

NOTE: This material is intended as only an example, which you may use in developing your own form. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ISBA Mutual Insurance Company be liable for any direct, indirect, or consequential damages resulting from the use of this material.

## Engagement Letter: Hourly Rate Fee

[Date]

[Name and Address]

Dear \_\_\_\_\_:

It was a pleasure meeting with you on \_\_\_\_\_ to discuss \_\_\_\_\_ representation of \_\_\_\_\_. The purpose of this agreement is to set forth the terms upon which \_\_\_\_\_ agrees to represent \_\_\_\_\_, in order to establish and maintain a mutual understanding of the goals and respective responsibilities of \_\_\_\_\_ and \_\_\_\_\_.

### SCOPE OF SERVICE AND RETAINER

\_\_\_\_\_ (\_\_\_\_\_) has hired \_\_\_\_\_ (\_\_\_\_\_) to represent it in connection with the prosecution of \_\_\_\_\_ for alleged age discrimination against \_\_\_\_\_ and \_\_\_\_\_. [As we discussed, \_\_\_\_\_ will not be representing \_\_\_\_\_ subsidiary, \_\_\_\_\_ Corporation, in this litigation because of potential attorney/client privilege and conflict of interest concerns. I have advised \_\_\_\_\_ Corporation, by letter dated \_\_\_\_\_ that \_\_\_\_\_ cannot represent it and that \_\_\_\_\_ Corporation is responsible for retaining separate counsel to defend it in this discrimination action.] **(Conflict of interest acknowledgment)**

As is our policy with new clients, we are requesting an initial deposit of \$\_\_\_\_\_. [This retainer is a partial advance against anticipated legal fees and disbursements and must be paid before the firm will commence work upon the file. The retainer will be deposited in the firm's client trust account, subject to IOLTA requirements, and applied against \_\_\_\_\_ bills for legal services and disbursements. If the retainer is exhausted prior to the conclusion of this matter, \_\_\_\_\_ reserves the right to request replenishment of the retainer before additional work is performed. The retainer will be refunded, to the extent it has not been utilized in this matter, immediately upon resolution.] or [This deposit is nonrefundable and is the minimum fee \_\_\_\_\_ will be charged for legal services and

costs associated with this matter. The deposit must be paid before \_\_\_\_\_ will commence work upon the file.] **(Refundable or non-refundable option)**

## **CLIENT COOPERATION**

In order to effectively advocate \_\_\_\_\_ interests, \_\_\_\_\_ has an affirmative obligation to cooperate with \_\_\_\_\_ during the pendency of this matter. For example, \_\_\_\_\_ will be required to furnish certain information and documents and designated \_\_\_\_\_ representatives may be required to attend depositions and court appearances. Consequently, \_\_\_\_\_ is expected to provide requested documentation promptly to the appropriate firm representative, whether an attorney, paralegal or secretary. \_\_\_\_\_ representatives must be available to work with \_\_\_\_\_ attorneys in preparation for depositions, court appearances and to discuss issues as they arise throughout this matter. A client's non-cooperation is grounds for \_\_\_\_\_ withdrawal, and thus, it is essential that we maintain open communication.

In return, \_\_\_\_\_ agrees to keep \_\_\_\_\_ informed of the status of this matter and to consult with \_\_\_\_\_ when appropriate. Copies of significant correspondence and documents will be sent to \_\_\_\_\_ through \_\_\_\_\_ and any other designated personnel. In the event that we are out of the office or otherwise unavailable, please leave a message with my secretary disclosing the nature and urgency of the call. Even if the attorney cannot respond directly, someone will return your call with an appropriate response.

## **GENERAL LAWSUIT INFORMATION**

In order to demystify the lawsuit process, \_\_\_\_\_ would like to explain, in some detail, how a lawsuit is handled and what you can expect during the pendency of this action.

A lawsuit is commenced by the service and filing of a Summons and Complaint. The Complaint recites facts upon which the Plaintiff asserts liability against the Defendant. In this case, \_\_\_\_\_ and \_\_\_\_\_ are alleging that \_\_\_\_\_ terminated their employment exclusively on the basis of age. The Defendant then has a limited number of days in which to serve and file an answer, which typically denies the claims asserted in the Complaint.

After the lawsuit is commenced, both the Plaintiff(s) and Defendant(s) are afforded a limited period of time called "discovery", during which they investigate the strengths and weaknesses of each other's claims. Written questions called "interrogatories" are frequently

exchanged which require written responses about the facts and claims asserted by both parties. Oral depositions are also commonly used as a discovery tool. Parties to the action, as well as witnesses, orally answer questions posed by opposing counsel, which are simultaneously recorded by a stenographer. Depositions are very important, because the testimony can later be used at trial to perhaps point out inconsistencies between deposition and trial testimony. Also, depositions are helpful in ascertaining the strength and credibility of the deponent. If interrogatories are sent to us, we will explain the procedure and assist you and any other relevant \_\_\_\_\_ employees with answering the questions. If depositions are scheduled, we will meet with you or the relevant \_\_\_\_\_ employee/deponent prior to the deposition and discuss the process. We will also be present at every deposition.

If your case does not settle after discovery is terminated, then a trial will take place, usually before a judge and six-person jury. Prior to trial, we will spend considerable time with you and other witnesses/parties explaining how a trial is conducted and reviewing everyone's testimony. It is entirely possible that several trial dates will be set, only to be continued because of crowded court calendars. It is very important that you understand the delays that often attend lawsuits; they can stretch on for years, which is why \_\_\_\_\_ commitment to and patience with this process is imperative.

## **LEGAL FEES, EXPENSES AND BILLINGS**

### ***Fees***

\_\_\_\_\_ agrees to pay fees for services provided on this matter, in excess of those amounts covered by the initial retainer, based upon the following rates:

Shareholder	\$ _____/hour
Associate	\$ _____/hour
Paralegal	\$ _____/hour

The above hourly rates are subject to adjustment in \_\_\_\_\_ of every calendar year without prior notice to \_\_\_\_\_. Current billing rate schedules are available upon request. Hourly billing will be to the tenth (1/10th) of an hour for time spent on \_\_\_\_\_ matter. "Time spent" includes telephone and personal conferences with both \_\_\_\_\_ and assigned firm personnel, legal research, conferences, court appearances, discovery, preparation and review of necessary documents and correspondence.

Although our fees are primarily based upon the value of the time actually spent on your matter, the following factors are also considered when determining our fee: a) the nature of the legal problem, including its novelty, complexity and importance; b) preclusion of other

employment; c) the amount or consequence at stake and the result obtained; d) time limitations imposed by the client or situation; e) the experience, reputation and ability of the attorney(s) retained; and f) the skill necessary to handle the matter correctly.

\_\_\_\_\_ understands that personal and telephone consultations with \_\_\_\_\_ attorneys shall be part of its representation and \_\_\_\_\_ may be billed for the time spent on each consultation.

It is difficult to estimate, in advance, the amount of fees which \_\_\_\_\_ will incur in connection with this matter. We anticipate the fees will be in the range of \$\_\_\_\_\_, exclusive of expenses described below. This figure is not, however, a maximum fee, but is simply an estimate to allow \_\_\_\_\_ to budget appropriately. If we see that the fees will be exceeding this estimate by a significant amount, we will notify \_\_\_\_\_.

### **Costs and Disbursements**

\_\_\_\_\_ is responsible for payment of any expenses incurred on \_\_\_\_\_ behalf, including reimbursement of all disbursements advanced by \_\_\_\_\_. Such expenses and disbursements include, but are not limited to, photocopying and facsimile charges, long distance telephone calls, travel expenses and computer research charges. Costs exceeding \$100, such as expert witness fees and deposition costs, may be billed directly to \_\_\_\_\_, for which \_\_\_\_\_ agrees to make prompt, direct payments to the vendor. Notice of payment should be sent to \_\_\_\_\_. Otherwise, \_\_\_\_\_ will attempt to notify \_\_\_\_\_ prior to advancing any cost exceeding \$300.

### **Billing**

Itemized statements of services and disbursements will be sent to \_\_\_\_\_ monthly, with payment to be made within thirty (30) days of the invoice date. \_\_\_\_\_ reserves the right to charge \_\_\_\_\_ interest, not to exceed % \_\_\_\_ per annum, on any bill outstanding for more than thirty (30) days. If \_\_\_\_\_ has any questions regarding the billing format or any information contained therein, please contact me or my secretary. Otherwise, we assume everything is satisfactory.

### **ASSIGNMENT OF FIRM PERSONNEL**

I will be primarily responsible for the supervision of \_\_\_\_\_ matter, but \_\_\_\_\_ is hiring \_\_\_\_\_, not me individually. If necessary, I reserve the right to draw upon the talent and expertise of other partners and associates within the firm and to utilize paralegal staff to handle ministerial tasks.

## WITHDRAWAL

\_\_\_\_\_ has the right to terminate our agreement at any time, subject to payment of any final billings. Conversely, \_\_\_\_\_ reserves the right to withdraw from representation, subject to the ethical restrictions imposed upon us by the applicable Rules of Professional Responsibility. If \_\_\_\_\_ chooses to terminate representation, reasonable notice will be given to \_\_\_\_\_.

## BINDING AGREEMENT

The foregoing represents the entire agreement between \_\_\_\_\_ and \_\_\_\_\_. By signing below, \_\_\_\_\_, by its President, \_\_\_\_\_, acknowledges that this Agreement has been carefully reviewed and its content understood and \_\_\_\_\_ agrees to be bound by all of its terms and conditions. Furthermore, \_\_\_\_\_ acknowledges that \_\_\_\_\_ has made no representations to \_\_\_\_\_ regarding the outcome of the legal matter for which \_\_\_\_\_ has been retained.

If this Agreement reflects \_\_\_\_\_ understanding of our relationship, please sign and return the enclosed duplicate copy. In conformance with firm policy, we cannot commence work upon your matter until we have received both this executed Agreement and the retainer.

Thank you again for this opportunity to be of service to \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

[Name]

## ARBITRATION

Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in the County of \_\_\_\_\_, State of \_\_\_\_\_, as follows:

[Insert appropriate jurisdictional requirements regarding a) selection of arbitrator; b) arbitration procedure; c) procedural impact of arbitrator's decision; d) review rights; and e) costs of arbitration.]

\_\_\_\_\_, by its President, \_\_\_\_\_, has reviewed and agreed to the above terms of engagement of \_\_\_\_\_.

\_\_\_\_\_

[Firm Name]

By: \_\_\_\_\_

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