- a. Cooperate with Attorney or office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
- b. Keep attorney or office advised of Client's concerns and any information that is pertinent to Client's case;
- c. Provide Attorney with copies of all pleadings and correspondence to and from Client regarding the case;
- d. Immediately provide Attorney with any new pleadings or motions received from the other party;
- e. Keep all documents related to the case in a file for review by Attorney.

- 3. Services to be performed by Attorney.** Client and Attorney have agreed that Attorney will provide the following services, indicated by writing YES or NO (Attorney will not perform any services indicated by the word NO):

- a. _____ Legal advice: office visits, telephone calls, fax, mail, email;
- b. _____ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration;
- c. _____ Evaluation of Client's self-diagnosis of the case and advising Client about legal rights and responsibilities;
- d. _____ Guidance and procedural information for filing or serving documents;
- e. _____ Review pleadings and other documents prepared by Client;

- f. _____ Suggest documents to be prepared;
 - g. _____ Draft pleadings, motions and other documents;
 - h. _____ Factual investigation: contacting witnesses, public record searches, in-depth interview of Client;
 - i. _____ Legal research and analysis;
 - j. _____ Evaluate settlement options;
 - k. _____ Discovery: interrogatories, depositions, requests for document production;
 - l. _____ Planning for negotiations, including simulated role-playing with Client;
 - m. _____ Planning for court appearances, including simulated role-playing with Client;
 - n. _____ Standby telephone assistance during negotiations or settlement conferences;
 - o. _____ Backup and troubleshooting during the hearing or trial;
 - p. _____ Referring Client to expert witnesses, special masters or other counsel;
 - q. _____ Counseling Client about an appeal;
 - r. _____ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal;
 - s. _____ Provide preventive planning and/or schedule legal check-ups;
 - t. _____ Other: _____
-

4. **Attorney's Responsibilities:** Attorney will exercise due professional care and observe strict confidentiality in providing the services identified by the word "YES" in Paragraph 4 above. In providing those services, Attorney WILL NOT:

- a. Represent, speak for, appear for, or sign papers on the Client's behalf;
- b. Become attorney of record on any court papers or litigate on Client's behalf;
- c. Provide services which are not identified by the word "YES" in Paragraph 4;
- d. Make decisions for Client about any aspect of the case;
- e. Protect Client's property or position by means of restraining orders while discovery and/or negotiations are in progress.

- f. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement, and initialed and dated by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact, and the Attorney's additional responsibilities in the Client's case.
- g. **Right to Seek Advice of Other Counsel:** Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in paragraph 3, which are identified with the word "**no**" at any time during or following this Ongoing Consulting Agreement.

5. Method of Payment for Services:

a. Hourly Fee:

The current hourly fee charged by Attorney for services under this agreement is \$ _____. Unless a different fee arrangement is established in clause b) of this Paragraph, the hourly fee shall be payable at the time of the service. Attorney will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour.

If, while this agreement is in effect, Attorney increases the hourly rate(s) being charged to clients generally for Attorney's fees, that increase may be applied to fees incurred under this agreement, but only with respect to services provided thirty days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rate(s), Client may terminate Attorney's services under this agreement by written notice effective when received by Attorney.

b. Payment from Deposit:

For a continuing consulting role, Client will pay to Attorney a deposit of \$ _____, to be received by Attorney on or before _____, and to be applied against Attorney's fees and costs incurred by Client. This amount will be deposited by Attorney in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as they are incurred by Client. Any interest earned will be paid, as required by law, to the State Bar of California to fund legal services for indigent persons. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by Client for Attorney's fees and costs is less than the amount of the deposit, the difference will be refunded to Client.

Costs: Client will pay Attorney's out of pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with Client's case including filing fees, investigation fees, deposition fees and the like will be paid directly by Client. Attorney will not advance costs to third parties on Client's behalf.

Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this agreement.

- c. Should it be necessary to institute any legal action for the enforcement of this agreement, the prevailing party shall be entitled to receive all court costs and reasonable attorney fees incurred in such action from the other party.

- 6. **Discharge of Attorney:** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. Notwithstanding the discharge, Client will remain obligated to pay Attorney at the agreed rate for all services provided and to reimburse Attorney for all costs incurred prior to such discharge.

- 7. **Withdrawal of Attorney:** Attorney may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. The circumstances under which the Rules permit such withdrawal include, but are not limited to, the following: a) The client consents, b) the client's conduct renders it unreasonably difficult for the Attorney to carry out the employment effectively, and c) the client fails to pay Attorney's fees or costs as required by his or her agreement with the Attorney.

Notwithstanding Attorney's withdrawal, Client will remain obligated to pay Attorney at the agreed rate for all services provided, and to reimburse Attorney for all costs incurred before the withdrawal.

At the termination of services under this agreement, Attorney will promptly release all of Client's papers and property to Client on request.

8. Resolving Disputes between Client and Attorney

- a. **Notice and Negotiation.** If any dispute between Client and Attorney arises under this agreement regarding the payment of fees, Attorney's professional services rendered to or for Client, and any other disagreement, regardless of the nature of the facts or legal theories involved, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Client or Attorney that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.

b. Mediation. If the dispute is not resolved through negotiation, Client and Attorney will attempt, within fifteen (15) days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within fifteen (15) days. If the Attorney and Client cannot agree on a neutral mediator, they will request that the local bar association or community based non-profit mediation program select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of the mediation, provided that the payment of costs and any attorney's fees may be mediated. Nothing in this provision shall constitute a waiver of Client's rights to State Bar fee arbitration or a trial *de novo* after a State Bar fee arbitration.

9. Amendments and Additional Services. This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and attached to this agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 4, a photocopy of Paragraph 4 that clearly denotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.

10. Severability in Event of Partial Invalidity. If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

11. Statement of Client's Understanding. I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:

- a. _____ I have accurately described the nature of my case in Paragraph 1.
- b. _____ I will be responsible for the conduct of my case and will be in control of my case at all times as described in Paragraph 2.
- c. _____ The services Attorney has agreed to perform in my case are identified by the word "YES" in Paragraph 3. I take responsibility for all other aspects of my case.
- d. _____ I understand and agree to the limitations on the scope of Attorney's responsibilities identified in Paragraph 4 and understand Attorney will not be responsible for my conduct in handling my case.
- e. _____ I will pay Attorney for services as described in Paragraph 5.

- f. _____ I will resolve any disputes I may have with Attorney under this Agreement in the manner described in Paragraph 8.
- g. _____ I understand that any amendments to this Agreement shall be in writing, as described in Paragraph 9.
- h. _____ I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client *before* I sign this Agreement.

(Client)

(Attorney)

(Date)

(Date)

FEE AGREEMENT #4*
LIMITED REPRESENTATION AGREEMENT INCLUDING COURT APPEARANCE

Identification of Parties: This agreement, executed in duplicate with each party receiving an executed original, is made between _____, hereafter referred to as "Attorney," and _____, hereafter referred to as "Client."

- 1. Nature of Case:** The Client is requesting ongoing consulting services from Attorney in the following matter:
- _____
- _____

These services are likely to require Attorney to appear of record for a limited issue.

- 2. Client Responsibilities and Control.** Client intends to retain control over all aspects of the case except those specifically assigned to Attorney, and understands that he/she will remain in control of the case and be responsible for all decisions made in the course of the case. Client agrees to:
- a. Cooperate with Attorney or office by complying with all reasonable requests for information in connection with the matter for which Client is requesting services;
 - b. Keep attorney or office advised of Client's concerns and any information that is pertinent to Client's case;
 - c. Provide Attorney with copies of all pleadings and correspondence to and from Client regarding the case;
 - d. Immediately provide Attorney with any new pleadings or motions received from the other party;
 - e. Keep all documents related to the case in a file for review by Attorney.

3. Services to be performed by Attorney

- a. Client seeks the services from Attorney as set forth in the Tasks and Issues to be Apportioned checklist attached as Exhibit A. Client and Attorney shall designate the services to be rendered by Attorney by writing the word "Yes" in the column labeled "Attorney Shall Do" next to the services they agree Attorney will do, and shall designate the services Client shall undertake him/herself by writing the word "Yes" under the column labeled "Client to Do" next to those services. If a service is to be rendered by another attorney or some other third person, the word "Other Attorney" or other similar designation shall be written in the blank opposite the service. Attorney and Client shall each retain an original of this agreement and the designation of services in Exhibit A attached.

*Use in conjunction with the Tasks/Issues checklists at pages 22-25.

- b. The Client may request that Attorney provide additional services. If Attorney agrees to provide additional services, those additional services will be specifically listed in an amendment to this Agreement, and initialed and dated by both parties. The date that both the Attorney and the Client initial any such list of additional services to be provided will be the date on which the Attorney becomes responsible for providing those additional services. If the Client decides to retain the Attorney as the Client's Attorney of record for handling the entire case on the Client's behalf, the Client and the Attorney will enter into a new written Agreement setting forth that fact, and the Attorney's additional responsibilities in the Client's case.
 - c. **Right to Seek Advice of Other Counsel:** Client is advised of the right to seek the advice and professional services of other counsel with respect to those services in paragraph 2 and Exhibit A and successor exhibits detailing the scope of representation which are identified with the words "*no*" or "*client to do*" at any time during or following this Limited Representation Agreement.
4. **Attorney of Record.** It is the intention of Attorney and Client that Attorney shall only perform those services specifically requested of Attorney. Some of those services may require Attorney to become attorney of record or make a court appearance in Client's case in order to perform the service requested. Attorney and Client specifically agree that Attorney's becoming attorney of record for such purposes shall not authorize or require Attorney to expand the scope of representation beyond the specific services designated. In the event that any court requires Attorney, as attorney of record for one or more authorized issues or tasks, to assume the responsibility for other tasks or issues reserved to client or a third party professional, Attorney may, at his/her option, elect to withdraw from representation, and Client agrees to execute any Substitution of Attorney forms reasonably requested by Attorney.

5. Method of Payment for Services:

a. Hourly Fee

The current hourly fee charged by Attorney for services under this agreement is as follows:

- 1) Attorney _____
- 2) Associate _____
- 3) Paralegal _____
- 4) Law Clerk _____

Unless a different fee arrangement is established in clause b) of this paragraph, the hourly fee shall be payable at the time of the service. Attorney will charge in increments of one tenth of an hour, rounded off for each particular activity to the nearest one tenth of an hour.

If, while this agreement is in effect, Attorney increases the hourly rate(s) being charged to clients generally for Attorney's fees, that increase may be applied to fees incurred under this agreement, but only with respect to services provided thirty days or more after written notice of the increase is mailed to Client. If Client chooses not to consent to the increased rate(s), Client may terminate Attorney's services under this agreement by written notice effective when received by Attorney.

- b. **Payment from Deposit.** For a continuing consulting role, Client will pay to Attorney a deposit of \$_____, to be received by Attorney on or before _____, and to be applied against Attorney's fees and costs incurred by Client. This amount will be deposited by Attorney in Attorney's trust account. Client authorizes Attorney to withdraw the principal from the trust account to pay Attorney's fees and costs as they are incurred by Client.

Any interest earned will be paid, as required by law, to the State Bar of California to fund legal services for indigent persons. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by Client for Attorney's fees and costs is less than the amount of the deposit, the difference will be refunded to Client.

Costs: Client will pay Attorney's out of pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense and postage. All costs payable to third parties in connection with Client's case including filing fees, investigation fees, deposition fees and the like will be paid directly by Client. Attorney will not advance costs to third parties on Client's behalf.

Client acknowledges that Attorney has made no promises about the total amount of Attorney's fees to be incurred by Client under this agreement.

6. Resolving Disputes between Client and Attorney

- a. **Notice and Negotiation.** If any dispute between Client and Attorney arises under this agreement, both Attorney and Client agree to meet and confer within ten (10) days of written notice by either Client or Attorney that the dispute exists. The purpose of this meeting and conference will be to negotiate a solution short of further dispute resolution proceedings.
- b. **Mediation.** If the dispute is not resolved through negotiation, Client and Attorney shall attempt, within fifteen (15) days of failed negotiations, to agree on a neutral mediator whose role will be to facilitate further negotiations within fifteen (15) days. If the Attorney and Client cannot agree on a neutral mediator, they shall request that the local bar association or community based non-profit mediation center select a mediator. The mediation shall occur within fifteen (15) days after the mediator is selected. The Attorney and Client shall share the costs of the mediation, provided that the payment of costs and any attorney's fees may be mediated. Nothing in this provision shall constitute a waiver of Client's rights to State Bar fee arbitration or a trial *de novo* after a State Bar fee arbitration.

7. **Amendments and Additional Services.** This written Agreement governs the entire relationship between Client and Attorney. All amendments shall be in writing and attached to this agreement. If Client wishes to obtain additional services from Attorney as defined in Paragraph 3b, a photocopy of Paragraph 3b which clearly denotes which extra services are to be provided, signed and dated by both Attorney and Client and attached to this Agreement, shall qualify as an amendment.
8. **Severability in Event of Partial Invalidity:** If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.
9. I have carefully read this Agreement and believe that I understand all of its provisions. I signify my agreement with the following statements by initialing each one:
- a. _____ I have accurately described the nature of my case in Paragraph 1.
 - b. _____ I will be responsible for the conduct of my case and will be in control of my case at all times as described in Paragraph 2.
 - c. _____ The services that I want Attorney to perform in my case are identified by the word "YES" in Paragraph 3. I take responsibility for all other aspects of my case.
 - d. _____ I understand and accept the limitations on the scope of Attorney's responsibilities identified in Paragraph 4 and understand that Attorney will not be responsible for my conduct in handling my own case.
 - e. _____ I will pay Attorney for services as described in Paragraph 5.
 - f. _____ I will resolve any disputes I may have with Attorney under this Agreement in the manner described in Paragraph 6.
 - g. _____ I understand that any amendments to this Agreement will be in writing, as described in Paragraph 7.
 - h. _____ I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client *before* I sign this Agreement.

(Client)

(Attorney)

(Date)

(Date)

SECTION 7

Sample Change in Scope Letter

Sample Change in Scope Letter

Re: Limited Scope Representation

Dear _____:

Per our [telephone] conversation of _____, 200_, you have asked me to perform additional tasks for you that are not included in our original Agreement for Limited Scope Representation dated _____ [and modified _____] (copies enclosed).

You have requested and I have agreed to do the following:

[Enumerate the specific tasks/issues that you have agreed to undertake for the client.]

(e.g. to prepare _____ in response to the motion recently filed.)

I understand that you wish to continue handling all other matters yourself as set forth in our original Agreement.

It is essential that we both have the same understanding of our respective responsibilities in connection with your case. **I am unable to begin to work on the new task[s] until one copy of the signed revised checklist has been returned to me.** [If applicable] Some of the tasks you want me to undertake have significant time constraints which could seriously impact your legal rights. It is therefore **extremely important** that you complete and initial a new Tasks/Issues checklist to memorialize the new scope of my involvement in your case. I've prepared and enclosed two copies of a new checklist, which I believe covers the changes to the prior Agreement for Limited Scope Representation. If time is of the essence in taking the necessary steps to protect your rights in this new area, you should consider either coming to my office to sign the checklist, or fax me a signed copy so I can start.

Please review it carefully and, if you agree, initial BOTH copies, and return one to me in the envelope provided. The other copy is for your records and should be attached to your copy of our Agreement for Limited Scope Representation.

I encourage you to seek the advice of other counsel in connection with tasks that I have not undertaken. Also, please feel free to consult with another attorney of your choice regarding this revised Agreement before signing and returning it to me.

I look forward to working with you on this new matter.

Very truly yours,

Enclosures:

Two copies of Revised Task/Issues Checklist
Return envelope for your convenience

SECTION 8

Checklists

FOLLOW-UP CHECKLIST

Client:

Attorney and Client consulted on

By

(fill in date) Client will:

Obtain the following documents:

Contact the following witnesses:

Complete the following forms:

Prepare the following information for coach:

By

(fill in date) Attorney will:

Draft the following documents:

Prepare the following forms:

Contact the following witnesses:

Research the law/procedure on:

Review the following documents:

Other:

Other assignments:

Attorney initials:

Client initials:

TICKLER CHECKLIST (**Keep on top of file**)						
Client:				Case opened:		
Initial Intake Checklist completed and copy given to client on						
Revised dated:						
Materials given to Client					Date	
Limited Scope ("Unbundling") Description						
Brochure						
Referral information						
Directions to court						
Self-Help Court Services						
Other						
Worksheet re scope of services and services NOT performed _____ Modified and signed by attorney and client (new form for each change in scope)						
Dated:						
Documents in hand signed by Client				Date	Modified on	
Intake Checklist						
Issues to be Apportioned						
Tasks to be Apportioned						
Retainer Agreement No.						
Other:						
Other:						
Other:						
Case Conclusion						
Closing letter sent:						
Substitution of attorney sent to client _____ (date), signed by client _____ (date) filed _____.						
Application to be Relieved as Counsel served and filed _____. Order granting application filed _____.						
Case Closed:						
Other Comments:						

SUGGESTED CLIENT HANDOUTS

LIMITED SCOPE GENERAL CIVIL REPRESENTATION

There are lots of handouts which you can have available to assist your limited scope clients. Consider having some or all of the following available:

1. MapQuest directions to the local courts, Self-Help Center Services, law library, etc.
2. A list of web sites with information for self-represented litigants, such as online forms and information sources, Judicial Council self-help sites and the like.
3. Referral information for legal assistance programs for which your clients may qualify, including Modest Means Programs, Pro Bono and other similar low fee panels.
4. Handouts with suggested methods for resolving certain types of disputes, such as neighbor disputes, employment disputes, business disputes, etc.

Note: Always note on the Tickler Checklist what handouts you gave them and when.

SECTION 9

Sample Closing Letter

Sample Closing Letter

Re: Limited Scope Representation

Dear _____:

I would like to take this opportunity to thank you for allowing me to assist you in this matter. I have now completed all of the tasks which we agreed I would do in our agreement dated _____ [and modified on _____]. I know of no other matters for which you have requested my assistance. **If you believe that I am incorrect, and you are relying on my assistance for some additional task, please contact me immediately.**

[Use only if attorney has appeared of record with the court]. [Option 1] If I do not hear from you within the next week, I will file the enclosed Notice of Completion with the court notifying the court that my representation of you is concluded. **[Option 2]** I am enclosing a substitution of attorney for you to sign and return indicating that I am no longer serving as your attorney. If you do not sign this substitution and return it within the week, I will be required to file a motion with the court asking to be relieved as your attorney.

[If applicable.] Don't forget that there is still a hearing on _____ at which time you will be representing yourself. **Your opposition paperwork must be served and filed on _____.**

You also agreed to contact _____ at (_____)____-____ to prepare _____.

The following issues, on which you have declined my assistance, are still pending:

- 1.
- 2.

I am enclosing the following original documents. Please be sure to keep them in a safe place in the event you need to refer to them in the future.

- 1.
- 2.

Thank you again for allowing me the opportunity to assist you in this matter. If you need further assistance in the future, I hope you will not hesitate to contact me.

Very truly yours,

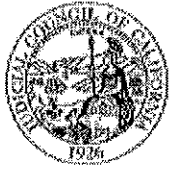
Enclosures

SECTION 10

APPENDICES

APPENDIX 1

Rules 3.35, 3.36 and 3.37 of the California Rules of Court



2007 California Rules of Court

Rule 3.35. Definition of limited scope representation; application of rules

(a) Definition

"Limited scope representation" is a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person.

(b) Application

Rules 3.35 through 3.37 apply to limited scope representation in civil cases, except in family law cases. Rules 5.70 and 5.71 apply to limited scope representation in family law cases.

(c) Types of limited scope representation

These rules recognize two types of limited scope representation:

(1) *Noticed representation*

Rule 3.36 provides procedures for cases in which an attorney and a party notify the court and other parties of the limited scope representation.

(2) *Undisclosed representation*

Rule 3.37 applies to cases in which the limited scope representation is not disclosed.

Rule 3.35 adopted effective January 1, 2007.



2007 California Rules of Court

Rule 3.36. Notice of limited scope representation and application to be relieved as attorney

(a) Notice of limited scope representation

A party and an attorney may provide notice of their agreement to limited scope representation by serving and filing a *Notice of Limited Scope Representation* (form MC-950).

(b) Notice and service of papers

After the notice in (a) is received and until either a substitution of attorney or an order to be relieved as attorney is filed and served, papers in the case must be served on both the attorney providing the limited scope representation and the client.

(c) Procedures to be relieved as counsel on completion of representation

Notwithstanding rule 3.1362, an attorney who has completed the tasks specified in the *Notice of Limited Scope Representation* (form MC-950) may use the procedures in this rule to request that he or she be relieved as attorney in cases in which the attorney has appeared before the court as an attorney of record and the client has not signed a *Substitution of Attorney-Civil* (form MC-050).

(d) Application

An application to be relieved as attorney on completion of limited scope representation under Code of Civil Procedure section 284(2) must be directed to the client and made on the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955).

(e) Filing and service of application

The application to be relieved as attorney must be filed with the court and served on the client and on all other parties or attorneys for parties in the case. The client must also be served with a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956).

(f) No objection

If no objection is served and filed with the court within 15 days from the date that the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) is served on the client, the attorney making the application must file an updated form MC-955 indicating the lack of objection, along with a proposed *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-958). The clerk must then forward the order for judicial signature.

(g) Objection

If an objection to the application is served and filed within 15 days, the clerk must set a hearing date on the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956). The hearing must be scheduled no later than 25 days from the date the objection is filed. The clerk must send the notice of the hearing to the parties and the attorney.

(h) Service of the order

If no objection is served and filed and the proposed order is signed under (f), the attorney who filed the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) must serve a copy of the signed order on the client and on all parties or the attorneys for all parties who have appeared in the case. The court may delay the effective date of the order relieving the attorney until proof of service of a copy of the signed order on the client has been filed with the court.

Rule 3.36 adopted effective January 1, 2007.





2007 California Rules of Court

Rule 3.37. Nondisclosure of attorney assistance in preparation of court documents

(a) Nondisclosure

In a civil proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the documents that he or she was involved in preparing the documents.

(b) Attorney's fees

If a litigant seeks a court order for attorney's fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of the attorney's fees, including:

- (1) The name of the attorney who assisted in the preparation of the documents;
- (2) The time involved or other basis for billing;
- (3) The tasks performed; and
- (4) The amount billed.

(c) Application of rule

This rule does not apply to an attorney who has made a general appearance in a case.

Rule 3.37 adopted effective January 1, 2007.



APPENDIX 2

- **Judicial Council Forms MC-950**
- **Flow Chart: How to Withdraw from Limited Scope Representation After a Court Appearance**
- **Judicial Council Forms MC-955, MC-956 and MC-958**

ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ OTHER: _____	CASE NUMBER: _____
NOTICE OF LIMITED SCOPE REPRESENTATION <input type="checkbox"/> Amended	JUDGE: _____ DEPT.: _____

[Note: This form is for use in civil cases other than family law. For family law cases, use form FL-950.]

- Attorney (name): _____
 and party (name): _____
 who is the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other (describe): _____

 have an agreement that the attorney will provide limited scope representation in this case to the party.
- The attorney will represent the party
 - ☐ at the hearing on (date): _____
☐ and at any continuance of that hearing
☐ until submission of the order after hearing
 - ☐ at the trial on (date): _____
☐ and at any continuance of that trial
☐ until judgment
 - ☐ other (specify nature and duration of representation): _____
- By signing this form, the party agrees to sign *Substitution of Attorney—Civil* (form MC-050) at the completion of the representation described above.

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
--	--------------

4. During the limited scope representation, parties and the court must serve papers on both the attorney named above and directly on the party. (Cal. Rules of Court, rule 3.36.) The party's name and address for purpose of service are as follows:

Name:

Address (for the purpose of service):

Telephone:

Fax:

This notice accurately states all current matters and issues on which the attorney has agreed to serve as an attorney for the party in this case. The information provided on this form is not intended to state all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date:

(TYPE OR PRINT NAME OF PARTY)

(SIGNATURE OF PARTY)

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
--	--------------

PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

2. I served copies of the *Notice of Limited Scope Representation* (form MC-950) by enclosing each of them in a sealed envelope with first-class postage fully prepaid and (*check one*):
 - a. ☐ deposited the sealed envelopes with the United States Postal Service.
 - b. ☐ placed the sealed envelopes for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. Copies of the *Notice of Limited Scope Representation* (form MC-950) were mailed:
 - a. on (*date*):
 - b. from (*city and state*):

4. The envelopes were addressed and mailed as follows:

a. Name of person served: Street address: City: State and zip code:	c. Name of person served: Street address: City: State and zip code:
b. Name of person served: Street address: City: State and zip code:	d. Name of person served: Street address: City: State and zip code:

- ☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

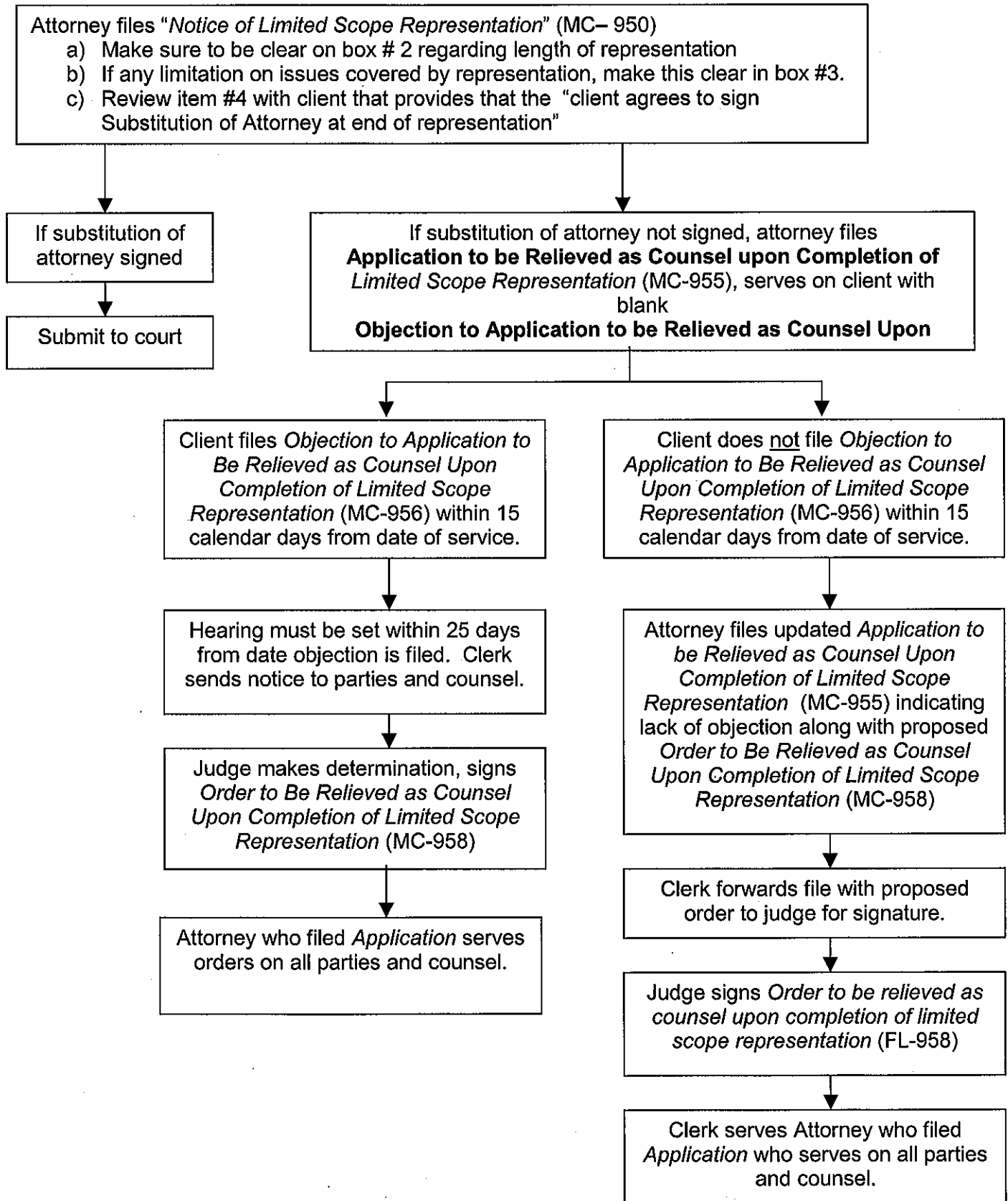
I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

HOW TO WITHDRAW FROM LIMITED SCOPE REPRESENTATION AFTER A COURT APPEARANCE



ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: E-MAIL ADDRESS: FAX NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
APPLICATION TO BE RELIEVED AS ATTORNEY ON COMPLETION OF LIMITED SCOPE REPRESENTATION <input type="checkbox"/> UPDATED APPLICATION	JUDGE: DEPT.:

1. I request an order to be relieved as attorney in this matter.

2. In accordance with the terms of an agreement in this case between (name):

who is the ☐ plaintiff/petitioner ☐ defendant/respondent ☐ other (describe):
 and me, I agreed to provide limited scope representation.

3. I was retained as attorney for the following limited scope services (describe in detail):

☐ See Notice of Limited Scope Representation (form MC-950). ☐ Continued in Attachment 3.

4. I have completed all services within the scope of my representation and have completed all acts ordered by the court.

5. The last known address for the party identified in item 2 is:

6. The last known telephone number for the party identified in item 2 is:

7. ☐ a. The party identified in item 2 was served with a copy of this application by ☐ mail ☐ personal delivery.
 b. ☐ 20 ☐ 15 days have passed since the application was served.
☐ c. I have not been served with any objection by the party in item 2.

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	
OTHER:	

NOTICE TO PARTY: Your attorney has filed this *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* with the court stating that he or she no longer represents you in this action because the tasks that you agreed the attorney would perform for you have been completed.

If you do not agree that these tasks have been completed and you want the attorney to continue to represent you until the tasks are completed, you must file an *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956) with the court within 15 calendar days of the date that this notice was served on you, asking the court to require the attorney to remain your attorney in the action until these tasks are completed. If you were served with this notice by mail, you must file the *Objection* (form MC-956) within 20 days of the date you were served. You must also serve this objection on your attorney and any other parties in the case. If you do not file a form MC-956, the court will grant your attorney's request to be relieved as counsel.

Please refer to the *Proof of Service* to determine the date that this application was served on you. (If this form was served by mail in California, the date of service is 5 days after the date of mailing.)

This procedure may be used **ONLY** if you believe that the attorney has not completed the tasks that he or she agreed to perform for you. It is **NOT** to be used to resolve other disagreements you may have with the attorney, such as disagreements concerning fees.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning or sign language interpreter services are available on request if at least 5 days' notice is provided. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code section 54.8.)



I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
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PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served copies of the *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* and a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* by enclosing each of them in a sealed envelope with postage fully prepaid and *(check one)*:
 - a. ☐ deposited the sealed envelopes with the United States Postal Service.
 - b. ☐ placed the sealed envelopes for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* and a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* were mailed:
 - a. on *(date)*:
 - b. from *(city and state)*:

4. The envelopes were addressed and mailed as follows:


a. Name of person served: Street address: City: State and zip code:	c. Name of person served: Street address: City: State and zip code:
b. Name of person served: Street address: City: State and zip code:	d. Name of person served: Street address: City: State and zip code:

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)



 (SIGNATURE OF DECLARANT)

PARTY (Name and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____			
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ OTHER: _____		CASE NUMBER: _____	
OBJECTION TO APPLICATION TO BE RELIEVED AS ATTORNEY ON COMPLETION OF LIMITED SCOPE REPRESENTATION		JUDGE: _____ DEPT.: _____	
Hearing Date: _____	Time: _____	Dept.: _____	Room: _____

1. I am the ☐ plaintiff/petitioner ☐ defendant/respondent ☐ other (describe): _____ in this case.
2. I do not believe that all the services that my attorney agreed to do for me are completed.
3. I request that the court not allow my attorney to withdraw from representation until those services have been completed.
The services that were agreed on that remain to be completed are (specify): _____

The reason that I think these tasks are supposed to be completed is (explain): _____

☐ Continued in Attachment 3.

NOTICE

If you object to your attorney's *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955), you must file this objection with the clerk of the court where the application was filed within 20 days of the day that the application was put in the mail to you. If you were personally served, you have to file this form 15 days from the day you were served. That date is on the proof of service at the end of the application (form MC-955). Also, you must have the attorney and any other parties in the case served with this *Objection* (form MC-956). A blank proof of service is on the back of this form.

I declare under penalty of perjury under the laws of the State of California that the above information and all attachment are true and correct.

Date: _____

(TYPE OR PRINT NAME OF PARTY)

(SIGNATURE OF PARTY)

Page 1 of 2

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	
OTHER:	

PROOF OF SERVICE BY FIRST-CLASS MAIL

(NOTE: You cannot serve the Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation if you are a party in the action. The person who served the Notice of Limited Scope Representation must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

 2. I served copies of the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956) by enclosing each of them in a sealed envelope with first-class postage fully prepaid and *(check one)*:
 - a. ☐ deposited the sealed envelopes with the United States Postal Service.
 - b. ☐ placed the sealed envelopes for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is paced for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
 3. Copies of the *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956) were mailed:
 - a. on *(date)*:
 - b. from *(city and state)*:
 4. The envelopes were addressed and mailed as follows:

<ol style="list-style-type: none"> a. Name of person served: <div style="margin-left: 20px;"> Street address: City: State and zip code: </div> b. Name of person served: <div style="margin-left: 20px;"> Street address: City: State and zip code: </div> 	<ol style="list-style-type: none"> c. Name of person served: <div style="margin-left: 20px;"> Street address: City: State and zip code: </div> d. Name of person served: <div style="margin-left: 20px;"> Street address: City: State and zip code: </div>
--	--
- ☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ OTHER: _____	CASE NUMBER(S): _____
ORDER ON APPLICATION TO BE RELIEVED AS ATTORNEY ON COMPLETION OF LIMITED SCOPE REPRESENTATION	JUDGE: _____ DEPT.: _____ DATE: _____

- The application of (name of attorney):
to be relieved as attorney for (name of client):
a party to this action or proceeding, was filed on (specify date):

2. ☐ **UNCONTESTED**

- The *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-955) and any attachments, and a blank *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956) were served on the client.
- The client was
 - ☐ personally served with the papers.
 - ☐ served by mail.
- No *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956) was filed or served within the time prescribed under rule 3.36 of the California Rules of Court.
- It appears from the application to be relieved as attorney and any attached documents that the attorney has completed the tasks that the client and attorney agreed that the attorney would perform as well as any acts ordered by the court.

3. ☐ **CONTESTED**

- The party filed an *Objection to Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-956) on (date):
- ☐ Attorney demonstrated that he or she has completed the tasks that the party and attorney agreed that the attorney would perform on the *Notice of Limited Scope Representation* (form MC-950) as well as any acts ordered by the court.

ORDER

- ☐ Attorney is relieved as attorney for the party identified in 1:
 - ☐ effective immediately.
 - ☐ effective on the filing of the proof of service of this signed order on the client.
 - ☐ effective on (date):

PLANTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
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5. ☐ The *Application to Be Relieved as Attorney on Completion of Limited Scope Representation* is denied for the following reasons:

6. ☐ The court further orders (*specify*):

7. The current mailing address for of the party identified in 1 is:

NOTICE TO PARTY: When this order becomes effective, you will represent yourself in all aspects of your case.

The court and the other parties in the case need to know how to contact you. It is your responsibility to keep the court and the other parties informed of your address. If the address in item 7 above is wrong, you must let the court and the parties know your correct mailing address as soon as possible. You can use form MC-040, *Notice of Change of Address*, for this notification.

If you do not let the court and the other parties know where to send you copies of papers, you may not get notices of hearings or orders in your case. Decisions may be made without your participation, and your case could be ended.

NOTICE TO ATTORNEY WHO FILED APPLICATION FOR RELIEF: You must serve copies of this order on all parties or their attorneys in this case. Proof of service must be filed with the court.

Date:

(JUDICIAL OFFICER)

PLANTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
---	--------------

PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served copies of the *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-958) by enclosing each of them in a sealed envelope with first-class postage fully prepaid and *(check one)*:
 - a. ☐ deposited the sealed envelopes with the United States Postal Service.
 - b. ☐ placed the sealed envelopes for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. Copies of the *Order on Application to Be Relieved as Attorney on Completion of Limited Scope Representation* (form MC-958) were mailed:
 - a. on *(date)*:
 - b. from *(city and state)*:

4. The envelopes were addressed and mailed as follows:

a. Name of person served: Street address: City: State and zip code:	c. Name of person served: Street address: City: State and zip code:
b. Name of person served: Street address: City: State and zip code:	d. Name of person served: Street address: City: State and zip code:

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

APPENDIX 3

**20 Things Judicial Officers can do to
Encourage Attorneys to Provide
Limited Scope Representation**

As many as 80% of litigants in family law courts represent themselves. Many would like the assistance of an attorney for parts of their cases even if they cannot afford full representation. The Board of Governors of the State Bar recently adopted recommendations made by the California Commission on Access to Justice aimed at encouraging attorneys to provide limited scope representation of pro per litigants. The Judicial Council also adopted new rules and forms to enable limited scope representation, effective July 1, 2003.

20 things judicial officers can do to encourage attorneys to provide Limited Scope Representation

How judges can get more attorneys to draft intelligible declarations and enforceable orders for self-represented litigants.

Support the General Idea

Limited Scope Representation Committee of the California Commission on Access to Justice

1) **Make positive comments** about limited scope representation and how it's great to have attorneys involved in self-represented cases—you appreciate getting forms you can understand, orders you can enforce, and having attorneys for appearances. Let it be known that you think it is not only okay, but beneficial for attorneys to provide limited scope representation. Let litigants know that they may get limited scope assistance if they are unable to afford (or choose not to have) full representation.

This is a win/win/win (court, litigant and attorney) and it helps everyone if done correctly.

2) **Hold a training for other judicial officers** on the issue of limited scope representation. Offer similar sessions to the local bar.

Consider an annual training in limited scope representation put on by the local bar in each county so that new forms, procedures and "bugs" can be addressed. This can also serve as a vehicle to address concerns that arise between bench and bar and train new lawyers.

3) **Mention 'unbundling'** as you also mention pro bono when doing public speaking to lawyers or the public.

4) **Encourage the Bar Association** to set up a limited representation panel and have at least a listing of persons who will help with prepar-

ing and negotiating judgments, especially in low asset cases.

5) **Get the local Bar Board of Directors** to pass a resolution in favor of Limited Scope of Representation and have it publicized in their newsletter. Having it come from the Bench will add credibility to the resolution. Consider a joint resolution.

6) **Educate.** Rather than complaining of problems with the narrow scope of the work, make suggestions to help counsel improve the quality of the "package" of services they supply in certain areas.

7) **Show that you understand** and believe that partial representation is helpful to the court. (Tell the lawyers that the years they spent sweating through law school do make a difference.)

Modify Courtroom Conduct

8) **If the client has agreed to limited representation**, you've got to let the attorney out once the scope of the representation is completed. If the word gets out that you are not honoring these agreements, attorneys will feel they're being held hostage for their good intentions and attempts to help, and won't want to make limited appearances in the future. That means you won't be able to get attorneys to assist when you need them to.

9) **If an attorney is appearing on only one issue in a matter**, try to bifurcate that in the hearing so that the attorney isn't either sitting through issues he or she is not authorized to address (and not getting paid for) or being tempted to expand the scope of representation beyond that which the attorney and client have negotiated. If the attorney decides that he or she can't keep quiet on the other issues, consider taking a break in the hearing and giving the attorney the opportunity to revise the scope of the representation with his or her client.

10) **Recognize that clients** who have consulted with an attorney may not present that attorney's advice fully or even accurately. Trust that it is unlikely that the attorney told them "not to bother with service" or similar misconceptions. If there appear to be consistent problems, consider addressing them as general issues with the local bar.

Limited Scope Representation, *continued*

11) Resist attempts by opposing counsel to broaden the scope of the representation.

12) Be open to discussing with counsel, when necessary, clarification of the issues so that opposing counsel will know which issues require contact through counsel and which issues permit contact with the client..

Review Forms, Papers and Processes

13) Review your local rules to modify any that may contradict limited scope of representation rules.

14) Work out procedures with the court clerk's office to make sure they know how to reflect the representational status of the litigant in their case management system. They are on the front line in dealing with many of the issues surrounding limited scope representation and need to be aware of the issues and techniques for dealing with them.

15) Use the Judicial Council form or a similar draft while that form is in the comment process. Have a copy provided to the other side. Get a clear understanding of the limitations on scope from the attorney.

16) Send comments on the proposed Judicial Council form so that it can be made as useful as possible. Let the Administrative Office of the Courts staff attorneys know as issues and problems come up so that they can be considered and addressed with the State Bar.

17) When problems arise, work with the local bar to develop practical solutions. For example, if you want to be sure that settlement conferences don't have to be continued so the self-represented litigants can consult with their advisory counsel, let them know that they are responsible for notifying their consulting/advisory counsel and making

arrangements for them to be available on standby or otherwise as appropriate. It is most effective if you meet periodically with the bar to discuss these issues and work out solutions which work for both of you.

Monitor Quality

18) Convene meetings of the family law bar and legal service programs to discuss limited scope representation and suggest that they continue a working group to develop standards of care (as in Contra Costa), informational materials for litigants, fee agreements and office tools, and develop working relationships, referral systems and protocols.

Financial Issues

19) Award attorneys fees for limited scope services when otherwise appropriate and let attorneys know what forms or information they need to provide to substantiate the claim for fees. This is especially important if the attorney is not appearing of record, but assisting in the preparation of forms, declarations and the like.

20) Be sensitive to the economic issues. For example, if an attorney is in court for limited scope, even a routine continuance can impose a real hardship by pricing the service outside the client's reach. If there's only money for one appearance, and it is wasted, no net benefit is acquired and the funds which might have been properly applied to a limited appearance are wasted. Likewise, be sensitive when opposing counsel is delaying or otherwise obstructing for tactical reasons.

Lawyers and litigants are looking to you for guidance and approval, and they will pick up on subtle signals. By letting them know that you are aware of the practical problems they face, you are creating a climate of creative innovation and mutual problem solving. ■

APPENDIX 4

**An Ethics Primer on Limited Scope Representation
by the State Bar of California Committee on
Professional Responsibility and Conduct**

An Ethics Primer on Limited Scope Representation

**By The State Bar of California
Committee on Professional Responsibility and Conduct**

Have you ever asked yourself this question: If I needed to hire a lawyer, could I afford to pay someone the fees I charge my clients? For many of us, the cost of legal services to handle even a routine legal matter is a “luxury” we simply cannot afford. For the indigent, getting the services of an attorney is often out of the question when, despite their eligibility for legal aid, they are unable to obtain representation due to the shortage of legal services attorneys. Thus, resorting to self-representation has become an economic necessity, not just for indigent individuals, but for large numbers of middle class litigants who find the cost of legal representation prohibitive. Moreover, while many litigants opt for partial self-representation because they have no financial alternative, others who have the resources to pay a lawyer to handle all aspects of their legal matter are choosing limited scope representation either to exert greater control and input, or to hold down the cost of legal services.

Therefore, it is not surprising that self-represented litigants (also called *pro per* or *pro se* litigants) are increasing in numbers and placing a strain on the limited resources of our judges and court system. Self-represented litigants are frequently unaware of the issues or procedures necessary to adequately represent their own interests, and repeatedly clog the courts with inaccurately prepared or inappropriately filed documents. As such, the courts and the legal profession have been challenged to find solutions to promote access to justice while at the same time limiting the burdens self-represented litigants place on the administration of justice.

One approach that has been increasingly utilized to bring down the costs of legal services is for lawyers and clients to allocate the duties and responsibilities for handling a legal matter between themselves, thereby limiting the scope of the lawyer’s representation to specific services or discrete tasks. Such “limited scope” or “discrete task” representation can provide the layperson with much-needed legal expertise and advice and limit the burdens placed on the courts by self-represented litigants, while keeping the cost of legal representation at an affordable level.¹

While limited scope representation promotes the core value of improving access to justice, attorneys who attempt to limit the scope of their representation must be mindful of their professional obligations, and must take care to communicate fully with the client and put appropriate procedures in place to ensure that the client receives competent representation and is not prejudiced. Thus, lawyers engaging in limited scope representation need to ask the right questions, identify the issues, make the necessary

¹ Throughout this article, the terms “limited scope representation” and “discrete task representation” are used interchangeably. Limiting the scope of legal representation is also sometimes referred to as “unbundling” a lawyer’s legal services.

disclosures, and develop the procedures that facilitate the proper handling of the client's legal matter.²

Some of the most important questions facing lawyers who provide limited scope or discrete task representation are:

- (1) *Have I carefully evaluated whether limited scope representation is appropriate in my area of practice?*

We want to emphasize that not every type of practice is conducive to limited scope representation. Attorneys should carefully consider whether their practice lends itself to limited scope representation. For example, in family law limited scope representation has been successfully used for years. As a result, the Judicial Council has promulgated new forms to facilitate limited scope representation in family law cases. Others areas in which limited scope representation has proven effective include landlord-tenant disputes and consumer advocacy. Legal services providers have also utilized discrete task representation very effectively in a variety of matters in order to provide at least limited assistance to indigent clients who cannot afford the services of an attorney. Many of these efforts have been directed toward assisting self-represented litigants to navigate the legal system and conform to court practice and procedures. On the other hand, it is wise to avoid limited scope representation in very sophisticated and/or complicated litigation. In fact, attorneys practicing in some areas (e.g., immigration law) may not be allowed to limit their representation for a particular aspect of a judicial or quasi-judicial proceeding.

- (2) *Have I adequately communicated the risks as well as the benefits of this type of legal service to the client?*

Attorneys engaging in limited scope representation should endeavor to fully advise their clients of the limitations on the representation, including the matters the attorneys are *not handling*. Clients also should be advised of the possible adverse implications of the limited scope representation, and to consult with other counsel about legal matters their attorney is not handling. It also may be advisable to recommend against a proposed allocation of responsibility or even to decline the representation if the attorney believes the client's proposed split of responsibility is a prescription for disaster.

- (3) *Have I put procedures in place to ensure that in limiting the scope of representation I am still providing the client with competent representation?*

As noted, attorneys need to communicate with their clients regarding not only the limitations on the scope of the representation, but the risks and benefits arising from the arrangement. Amongst the most important procedures to ensure competent representation are written fee agreements and other written risk management tools

² In this article the authors do not intend to set or to define the standard of care or the duties of attorneys with respect to any of the issues discussed.

designed to ensure that clients understand the specific nature and ramifications of their specific arrangement. Some suggested materials have already been prepared for family law practitioners and can be adapted by attorneys in other practice areas as a checklist to ensure that all matters relating to the limited scope representation are covered either by the attorney or the client or both, and that both parties fully understand their respective assignments and responsibilities.

- (4) *If my scope of work does not include representing the client from start to finish, have I put procedures in place to avoid prejudice to my client upon my withdrawal?*

In many limited scope or discrete task representations, the attorney and the client have an understanding from the outset that the lawyer is not going to see the matter through to its conclusion. However, in withdrawing from representation before the conclusion of a client's matter, an attorney must take reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. (Cal. Rule of Prof. Conduct 3-700.) These obligations apply irrespective of whether the client and attorney agreed at the outset that the attorney's representation would not extend through the conclusion of the matter. Thus, from the beginning of the representation, the attorney should pay particular attention to the need to educate and inform the client in order to avoid reasonably foreseeable prejudice to the client's rights upon the completion of the attorney's services. In many situations this will include informing the client about matters pending at the time of the attorney's withdrawal, applicable deadlines, etc. The attorney should also check California Rule of Professional Conduct 3-700 as well as applicable statutes and rules of court to ensure compliance with the law in connection with the termination of the relationship.

- (5) *Have I put procedures in place to ensure that I am treating limited scope clients the same as all other clients for purposes of fulfilling my duties of undivided loyalty and confidentiality?*

Attorneys who offer limited scope representation are required to comply with the same fiduciary duties of undivided loyalty and confidentiality as lawyers providing full service representation for a legal matter. Therefore, conducting conflicts checks and avoiding the disclosure of confidential client information remain the attorney's responsibility.

- (6) *Have I fulfilled my duties to the ethical administration of justice?*

Each limited scope representation is different, and these questions should be answered in the context of each client matter. The following discussion highlights the issues which each attorney should carefully consider before undertaking a limited scope representation.

A. Agreements Defining the Limited Scope of Legal Representation

In California, most attorney-client arrangements involving payment for the attorney's services must be memorialized in writing. [See Bus. & Prof. Code §6147 (pertaining to contingency fee agreements) and §6148 (pertaining to non-contingency fee agreements)].³ These statutory mandates apply whether the attorney is providing full service representation for a particular matter, or has, instead, limited the scope of his or her representation. However, because of the nature of discrete task representation and the importance of educating the client concerning the scope, risks and benefits of that representation, it is of paramount importance that any fee agreement that purports to limit the scope of the attorney's representation be in writing, and be clear, unambiguous, and reasonable regarding the services to be performed by the attorney and client, respectively.

Thus, in limited scope representation, no part of the written fee agreement is more important than the provision defining the scope of the attorney's representation -- what the attorney will be doing -- and often, even more importantly, what the attorney will *not* be doing -- and what the client will be doing. It is easy enough for clients and attorneys to develop misunderstandings about their respective responsibilities when the attorney is providing full service representation for a transaction or litigated matter. In limited scope representation, the potential for misunderstandings, serious adverse consequences and malpractice exposure increases dramatically when the agreement is not memorialized in a writing signed by both the attorney and client. In addition, agreements regarding the scope of the representation may change over the course of the representation, and it is equally essential that these changes be memorialized in writing as well.

Because of the particular risks created when attorneys limit the scope of their representation in any specific matter, we recommend incorporating language in the agreement to the effect that the client has read the provisions of the agreement defining the limited scope of the engagement, that the scope of the attorney's services has been limited by express agreement (and at the client's request if that is the case), that the attorney has fully explained the nature and risks of the arrangement, and that the client understands the potential adverse consequences of limiting the scope of the attorney's representation.

While the definition of scope is generally included in the fee agreement, it can be set forth in a separate document. If a separate document is used, it should be prepared and signed by both the attorney and the client contemporaneously with the fee agreement as well as when changes in the scope of representation are agreed to by the attorney and client.

³ Failure to comply generally renders the agreement voidable at the option of the client and limits the attorney to recovery of the reasonable value of the services rendered.

B. The Duty of Competence

Once you have determined that limited scope representation is appropriate to handle your client matter, you must be prepared to comply with California Rule of Professional Conduct 3-110 by performing competently. The competency of an attorney's performance can become an issue in limited scope matters when the client and attorney disagree over whether the attorney has performed (a) as agreed or (b) as otherwise required. The latter issue is highlighted in the case of *Nichols v. Keller* (1993) 15 Cal.App.4th 1672, in which an attorney desiring to limit the scope of his representation of an injured client to prosecuting a workers' compensation claim drafted an agreement so limiting the scope of representation. The agreement made no mention of a potential third party tort claim, and when the client learned that his tort case was time barred, he sued his attorney for negligently failing to put him on notice of that potential remedy.

In analyzing the malpractice claim, the court of appeal addressed an attorney's duty to advise clients, stating:

One of an attorney's basic functions is to advise. Liability can exist because the attorney failed to provide advice. *Not only should an attorney furnish advice when requested, but he or she should also volunteer opinions when necessary to further the client's objectives. The attorney need not advise and caution of every possible alternative, but only of those that may result in adverse consequences if not considered.*"

Nichols v. Keller, supra, 15 Cal.App. 4th 1672, 1683-1684 (emphasis added).

In explaining the rationale for its decision, the court stated: "A trained attorney is more qualified to recognize and analyze legal needs than a lay client, and, at least in part, this is the reason a party seeks out and retains an attorney to represent and advise him or her in legal matters." (*Nichols v. Keller, supra*, 15 Cal.App.4th 1672, 1686.)

In the specific context of a lawyer representing a client in a workers' compensation matter, the *Nichols* court held that the lawyer could limit the scope of services to the workers' compensation action, but to avoid exposure to the client for negligence, the attorney had to inform the client of: (1) the limitations on the scope of the attorney's services; and (2) the possible adverse implications of the limited scope representation.

As to explaining the possible adverse implications of the limited scope representation, the court noted that the attorney should disclose: (a) that there may be other remedies or issues pertaining to the client's legal matter that the attorney is not investigating (e.g., third party tort claims); (b) apparent legal problems pertaining to the limited scope of services (e.g., time deadlines would impact the client's ability to pursue

other claims); and (c) the advisability of consulting different counsel for other aspects of the client's legal matter. (*Nichols v. Keller*, *supra*, 15 Cal.App. 4th 1672, 1686-1687.)

Nichols teaches that because we, as attorneys, have greater knowledge than lay clients about the law and the potential pitfalls our clients may encounter, we have an obligation to alert our clients to matters that may result in adverse consequences if not considered. Although *Nichols* involved a situation where it was the attorney, rather than the client, who sought to limit the scope of the legal services being provided, the case provides a helpful roadmap for attorneys entering into limited scope or discrete task representation agreements with clients, particularly with respect to the fact that in defining a limited scope of representation it can be as important to *alert the client to what the attorney is not doing* as it is to identify the tasks the attorney is doing.

There are additional authorities to which attorneys may look for guidance in defining the limited scope of legal services. In the family law arena, Judicial Council Form FL-950 (July 1, 2003) entitled "Notice of Limited Scope Representation" specifies whether the attorney or the client will be "attorney of record" with respect to the following general issues and matters, each of which is then broken down in more detail: (a) Child Support; (b) Spousal Support; (c) Restraining Orders; (d) Child Custody and Visitation; (e) Division of Property; (f) Pension Issues; (g) Contempt; and (h) Other. The form also requires the attorney to verify the existence of a written fee agreement. As this Judicial Council form has been approved for use in family law cases, attorneys can consider the panoply of services provided in their own areas of practice and adapt forms that reference those specific services, leaving a place for "other" to cover matters that might be unique to a specific legal representation. The Limited Scope Representation Committee of the California Commission on Access to Justice also has created helpful and critical Risk Management Materials for attorneys to utilize in family law limited scope representation that may be adapted to your particular limited scope representation matters. These forms may be obtained by contacting the State Bar of California Office of Legal Services or online from a link to the Commission on Access to Justice, which can be reached through <http://www.calbar.ca.gov>.

It is also important to keep in mind that there are contexts in which the duty of competence prohibits limiting the scope of representation in a particular manner. [See, *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 521 ("there is no 'limited' appearance of counsel in immigration proceedings.") and *Janik v. Rudy, Exelrod & Zieff* (2004) 119 Cal.App.4th 930 (an attorney's obligations may extend beyond a document purporting to limit scope to include the duty to assert claims arising out of the same facts that the client would reasonably expect to be asserted to accomplish the objectives of the representation.)]

C. The Duty to Avoid Prejudice to the Client's Interests Upon Withdrawal

Before withdrawing from representation of a client in any matter, whether the representation is full or limited in scope, an attorney must comply with California Rule of Professional Conduct 3-700, and therefore must take:

reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with all applicable laws and rules.”⁴

[Cal. Rule of Prof. Conduct 3-700 (A)(2).]

In addition, if an attorney is of record in a litigated matter, permission of the client and/or tribunal is generally required. [Cal. Rule of Prof. Conduct 3-700(A)(1)].

In the context of a limited scope representation in which the attorney and client agree the representation will cease before the conclusion of the client’s matter, the obligations of the withdrawing attorney pursuant to subdivisions (A)(1) and (A)(2) of California Rule of Professional Conduct 3-700 should be addressed in the initial agreement between the attorney and client. In the context of limited scope representation, the avoidance of prejudice to the client is apt to depend upon the extent to which the attorney has disclosed: (1) the limitations on the scope of the attorney’s services; (2) apparent legal problems that are reasonably likely to exist at the projected time of withdrawal; and (3) the advisability of consulting different counsel for those aspects of the client’s legal matter the parties expect to be pending at the time of completion of the attorney’s services. Litigation attorneys, particularly those practicing in the tort arena, have included such limitations in their fee agreements for years by explaining that their scope of representation does not include an appeal or collection of a judgment.

If the circumstances pertaining to the conclusion of the attorney’s services have been adequately addressed at the outset of the attorney-client relationship, and there have been no unforeseen developments that have materially altered the situation, an advance agreement between the attorney and client setting forth the parameters for withdrawal may be sufficient to prevent reasonably foreseeable prejudice to the rights of the client. On the other hand, if these issues have not been adequately addressed in advance, the attorney will need to take precautions prior to the proposed withdrawal to ensure compliance with California Rule of Professional Conduct 3-700(A)(2).

Another related issue is whether a client can agree in advance to execute a substitution of attorney form upon the conclusion of a limited representation. There is no case law to suggest that it would be unethical for an attorney and client to agree at the outset to execute the documents necessary to formalize the conclusion of the relationship, such as a substitution of attorneys, when the terms of the engagement have been completed. The ability to enter into such an agreement also furthers the personal autonomy of a client to choose limited scope, rather than full service, legal representation for a particular matter.

⁴ Rule 3-700(D) pertains to the release of client papers and property, and to the return of unearned fees.

However, an attorney who obtains a pre-signed substitution *for filing in the attorney's sole discretion* will run afoul of California Rule of Professional Conduct 3-700. (See, Los Angeles County Bar Association Formal Opinion 371.) This is particularly true when the client disagrees that the services were completed and the timing of the withdrawal prejudices the client's rights. In Family Law matters, the Judicial Council has created a form that permits the attorney to request an order relieving him or her as counsel because the limited scope representation has been completed as agreed. This application is served on the client, and if the client disagrees, he or she has the right to file an objection with the court.

If an attorney providing limited scope representation in a litigated matter desires to withdraw and the client does not agree to sign a substitution of attorney, the attorney must seek permission from the tribunal to withdraw, and in so doing, should note completion of the limited scope representation. Because written fee agreements are confidential communications under California Business and Professions Code section 6149, there is a question as to whether it is permissible for an attorney to use a written fee agreement limiting the scope of services as a basis for a motion to withdraw. In order to assure that there is an understanding between the attorney and client as to the attorney's intention to place the agreement before the court, the attorney can obtain an advance waiver of California Business and Professions Code section 6149 from the client. (See, e.g., Cal. Rule of Prof. Conduct 3-310(C)(1) and (2); *Zador Corp. v. Kwan*, (1995) 31 Cal.App.4th 1285; California State Bar Formal Opn. No. 1989-115.) However, because submission to a court or other tribunal can result in dissemination of the agreement to the adversary and the public, an *in camera* production or protective order may be appropriate in certain circumstances.

Even if the attorney has not obtained the client's consent to disclose the agreement in advance, if the agreement defines the limitations on the scope of representation, and the client is nevertheless unwilling to sign a substitution when the scope has been completed, the attorney can use the limited scope agreement without violating California Business and Professions Code section 6068, subdivision (e) or the attorney-client privilege, on grounds that the issue for which it is offered is the client's breach of the agreement. (Cal. Evid. Code §958; *Fox Searchlight v. Paladino* (2001) 89 Cal.App.4th 294, 313.) However, to protect client confidentiality, *in camera* review or a protective order may be warranted.

D. The Duties of Loyalty and Confidentiality

The fiduciary duties of loyalty and confidentiality apply with equal force and effect whether an attorney is providing full service representation for a transactional or litigation matter, or representing the client only on a limited scope basis. The duty of confidentiality is "fundamental to our legal system" and attaches upon formation of the attorney-client relationship, or even in the absence of such a relationship where a person has consulted an attorney in confidence. (See, Cal. Bus. & Prof. Code, § 6068, subd. (e); Cal. Evid. Code, §§950 et seq., *People ex rel. Department of Corporations v. Speedee Oil*

Change Systems, Inc. (1999) 20 Cal. 4th 1135; California State Bar Formal Opn. No. 2003-161.)

For conflict of interest purposes, the duty of undivided loyalty attaches whenever “the attorney knowingly obtains material confidential information from the client and renders legal advice or services as a result.” (*People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.*, *supra*, 20 Cal. 4th 1135, 1148; *see also*, *Flatt v. Superior Court* (1995) 9 Cal. 4th 275, 284; Cal. Rule of Prof. Conduct 3-310.) Thus, this core value of the legal profession must be honored irrespective of the limited scope of the representation.

E. The Duty to the Administration of Justice

Pursuant to California Rule of Professional Conduct 5-200 (A) & (B), an attorney has a duty to be truthful and not to “mislead the judge, judicial officer, or jury by an artifice.” Self-represented litigants are often given more latitude by the court in the preparation of pleadings. Thus, federal courts have expressed concern that if an attorney has authored pleadings and guided the course of litigation for a self-represented litigant it may improperly disadvantage an adverse party. (*Ricotta v. State of California* (S.D. Cal. 1998) 4 F.Supp.2d 961.) Thus, if a “behind the scenes” attorney providing limited scope representation in the form of coaching or ghostwriting appears to be “guiding the course of the litigation with an unseen hand,” (*Id.* at 986) or preparing a brief “in any substantial part,” some courts have suggested that the attorney is obligated to advise the court of his or her role in the matter. (*Ellis v. State of Maine* (1st Cir. 1971) 448 F.2d 1325, 1328.) While indicating concern, the *Ricotta* court found no case law or local rules prohibiting ghostwriting in California.

Due to the overwhelming number of *pro per* litigants (approximately 80% in family law matters alone), the courts are finding new ways to encourage greater attorney participation to alleviate the strain on judicial resources caused by self-represented litigants. For example, in 2003, the California Judicial Council adopted Rule of Court 5.70 specifically providing that an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents.

F. Conclusion

Most attorneys either have been, or soon will be, faced with client requests for limited scope legal representation. As our initial question suggested, it is not difficult to understand why consumers of legal services are increasingly seeking this flexible, economical and empowering option from attorneys.

All attorneys who are considering or engaging in limited scope representation should carefully consider the issues raised in this article (1) to determine whether their practice area can accommodate limited representation on particular matters, and if so (2)

to establish procedures that not only reduce the cost of legal representation through limiting the attorneys role, but also foster compliance with all of the duties attorneys owe their clients. Those attorneys who provide limited scope representation responsibly and ethically will not only increase the public's access to justice, but should also experience increased client satisfaction flowing from the collaborative effort of achieving the client's desired goals.

APPENDIX 5

Limited Scope Legal Assistance List of Resources

Unbundling Web Links

Risk Management Materials The California Commission on Access to Justice has developed a complete set of risk management materials for use in family law limited scope representation, including checklists, best practices, four variations on fee agreements, and the official California court forms. It can be located on the California State Bar website by clicking on CalBarJournal and locating the archived issue for February 2004. It is available in either pdf or Word. To get a pdf copy, go to the website at <http://calbar.ca.gov>. From the home page, click public services, then assistance programs, then access to justice and follow the links to the risk management materials. For a Word version, email Chris.Zupanovich@calbar.ca.gov and she will get it to you. This is an essential resource for anyone contemplating limited scope family law representation. California adopted court rules and forms for civil limited scope representation effective January 1, 2007. A companion set of civil risk management materials is in the final stages of editing.

California Judicial Council Website

<http://www.courtinfo.ca.gov/programs/equalaccess/ethiss.htm#limited> This is the link to a wealth of unbundling materials on the California Judicial Council website. This has direct links to some of the materials listed here, as well as the **Report of the Limited Representation Committee of the California Commission on Access to Justice (2001)** many more resources.

Ethics Primer The California State Bar's Committee on Professional Responsibility and Conduct has posted an Ethics Primer on Limited Scope Representation at

http://calbar.ca.gov/calbar/pdfs/ethics/COPRAC/COPRAC_02-0005_11-17-04.pdf

Colorado Ethics Opinion <http://www.cobar.org> This is the Colorado Bar Association web site. Look for **Ethics Opinion 101** for a comprehensive discussion of the ethical issues, and citations to opinions in other states.

Los Angeles County Ethics Opinion <http://www.lacba.org> This is the Los Angeles County Bar web site. Look for **Ethics opinion 502**. It is the only California opinion, and was very thoughtfully written by some ethics and malpractice experts.

Access to Justice Commission Report and Appendix

http://calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf This is the California State Bar web site, where you can read the **Report on Limited Scope Legal Assistance with Preliminary Recommendations by the Limited Representation Committee of the Commission on Access to Justice**. It's very thorough and supportive, and the recommendations were unanimously approved by the Board of Governors in 2001. Don't miss the appendix, which has lots of other cross links and resources.

Webinar and Resource Library <http://www.selfhelpsupport.org> This is a wealth of information designed to assist litigants and the attorneys assisting them. Check it frequently for updates. It has an excellent resource library which is continually being updated. There is a free webinar on limited scope representation.

PLI 3 Hour Limited Scope Training <http://www.pli.edu> As a public service, PLI recorded a three hour family law unbundling training which is available for **FREE** on their website. Just log in and search for family law. It is the only family law program they have. Put it in your shopping cart (the cost will be \$0). It uses the Risk Management Packet referenced above as its written materials, which is downloadable from the California State Bar website (see link above).



The State Bar of California

Rule 1.5 Fees for Legal Services (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer shall not make an agreement for, charge, or collect an unconscionable or illegal fee.
- (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following:
 - (1) whether the lawyer engaged in fraud* or overreaching in negotiating or setting the fee;
 - (2) whether the lawyer has failed to disclose material facts;
 - (3) the amount of the fee in proportion to the value of the services performed;
 - (4) the relative sophistication of the lawyer and the client;
 - (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (7) the amount involved and the results obtained;
 - (8) the time limitations imposed by the client or by the circumstances;
 - (9) the nature and length of the professional relationship with the client;
 - (10) the experience, reputation, and ability of the lawyer or lawyers performing the services;
 - (11) whether the fee is fixed or contingent;
 - (12) the time and labor required; and
 - (13) whether the client gave informed consent* to the fee.
- (c) A lawyer shall not make an agreement for, charge, or collect:
 - (1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; or

- (2) a contingent fee for representing a defendant in a criminal case.
- (d) A lawyer may make an agreement for, charge, or collect a fee that is denominated as “earned on receipt” or “non-refundable,” or in similar terms, only if the fee is a true retainer and the client agrees in writing* after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer’s availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed.
- (e) A lawyer may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer providing those services.

Comment

Prohibited Contingent Fees

[1] Paragraph (c)(1) does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under child or spousal support or other financial orders.

Payment of Fees in Advance of Services

[2] Rule 1.15(a) and (b) govern whether a lawyer must deposit in a trust account a fee paid in advance.

[3] When a lawyer-client relationship terminates, the lawyer must refund the unearned portion of a fee. (See rule 1.16(e)(2).)

Division of Fee

[4] A division of fees among lawyers is governed by rule 1.5.1.

Written Fee Agreements*

[5] Some fee agreements must be in writing* to be enforceable. (See, e.g., Bus. & Prof. Code, §§ 6147 and 6148.)

**Rule 1.15 Safekeeping Funds and Property of Clients and Other Persons
(Rule Approved by the Supreme Court, Effective January 1, 2023)**

- (a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial* relationship between the client or the client’s business and the other jurisdiction.
- (b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer’s or law firm’s operating account, provided:
 - (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
 - (2) if the flat fee exceeds \$1,000.00, the client’s agreement to deposit the flat fee in the lawyer’s operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.
- (c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:
 - (1) funds reasonably* sufficient to pay bank charges; and
 - (2) funds belonging in part to a client or other person* and in part presently or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm’s interest in that portion becomes fixed. However, if a client or other person* disputes the lawyer or law firm’s right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (d) A lawyer shall:
 - (1) absent good cause, notify a client or other person* no later than 14 days of the receipt of funds, securities, or other property in which the lawyer knows* or reasonably should know* the client or other person* has an interest;
 - (2) identify and label securities and properties of a client or other person* promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

- (3) maintain complete records of all funds, securities, and other property of a client or other person* coming into the possession of the lawyer or law firm*;
 - (4) promptly account in writing* to the client or other person* for whom the lawyer holds funds or property;
 - (5) preserve records of all funds and property held by a lawyer or law firm* under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
 - (6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
 - (7) promptly distribute any undisputed funds or property in the possession of the lawyer or law firm* that the client or other person* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms* in accordance with subparagraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.
- (f) For purposes of determining a lawyer’s compliance with paragraph (d)(7), unless the lawyer, and the client or other person* agree in writing that the funds or property will continue to be held by the lawyer, there shall be a rebuttable presumption affecting the burden of proof as defined in Evidence Code sections 605 and 606 that a violation of paragraph (d)(7) has occurred if the lawyer, absent good cause, fails to distribute undisputed funds or property within 45-days of the date when the funds become undisputed as defined by paragraph (g). This presumption may be rebutted by proof by a preponderance of evidence that there was good cause for not distributing funds within 45 days of the date when the funds or property became undisputed as defined in paragraph (g).
- (g) As used in this rule, “undisputed funds or property” refers to funds or property, or a portion of any such funds or property, in the possession of a lawyer or law firm* where the lawyer knows* or reasonably should know* that the ownership interest of the client or other person* in the funds or property, or any portion thereof, has become fixed and there are no unresolved disputes as to the client’s or other person’s* entitlement to receive the funds or property.

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what “records” shall be maintained by lawyers and law firms* in accordance with paragraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person* through the period ending five years from the date of appropriate disbursement of such funds, maintain:

- (a) a written* ledger for each client or other person* on whose behalf funds are held that sets forth:
 - (i) the name of such client or other person;*
 - (ii) the date, amount and source of all funds received on behalf of such client or other person;*
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person;* and
 - (iv) the current balance for such client or other person;*
- (b) a written* journal for each bank account that sets forth:
 - (i) the name of such account;
 - (ii) the date, amount and client affected by each debit and credit; and
 - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person* through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written* journal that specifies:
 - (a) each item of security and property held;
 - (b) the person* on whose behalf the security or property is held;
 - (c) the date of receipt of the security or property;
 - (d) the date of distribution of the security or property; and
 - (e) person* to whom the security or property was distributed.

Comment

[1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person* other than a client in situations where client funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person* and whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. (See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665].) However, civil liability by itself does not establish a violation of this

rule. (Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] [“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”] with *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] [lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds].)

[2] As used in this rule, “advances for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see rule 1.5(d) and (e). Subject to rule 1.5, a lawyer or law firm* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written* disclosure and the client’s agreement in a writing* signed by the client as provided in paragraph (b), a lawyer must deposit a flat fee paid in advance of legal services in the lawyer’s trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer’s obligations under paragraph (d) or the lawyer’s burden to establish that the fee has been earned.

[4] Subparagraph (d)(7) is not intended to apply to a fee or expense the client has agreed to pay in advance, or the client file, or any other property that the client or other person* has agreed in writing that the lawyer will keep or maintain. Regarding a lawyer’s refund of a fee or expense paid in advance, see rule 1.16(e)(2). Regarding the release of a client’s file to the client, see rule 1.16(e)(1).

[5] Upon rebuttal by proof by a preponderance of the evidence of the presumption set forth in paragraph (f), a violation of paragraph (d)(7) must be established by clear and convincing evidence without the benefit of the rebuttable presumption.

[6] Whether or not the rebuttable presumption in paragraph (f) applies, a lawyer must still comply with all other applicable provisions of this rule. This includes a lawyer’s duty to take diligent steps to initiate and complete the resolution of disputes concerning a client’s or other person’s* entitlement to funds or property received by a lawyer.

[7] Under paragraph (g), possible disputes requiring resolution may include, but are not limited to, disputes concerning entitlement to funds arising from: medical liens; statutory liens; prior attorney liens; costs or expenses; attorney fees; a bank’s policies and fees for clearing a check or draft; any applicable conditions on entitlement such as a plaintiff’s execution of a release and dismissal; or any legal proceeding, such as an interpleader action, concerning the entitlement of any person to receive all or a portion of the funds or property.



The State Bar of California

Rule 1.5.1 Fee Divisions Among Lawyers (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) Lawyers who are not in the same law firm* shall not divide a fee for legal services unless:
 - (1) the lawyers enter into a written* agreement to divide the fee;
 - (2) the client has consented in writing,* either at the time the lawyers enter into the agreement to divide the fee or as soon thereafter as reasonably* practicable, after a full written* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyers or law firms* that are parties to the division; and (iii) the terms of the division; and
 - (3) the total fee charged by all lawyers is not increased solely by reason of the agreement to divide fees.
- (b) This rule does not apply to a division of fees pursuant to court order.

Comment

The writing* requirements of paragraphs (a)(1) and (a)(2) may be satisfied by one or more writings.*

**Rules 5.4 Financial and Similar Arrangements with Nonlawyers
(Rule Approved by the Supreme Court, Effective March 22, 2021)**

- (a) A lawyer or law firm* shall not share legal fees directly or indirectly with a nonlawyer or with an organization that is not authorized to practice law, except that:
- (1) an agreement by a lawyer with the lawyer's firm,* partner,* or associate may provide for the payment of money or other consideration over a reasonable* period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;*
 - (2) a lawyer purchasing the practice of a deceased, disabled or disappeared lawyer may pay the agreed-upon purchase price, pursuant to rule 1.17, to the lawyer's estate or other representative;
 - (3) a lawyer or law firm* may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, provided the plan does not otherwise violate these rules or the State Bar Act;
 - (4) a lawyer or law firm* may pay a prescribed registration, referral, or other fee to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's Minimum Standards for Lawyer Referral Services;
 - (5) a lawyer or law firm* may share with or pay a court-awarded legal fee to a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer or law firm* in the matter; or
 - (6) a lawyer or law firm* may share with or pay a legal fee that is not court-awarded but arises from a settlement or other resolution of the matter with a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer or law firm* in the matter provided:
 - (i) the nonprofit organization qualifies under section 501(c)(3) of the Internal Revenue Code;
 - (ii) the lawyer or law firm* enters into a written* agreement to divide the fee with the nonprofit organization;
 - (iii) the lawyer or law firm* obtains the client's consent in writing,* either at the time the lawyer or law firm* enters into the agreement with the nonprofit organization to divide the fee or as soon thereafter as reasonably* practicable, after a full written* disclosure to the client of the fact that a division of fees will be made, the identity of the lawyer or law firm* and the nonprofit organization that are parties to the division, and the terms of the division, including the restriction imposed under paragraph (a)(6)(iv); and

- (iv) the total fee charged by the lawyer or law firm* is not increased solely by reason of the agreement to divide fees.
- (b) A lawyer shall not form a partnership or other organization with a nonlawyer if any of the activities of the partnership or other organization consist of the practice of law.
- (c) A lawyer shall not permit a person* who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's independent professional judgment or interfere with the lawyer-client relationship in rendering legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or other organization authorized to practice law for a profit if:
 - (1) a nonlawyer owns any interest in it, except that a fiduciary representative of a lawyer's estate may hold the lawyer's stock or other interest for a reasonable* time during administration;
 - (2) a nonlawyer is a director or officer of the corporation or occupies a position of similar responsibility in any other form of organization; or
 - (3) a nonlawyer has the right or authority to direct or control the lawyer's independent professional judgment.
- (e) The Board of Trustees of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on lawyers. A lawyer shall not accept a referral from, or otherwise participate in, a lawyer referral service unless it complies with such Minimum Standards for Lawyer Referral Services.
- (f) A lawyer shall not practice with or in the form of a nonprofit legal aid, mutual benefit or advocacy group if the nonprofit organization allows any third person* to interfere with the lawyer's independent professional judgment, or with the lawyer-client relationship, or allows or aids any person* to practice law in violation of these rules or the State Bar Act.

Comment

[1] Paragraph (a) does not prohibit a lawyer or law firm* from paying a bonus to or otherwise compensating a nonlawyer employee from general revenues received for legal services, provided the arrangement does not interfere with the independent professional judgment of the lawyer or lawyers in the firm* and does not violate these rules or the State Bar Act. However, a nonlawyer employee's bonus or other form of compensation may not be based on a percentage or share of fees in specific cases or legal matters.

[2] Paragraph (a) also does not prohibit payment to a nonlawyer third-party for goods and services provided to a lawyer or law firm;* however, the compensation to a nonlawyer

third-party may not be determined as a percentage or share of the lawyer's or law firm's overall revenues or tied to fees in particular cases or legal matters. A lawyer may pay to a nonlawyer third-party, such as a collection agency, a percentage of past due or delinquent fees in concluded matters that the third-party collects on the lawyer's behalf.

[3] Paragraph (a)(5) permits a lawyer to share with or pay court-awarded legal fees to nonprofit legal aid, mutual benefit, and advocacy groups that are not engaged in the unauthorized practice of law. (See *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23 [40 Cal.Rptr.3d 221]; see also rule 6.3.) Under the specified circumstances, paragraph (a)(6) permits a lawyer to share with or pay legal fees arising from a settlement or other resolution of the matter to 501(c)(3) organizations, such as nonprofit legal aid and charitable groups that are not engaged in the unauthorized practice of law. Paragraphs (a)(5) and (a)(6) include the concept of a nonprofit organization facilitating the employment of a lawyer to provide legal services. One example of such facilitation is a nonprofit organization's operation of a law practice incubator program.

[4] A lawyer or law firm* who has agreed to share with or pay legal fees to a qualifying organization under paragraphs (a)(5) or (a)(6) remains obligated to exercise independent professional judgment in the client's best interest. See rules 1.7 and 2.1. Regarding a lawyer's contribution of legal fees to a legal services organization, see rule 1.0, Comment [5] on financial support for programs providing pro bono legal services.

[5] Nothing in paragraphs (a)(5) or (a)(6) is intended to alter the regulation of lawyer referral activity set forth in Business and Professions Code section 6155. In addition, a lawyer must comply with rules 5.4(a)(4) and 7.2(b).

[6] This rule is not intended to affect case law regarding the relationship between insurers and lawyers providing legal services to insureds. (See, e.g., *Gafcon, Inc. v. Ponsor Associates* (2002) 98 Cal.App.4th 1388 [120 Cal.Rptr.2d 392].)

[7] Paragraph (c) is not intended to alter or diminish a lawyer's obligations under rule 1.8.6 (Compensation from One Other Than Client).



The State Bar of California

Rule 1.4.2 Disclosure of Professional Liability Insurance (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer who knows* or reasonably should know* that the lawyer does not have professional liability insurance shall inform a client in writing,* at the time of the client's engagement of the lawyer, that the lawyer does not have professional liability insurance.
- (b) If notice under paragraph (a) has not been provided at the time of a client's engagement of the lawyer, the lawyer shall inform the client in writing* within thirty days of the date the lawyer knows* or reasonably should know* that the lawyer no longer has professional liability insurance during the representation of the client.
- (c) This rule does not apply to:
 - (1) a lawyer who knows* or reasonably should know* at the time of the client's engagement of the lawyer that the lawyer's legal representation of the client in the matter will not exceed four hours; provided that if the representation subsequently exceeds four hours, the lawyer must comply with paragraphs (a) and (b);
 - (2) a lawyer who is employed as a government lawyer or in-house counsel when that lawyer is representing or providing legal advice to a client in that capacity;
 - (3) a lawyer who is rendering legal services in an emergency to avoid foreseeable prejudice to the rights or interests of the client;
 - (4) a lawyer who has previously advised the client in writing* under paragraph (a) or (b) that the lawyer does not have professional liability insurance.

Comment

[1] The disclosure obligation imposed by paragraph (a) applies with respect to new clients and new engagements with returning clients.

[2] A lawyer may use the following language in making the disclosure required by paragraph (a), and may include that language in a written* fee agreement with the client or in a separate writing:

"Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I do not have professional liability insurance."

[3] A lawyer may use the following language in making the disclosure required by paragraph (b):

“Pursuant to rule 1.4.2 of the California Rules of Professional Conduct, I am informing you in writing that I no longer have professional liability insurance.”

[4] The exception in paragraph (c)(2) for government lawyers and in-house counsels is limited to situations involving direct employment and representation, and does not, for example, apply to outside counsel for a private or governmental entity, or to counsel retained by an insurer to represent an insured. If a lawyer is employed by and provides legal services directly for a private entity or a federal, state or local governmental entity, that entity is presumed to know* whether the lawyer is or is not covered by professional liability insurance.

California Code, Business and Professions Code - BPC § 6146

(Current as of January 01, 2023)

(a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:

(1) Twenty-five percent of the dollar amount recovered if the recovery is pursuant to settlement agreement and release of all claims executed by all parties thereto prior to a civil complaint or demand for arbitration being filed.

(2) Thirty-three percent of the dollar amount recovered if the recovery is pursuant to settlement, arbitration, or judgment after a civil complaint or demand for arbitration is filed.

(3) If an action is tried in a civil court or arbitrated, the attorney representing the plaintiff or claimant may file a motion with the court or arbitrator for a contingency fee in excess of the percentage stated in paragraph (2), which motion shall be filed and served on all parties to the action and decided in the court's discretion based on evidence establishing good cause for the higher contingency fee.

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For purposes of this section:

(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500), or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

(3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

California Code, Business and Professions Code - BPC § 6147

(Current as of January 01, 2023)

(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate that the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

(d) This section shall become operative on January 1, 2000.

California Business and Professions Code - BPC § 6148

(Current as of January 01, 2023)

(a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.

(2) The general nature of the legal services to be provided to the client.

(3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(e) This section applies prospectively only to fee agreements following its operative date.

(f) This section shall become operative on January 1, 2000.

Proposed Formal Opinion Interim No. 20-0005 (Conversion Clauses in Contingent Fee Agreements)



The State Bar seeks public comment on Proposed Formal Opinion Interim No. 20-0005 (Conversion Clauses in Contingent Fee Agreements).

Deadline: September 3, 2024, 11:59 p.m.

Direct comments to

Comments should be submitted using the [online Public Comment Form](#). The online form allows you to input your comments directly and can also be used to upload your comment letter and/or other attachments.

Background

The State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) is charged with the task of issuing advisory opinions on the ethical propriety of hypothetical attorney conduct. In accordance with applicable State Bar policy and procedure, the committee shall publish proposed formal opinions for public comment (See, State Bar Board of Trustee Resolutions July 1979 and December 2004. See also, Board of Trustee Resolution November 2016).

Discussion/proposal

Proposed Formal Opinion Interim No. 20-0005 considers:

Under what circumstances, if any, are “conversion clauses” in contingent fee agreements ethically permissible?

The opinion interprets rules 1.2, 1.5, and 1.16 of the Rules of Professional Conduct of the State Bar of California.

The opinion digest states: “A conversion clause is a term in any contingent fee agreement, in either a litigation or transactional matter, that provides that, upon termination of the relationship or refusal to settle on terms recommended by an attorney before the happening of the contingent event, the attorney’s fee may convert to an hourly rate or some other calculation other than the original contingent fee. Conversion clauses in contingent fee agreements are ethically prohibited primarily because their use improperly interferes with important client rights, including the client’s right to discharge the attorney or the client’s right to determine whether to settle. Conversion clauses violate an attorney’s ethical duties and may constitute an agreement to charge an unconscionable fee.”

At its June 21, 2024, meeting, and in accordance with their procedures, COPRAC tentatively approved Proposed Formal Opinion Interim No. 20-0005 for a 60-day public comment distribution. This is the second public comment period for this opinion. A [prior version of the opinion](#) was issued for public comment with a November 17, 2022, comment deadline. The prior draft of the opinion advised: “Conversion clauses are not ethically prohibited per se, but require careful ethical scrutiny, and the circumstances where a conversion clause is ethically permissible are rare. They are ethically prohibited where their use may improperly interfere with important client rights or may violate an attorney’s ethical duties, primarily the client’s right to discharge the lawyer or the client’s right to determine whether to settle and where they would result in an unconscionable fee.” The opinion provided five scenarios. In four scenarios, the committee advised that a conversion clause was ethically prohibited. In one scenario, the committee advised that there could be a “settlement-related conversion clause that may be ethically permissible” based on (1) the sophistication of the client; (2) the alternate fee being designed to encourage the lawyer to provide a contingent fee representation based on the client’s preference; (3) the alternate fee not interfering with the client’s decision whether to settle and the possibility that the client may choose not to pursue the claim to disposition; (4) the alternate fee not constituting an unconscionable fee; and (5) the client providing informed written consent to the unusual fee arrangement.

The revised version of the opinion, as issued for this 60-day public comment period, advises that conversion clauses are never ethically permitted.

The committee seeks comment on the revised opinion. In particular, the committee invites public comments addressing (1) the opinion’s position that a conversion clause should be prohibited per se in all matters and representations, including in transactional matters; and (2) whether the opinion should be limited to prohibiting conversion clauses only certain types of representation, such as in a litigation context.

Any fiscal/personnel impact

N/A

Background material

- [Proposed Formal Opinion Interim No. 20-0005](#)

Source

Committee on Professional Responsibility and Conduct

Deadline

September 3, 2024, 11:59 p.m.

Direct comments to

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**THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION INTERIM NO. 20-0005
CONVERSION CLAUSES IN CONTINGENT FEE AGREEMENTS**

- ISSUES:** Under what circumstances, if any, are “conversion clauses” in contingent fee agreements ethically permissible?
- DIGEST:** A conversion clause is a term in any contingent fee agreement, in either a litigation or transactional matter, that provides that, upon termination of the relationship or refusal to settle on terms recommended by an attorney before the happening of the contingent event, the attorney’s fee may convert to an hourly rate or some other calculation other than the original contingent fee. Conversion clauses in contingent fee agreements are ethically prohibited primarily because their use improperly interferes with important client rights, including the client’s right to discharge the attorney or the client’s right to determine whether to settle. Conversion clauses violate an attorney’s ethical duties and may constitute an agreement to charge an unconscionable fee.
- AUTHORITIES
INTERPRETED:** Rules 1.2, 1.5, and 1.16 of the Rules of Professional Conduct of the State Bar of California.¹

INTRODUCTION AND SCOPE

This opinion addresses the ethical permissibility of conversion clauses in contingent fee agreements. For purposes of this opinion, a conversion clause is a contractual provision that, if triggered, converts the fee due to an attorney from that contingent fee to an alternate fee arrangement that purports to entitle the attorney to a fee greater than the reasonable value of the attorney’s services up to the time of discharge not calculated against the recovery actually obtained or against the services of successor counsel in relation to the recovery actually obtained.²

It is the view of the committee that such conversion clauses are ethically prohibited for two reasons. First, they impermissibly interfere with the client’s right to discharge the attorney and second, they can impermissibly interfere with the client’s right to determine whether to settle. In doing so, they can result in the charging of an amount more than the discharged attorney’s right to a “reasonable fee,” which is

¹ Unless otherwise indicated, all references to “rules” in this opinion will be to the Rules of Professional Conduct of the State Bar of California.

² This opinion is not intended to address the ethical validity or enforceability of hybrid fee agreements, which are distinct from conversation clauses and usually involve the payment of attorneys’ fees in some combination of an hourly rate, flat rate, or contingency fee. For some analysis of ethical issues related to hybrid fee agreements, see Bar Association of San Francisco Formal Ethics Opn. No. 1999-1 (opining that if the client enters into the fee agreement in an arm’s length transaction and agrees to the fee with informed consent, such arrangements would be permissible under rule 1.5 provided that the fee charged is not unconscionable).

not permitted by California case law and thus would constitute an agreement to charge an unconscionable fee.

DISCUSSION

A. The Client's Right to Discharge Counsel.

Both the rules and California decisional law confirm a client's absolute right to discharge his or her attorney. (Rule 1.16(a)(4); *Fracasse v. Brent* (1972) 6 Cal.3d 784 [100 Cal.Rptr. 385]; *Kroff v. Larson* (1985) 167 Cal.App.3d 857, 860 [213 Cal.Rptr. 526] [client has the absolute right at any time to discharge an attorney, with or without cause].) Conversion clauses purport to entitle an attorney in a contingent fee representation, if terminated, to an amount more than the quantum meruit value of the attorney's services up to the time of discharge (an amount that cannot be determined unless and until the contingency in fact occurs) are impermissible because they would interfere with the client's right to discharge counsel. (See *Fracasse v. Brent*, *supra*, 6 Cal.3d at p. 792 [improper to burden the client in contingency cases with an absolute obligation to pay the attorney regardless of outcome]; see also, Colorado State Bar Ethics Opinion 100 (1997); 64 Mercer L. Rev. 363 (2013); *Compton v. Killtelson* (2007) 171 P.3d 172 [contingent fee agreement retroactively converted to hourly fee upon discharge of attorney was unconscionable and a violation of Model Rule 1.2]; *U.S. Postal Service v. Haselrig Corp* (D. Md. 2004) 349 F.Supp.2d 955 [agreement that attempted to unlawfully penalize the client for discharge of the attorney by requiring payment of 40% contingency or flat \$35,000 was unreasonable at inception].)

Some argue that conversion clauses are necessary to "protect" contingent fee attorneys from perceived bad faith termination by clients. However, established law already protects a contingent fee attorney in these circumstances under the principles of *quantum meruit*,³ which allows a terminated contingent attorney to receive a fee commensurate with the reasonable value⁴ of the services provided up to the time of discharge. As the California Supreme Court in *Fracasse* noted (in a different but related context): "... we find no injustice in a rule awarding a discharged attorney the reasonable value of the services he has rendered up to the time of discharge," a rule which the court noted, "preserve[s] the client's right to discharge his attorney without undue restriction, and yet acknowledge[s] the attorney's right to fair compensation for work performed." (*Fracasse v. Brent*, *supra*, 6 Cal.3d. at p. 791.) Conversion clauses

³ "Quantum meruit" refers to the principle that the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered. The doctrine of *quantum meruit*, where appropriate, allows attorneys to recover the reasonable value of their services even in the absence of a valid or enforceable contract. (See *Sheppard, Mullin, Richter & Hampton, LLP v J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59, 88 [237 Cal.Rptr.3d 424].) Although beyond the scope of this opinion, California has a well-developed body of law concerning when a discharged lawyer's conduct entitles or disentitles the lawyer to a reasonable fee (i.e., a *quantum meruit* recovery) such as where a contingent fee attorney withdraws from the case without justifiable cause (see *Rus Miliband & Smith v. Conkle & Olesten* (2003) 113 Cal.App.4th 656 [6 Cal.Rptr.3d 612]; *Hensel v. Cohen* (1984) 155 Cal.App.3d 563 [202 Cal.Rptr. 85]; *Fracasse v. Brent*, *supra*, 6. Cal.3d. at p. 791) or engages in certain ethical violations such as an egregious conflict of interest (see *Cal Pak Delivery, Inc. v. United Parcel Service Inc.* (1997) 52 Cal.App.4th 1 [60 Cal.Rptr.2d 207]).

⁴ For further analysis of the factors involved in the determination of a reasonable fee, see State Bar of California Arbitration Advisory 1998-03 (rev. 2016).

purporting to entitle a discharged attorney to a fee more than quantum meruit operate as improper penalties rather than ethically permissible attorney protections.

In addition, because the reasonable value of the discharged attorney's services in a contingent fee matter cannot be calculated until the case terminates and the amount of recovery, if any, is known, and there is a risk that a contractually agreed formula may ultimately result in a fee greater than the reasonable value of the services provided up to the date of termination of the relationship or in a fee where no recovery ultimately is obtained. The risk creates a further impermissible disincentive to the exercise of the client's right to discharge counsel.

For these reasons, it is the view of the committee that any conversion clause that purports to entitle a discharged contingent-fee attorney to more than *quantum meruit* is ethically prohibited. Further, it is the view of the committee that a conversion clause that seeks to entitle a contingent-fee attorney to *any* fee in circumstances under which that contingent-fee attorney would otherwise be legally disentitled to recover a fee in *quantum meruit* is ethically prohibited. (See fn. 3, *supra*).

B. The Client's Right to Decide Whether or Not to Settle

An attorney is ethically required to abide by a client's decision concerning the objectives of the representation. The rules expressly extend this precept to the decision to accept or reject a settlement offer. "[A] lawyer shall abide by a client's decision whether to settle a matter." (Rule 1.2(a).) Nonetheless, some conversion clauses may be designed to "protect" an attorney against what the attorney perceives as a client's unreasonable or even bad faith decisions regarding whether to accept or reject settlement proposals contrary to the attorney's recommendation.

Such conversion clauses may purport to entitle the attorney to payment of the attorney's contingent fee percentage calculated against any settlement offer that the attorney recommends the client accept, but which the client rejects. Alternatively, some clauses entitle an attorney to the attorney's hourly rates if the client accepts a settlement offer (or walk-away agreement) that the attorney believes is insufficient.

While ethics committees of other states have approached such settlement-related conversion clauses from a variety of perspectives, all (save for one possible exception posed in a hypothetical comment from a Colorado opinion) have found conversion clauses to be ethically impermissible. (See, e.g., 64 Mercer L. Rev. 363 (2013); Wisconsin State Bar Professional Ethics Committee Formal Opinion No. E-82-5 (1982) (a contingent fee agreement that permits charging hourly fees if attorney deems a settlement offer inadequate is overreaching and unethical); Philadelphia Bar Association Ethics Opinion No. 2001-1 (majority opinion would permit conversion where there is clear advanced agreement on the goals of representation and agreement as to alternate methods of compensation if the client's goals change; the minority opinion would permit conversion clauses for sophisticated clients, not unsophisticated clients); Nebraska Ethics Advisory Opinion No. 95-1 (a provision triggered by a client not following attorney's settlement advice, which allows the attorney to choose between the contingent percentage or full hourly fee, restricts the client's authority to settle a matter).)

It is the view of the committee that the requirement imposed by rule 1.2(a), that "a lawyer shall abide by a client's decision whether to settle a matter," is clear and nonwaivable and its elimination by contract is not permitted under rule 1.2(b). (See, e.g., *Amjadi v. Brown* (2021) 68 Cal.App.5th 383 [283 Cal.Rptr.3d 448] [holding that a provision in a fee agreement purporting to grant the attorney the right to accept a settlement offer on behalf of the client in the attorney's "sole discretion" violates the rules

and is void];⁵ *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 314–315 [the State Bar Court held that “[a]ttempts by an attorney to restrict a client’s right to control his or her case are invalid and evidence of overreaching”].) Conversion clauses keyed to the acceptance or rejection of settlement offers thus are ethically prohibited.

CONCLUSION

It is the view of the committee that conversion clauses are ethically prohibited because they impermissibly interfere with a client’s right to (1) terminate an attorney or (2) decide whether to settle, in doing so, because they can result in an agreement to charge an unconscionable fee, either facially or as applied.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.

⁵ *Amjadi* also held that attempts by lawyers to wrest control from clients as to settlement decisions not only violate rule 1.2 but also create a conflict of interest between the lawyer and client under rule 1.7(b) whenever the client and attorney disagree about settlement.