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Engagement Letter: Estate Planner Representing Both Spouses

For use when representing both spouses

Dear **[Name of Client(s)]**:

I am writing to confirm our agreement to represent both of you jointly regarding your estate plan. Spouses can sometimes have conflicting interests regarding their estate plan. For example, they may have different views as to how much power the surviving spouse should have over the property of a deceased spouse, how assets should be distributed upon the death of one or both of them, and how family assets should be divided between them during their lifetimes. Also, in order to take advantage of available tax benefits, lawyers frequently recommend that family assets be divided between a husband and wife to increase one estate or decrease the other by dividing jointly owned assets or by recommending gifts from one to the other. These are just some examples of potential conflicts that sometimes arise during the estate planning process.

If each of you had your own separate lawyer, you would each have an “advocate” for your position and would each receive totally independent and confidential advice from your own lawyer. Under such an arrangement the information given to your respective lawyers would be confidential and could not be disclosed to your spouse without your consent. This is not the case when one firm advises both of you jointly.

Although we will encourage the resolution of any differences of opinion or conflicting interests, we cannot be an advocate for one of you against the other if we represent both of you. When your individual interests differ, we will attempt to explain to both of you the interests of each of you and the effect on each of you of a particular course of action. Similarly, anything that either of you tells us relating to your estate plan cannot be kept confidential from the other.

In the interests of efficiency, you may choose to communicate with us primarily through one of you, in which event we will provide any necessary explanation of the issues to that individual. Of course, either of you may put questions to us at any time.

By signing this letter, each of you confirm that you have requested and consented to our joint representation of both of you in connection with the preparation of your estate plan and that you each agree that communication and information received from each of you relating to your estate plan will not be kept confidential from the other. Of course, either of you may retain separate counsel at any time. In that event, we will be free to continue to represent the other one of you only with the consent of the one who retained separate counsel.

In very unusual circumstances, a law firm representing both the husband and wife regarding their estate plan confronts a conflict of interest between them that is so serious that the firm can no longer continue to represent either of them. Although such a situation seems highly unlikely in your case, were it to occur, we would promptly notify both of you that we could no longer

continue to represent either of you. In some cases, it may not be possible to disclose to both of you precisely why we have concluded that we should discontinue our representation.

Our fee will be based upon the prevailing hourly rates in effect for our law firm. Currently, these rates range from \$___ to \$___ per hour, depending upon the experience and position of the individual lawyer. Paralegal services, if reasonably required, will be billed at a rate of \$___ per hour. During the period of our representation, it is possible that individual hourly rates in the firm may be increased **[by some modest amount]**. You will be informed of any changes immediately.

You will be billed for all of the time spent handling your matter, including but not limited to time spent on telephone conferences, research and drafting. In addition to our fee for services, you will also be billed for out-of-pocket costs incurred on your behalf such as postage, photocopying, long distance charges, facsimile charges, costs of using computerized legal research facilities, filing fees and messenger fees.

We will bill you monthly for the amount of work that was performed on your file during the preceding month. At this time, it is impossible to estimate the amount of time and expense that will be necessary to adequately represent you in this matter.

During the representation, we will supply you with copies of all substantive correspondence **[as well as a complete set of your estate plan documents upon completion of the matter]**. We suggest that you keep a copy of all of the documents regarding your matter in the file folder we have provided to you. After the matter is closed, you may obtain copies of your file by paying our standard photocopying charges and a minimum fee to compensate us for the time necessary to duplicate the file. **[Due to storage constraints, the file will be destroyed after ___ years.]**

We understand that we are being retained solely to prepare your estate plan and related documents, that our representation will cease when the documents are signed, and that thereafter you prefer that we not advise you of changes in the law or provide additional or ongoing services, except at your specific request. Because estate taxes and other relevant laws change from time to time and your estate planning goals may also change, we would be pleased to review your estate plan in the future upon your request. We urge that you consider such a review at least once every five years.

Your primary contact for this matter will be _____. If you have any questions regarding this matter, please feel free to contact _____ directly at (###) ###-####.

If you disagree with any of the terms and conditions set forth above, please contact me immediately. We will not commence any work on your behalf until we have received a copy of this letter with both of your signatures acknowledging agreement. We look forward to representing you in the preparation of your estate plan.

Sincerely,

Agreed to:

Signature

Print Name

Date

Signature

Print Name

Date