



TEMPLATE: Build-Your-Own Engagement Letter

Disclaimer: LMICK is providing general legal information for Kentucky lawyers drafting client engagement letters. This document is intended to provide a starting point and must be adjusted to suit your practice's and your client's needs. LMICK is not providing legal advice.

If you have attended a Lawyers Mutual of Kentucky CLE, you have likely heard us emphasize how important it is to execute engagement letters with every client *and* in every matter. Engagement letters are a small task that has a big risk mitigation impact, documenting the scope and terms of the representation as well as outlining how the representation will end. When thoughtfully crafted, engagement letters can also guide initial discussions with clients to set realistic expectations and boundaries, which serves the dual purposes of client screening as well as preventing an angry, confused client down the road.

We recognize every practice is different and the level of formality necessary varies between firms. That is why we are providing this *a la carte* template letter to get Kentucky lawyers started on their own engagement letter. This resource is not intended to be all inclusive and you may find there are additional topics that you need to discuss in more detail in your letter. Indeed, you may find that you can pull from this resource to create your own template engagement letter that will at times need additional tailoring to individual clients.

This resource will discuss the following sections to consider for inclusion in your engagement letter:

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| I. Client Identification | XI. Additional Miscellaneous Fee Provisions |
| II. Conditions | XII. Approval Necessary for Settlement |
| III. Scope of Services | XIII. Back-up Lawyer Notice |
| IV. Limitation of Representation | XIV. Discharge and Withdrawal |
| V. Responsibilities of the Parties | XV. Conclusion of Services |
| VI. Staffing the Matter | XVI. File Retention and Destruction |
| VII. Method of Communication | XVII. Miscellaneous Concluding Provisions |
| VIII. Confidentiality of Communications | XVIII. Signature by Lawyer and Client |
| IX. Legal Fees | |
| X. Billing Procedures or Final Invoice | |

On the pages, below, you will find short summaries of each of these sections. The summaries are immediately followed by sample language for you to adopt and tailor for your specific needs. As you pull the applicable sections, you will build an engagement letter than best serves your practice.

As you utilize this template to craft your own engagement letter, keep in mind that simple, clear language (i.e., *not legalese*) is your best bet. However, you will need to tweak your own letter for particular clients to ensure they are able to understand what they are agreeing to based on cognitive ability, language barriers, etc. Also, don't let the engagement letter replace the verbal discussion of the representation parameters. Instead, let your engagement letter provide the road map for that discussion to ensure client understanding.

ENGAGEMENT LETTER TEMPLATE RESOURCE

- I. **Client Identification:** *If there are additional related parties involved in the matter, define those parties, here. Also, consider including the exclusionary language in sentence two of the example, below, to prevent others not named in the letter from asserting an attorney client relationship This can help limit the number of persons that could later assert a legal malpractice claim.*

Additionally, if you are representing more than one client, take care to have considered all the conflict of interest issues that may be implicated and include waiver language as appropriate. Each client should receive their own original engagement letter for review and execution.

[FIRM LETTERHEAD]

[NAME OF FIRM] (“Lawyer”), and [NAME OF CLIENT] (“Client”) hereby agree that Lawyer will provide legal services to Client on the terms set forth below. No duties have been undertaken or assumed for any person or entity not specifically identified as a client in this letter.

- II. **Conditions:** *Explain at the beginning of the agreement that you have no obligation to provide legal services until the agreement is signed. If you also ask for a retainer, explain that the retainer must be paid before legal services will be provided.*

Conditions. This Agreement will not take effect, and Lawyer will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the advance retainer, if any, called for under Paragraph [#].

- III. **Scope of Services:** *This should be tailored to define (and limit) the scope of services to what you are willing and able to take on. Maybe this is an agreement to do work prior to litigation being filed. Maybe this is an agreement to handle the matter through settlement or judgment (as written below). Perhaps you are representing a client in a criminal matter only at arraignment. Whatever your agreement is, define it clearly here. Setting out the specific scope of services can serve as a defense against malpractice allegations that you should have done more.*

Scope of Services. Client is hiring Lawyer to represent Client in the matter of Client’s claims against [xxx], arising out of [xxx] which occurred on or about [xxx].

If a court action is filed, Lawyer will represent Client until a settlement or judgment is reached. Lawyer will oppose any motion for a new trial or any other post-trial motions filed by an opposing party, or make any appropriate post-trial motions on Client's behalf.

After judgment or settlement, Lawyer will not represent Client on any appeal, or in any proceeding to execute on the judgment, unless Client and Lawyer execute a new written agreement.

- IV. Limitation of Representation: *It is also helpful to explicitly limit the representation, especially if the nature of the case indicates there could be other related or similar claims.*

Limitation of Representation. Lawyer is representing Client ***only on the matter described in Paragraph [#]***. Lawyer's representation ***does not include*** independent or related matters that may arise, including but not limited to:

- a. Claims for property damage
- b. Workers' compensation
- c. Disputes with a health care provider
- d. Claims for reimbursement by any insurance company (subrogation)
- e. Cross-claims or counter-claims that may be asserted against the Client in this matter.

- V. Responsibilities of the Parties: *Use this section to help set expectations and define responsibilities.*

Responsibilities of the Parties.

Lawyer will:

- a. provide the legal services reasonably required to represent the Client in the claims described in Paragraph [#].
- b. take reasonable steps to keep Client informed of progress and developments
- c. respond promptly to client inquiries and communications
- d. respond to opposing counsel, court, and other third party inquiries in a reasonable timeframe

Client agrees to

- a. be truthful with Lawyer

- b. cooperate fully with Lawyer in all matters related to the preparation and presentation of Client's claims
- c. keep Lawyer informed of any information and developments which may come to Client's attention
- d. provide Lawyer with any updates in Client's address, telephone number, email address, and whereabouts
- e. pay Lawyer's bills for costs on time
- f. appear at all legal proceedings when Lawyer deems it necessary

VI. Staffing the Matter: *This section is designed for firms with two or more lawyers and/or paralegals that may be working on a matter. We recommend including this section and then separately addressing various rates, if necessary, in the fee section. If you are a solo practitioner, you should review and consider the Back-Up Lawyer section, below.*

Staffing the Matter. [Lawyer's Name] will be the primary lawyer handling this matter and will be available to you for conferences and meetings upon your request. [Secondary Lawyer Name] will also be fully informed and prepared to discuss any issues or respond to any inquiries. [Paralegal/Assistant Name] will be the primary support staff on the matter but is prohibited by the Kentucky Rules of Professional Conduct from providing legal advice. Other partners, lawyers, or paralegals will be called upon as necessary so that the best possible services can be provided.

VII. Method of Communication: *Use this section to set expectations around communications, specifically. We have drafted the template based on our recommended practices. However, if you also use text messages to communicate, make sure to set boundaries around those, here. (Take care to have a way to save all text communications with clients to prove you are keeping them updated in the event a violation of your duty to communicate (1.4) is alleged).*

Method of Communication. Lawyer will use email as the primary form of communication. Client agrees to regularly check the email address provided and respond in a timely manner.

Lawyer will also reach out to client via phone to discuss issues, and then follow-up by email, as appropriate. Client agrees to promptly return missed phone calls.

Client may reach out via phone or email to discuss questions or issues that arise. Client agrees to use the office number (_____) for these calls. Lawyer may share a cell phone number for logistic purposes (i.e., confirming a meeting time,

connecting at the courthouse, meeting for a deposition). Lawyer will not provide legal advice via text message.

- VIII. Confidentiality of Communications: *Discuss the importance of keeping communications with the lawyer and anyone at the firm private to protect confidentiality and privilege.*

Confidentiality of Communications. It is important to keep our communications with you confidential. There are legal reasons for confidentiality, including prevention of inadvertent disclosure and loss of client-lawyer-privilege. Lawyer asks that client assist in this regard as follows:

- Avoid any discussion of sensitive matters with us where the conversation could be overheard.
- Avoid discussing our communications with other people, including your family and friends.
- Avoid using computers or devices owned by others (including your employer) to communicate with us. Instead, use your personal computer, device, email, and network for communicating with us.

- IX. Legal Fees: *Generally speaking, any engagement letter must include details about the lawyer's legal fees, including how fees are calculated and the consequences for nonpayment. However, this section will vary widely based on the type of compensation (i.e., contingency, hourly rate, flat rate). See part two, below, for additional details on fees and a variety of templates.*

Practice Pointer: Do not sue a client for unpaid fees. It almost certainly invites a malpractice counterclaim. Instead, be proactive with your engagement letter and billing practices to manage unpaid fees before the outstanding amount is so large you are tempted to file suit.

- X. Billing Procedures or Final Invoice: *If you are utilizing a billable hour arrangement, it is important to explain your billing procedures at the outset so there are no surprises. This can also help facilitate a discussion about the ability to pay and what happens if the client is unable to pay. It can even be helpful to attach an example bill to the agreement.*

If you are utilizing a contingency fee arrangement, it is important to describe what will be provided at the end of the matter.

Because this is tied closely to the fee structure, this template also appears, below, in part two.

Practice Pointer: when accounting for your time, be sure to include entries for ALL of your time, even if you plan to discount it for the client.

XI. Additional Miscellaneous Fee Provisions

Negotiability of Fees. The rates set forth above are not set by law, but are negotiable between an lawyer and client.

Costs and Expenses. Lawyer will incur various costs and litigation expenses in this matter which commonly include, but are not limited to:

- a. Investigation expenses
- b. Court fees, including filing fees
- c. Service of process charges
- d. Consultant and expert witness costs
- e. Document and media reproduction costs, including photocopying and digital media storage costs
- f. Notary fees
- g. Mail, messenger, and other delivery service fees
- h. Travel costs, including parking, transportation, meals, and hotel costs
- i. Mileage, calculated using the IRS mileage rate in effect at the time of travel
- j. Deposition costs and fees
- k. Mediation or arbitration costs
- l. Other similar costs

Client authorizes Lawyer to incur all reasonable costs Lawyer determines to be necessary. Lawyer agrees to obtain Client's consent before incurring any costs in excess of \$_____. Lawyer also agrees to obtain Client's consent before retaining outside investigators, consultants, or expert witnesses.

[IF BILLABLE HOUR, ALSO INCLUDE THIS PARAGRAPH] Client authorizes Lawyer to pay expenses from the advance retainer after providing an invoice in accordance with this agreement.

[ONLY IF CONTINGENCY, ALSO INCLUDE THE FOLLOWING TWO PARAGRAPHS] Lawyer will pay all costs or expenses on Client's behalf. Client agrees to reimburse Lawyer for all costs, disbursements, or expenses from the settlement, arbitration award, or judgment in the Client's benefit at Lawyer's cost. If Client does not obtain a settlement, arbitration award or judgment in their benefit, Client will not be obligated to reimburse Lawyer for costs and expenses.

Client agrees to reimburse Lawyer the full amount of costs, disbursements, and expenses out of any settlement, arbitration award, or judgment in their benefit—even if an award or judgment is structured to award a lesser amount for costs.

Fees and Costs to Other Parties. Client understands that if Client’s case proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such award will be entirely the responsibility of Client.

XII. Approval Necessary for Settlement: *Outline how settlements will be handled.*

Approval Necessary for Settlement. Lawyer 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. Client agrees to consider seriously any settlement offer Lawyer recommends before making a decision to accept or reject the offer. Client agrees not to make any settlement or compromise of any nature of any of Client’s claims without prior notice to Lawyer.

XIII. Back-up Lawyer Notice: *Solo practitioners should consider including a clause that names who your back-up lawyer will be in the event you are unexpectedly unavailable due to accident, illness, or death. Including the language, here, allows the back-up lawyer to act immediately to protect the client’s interest without having to obtain separate client consent. For more information about planning for the unexpected, [see LMICK’s disaster planning resources here.](#)*

Back-up Lawyer Notice. In order to meet my ethical obligation to protect your interests in the event I am unavailable due to an unexpected leave, I have appointed **[Back-up Lawyer Name]** to act as my back-up lawyer. **[Back-up Lawyer Name]** will have the authority to **[DESCRIBE SCOPE HERE. EX: handle matters that arise during either planned or unplanned leaves of absence, including wrapping up my practice should the need arise.]**

XIV. Discharge and Withdrawal: *Address what happens if the client discharges you—or you withdraw—prior to the conclusion of the matter.*

Discharge and Withdrawal. Client may discharge Lawyer at any time, upon written notice to Lawyer.

Lawyer may withdraw from representation of Client:

- a. with Client’s consent;

- b. upon court approval; or,
- c. if no court action has been filed, for good cause and upon reasonable notice to Client as allowed under the Kentucky Rules of Professional Conduct. Good cause includes:
 - i. Client's breach of this contract;
 - ii. Client's refusal to cooperate with Lawyer or to follow Lawyer's advice on a material matter; or,
 - iii. Any other fact or circumstance that would render Lawyer's continuing representation unlawful or unethical.

In the event of discharge or withdrawal, if Client ultimately obtains a settlement, arbitration award, or judgment in their benefit, Client will remain responsible for reasonable Lawyer's fees for the work performed from the effective date of this Agreement until discharge or withdrawal.

- XV. Conclusion of Services: *It is important to explain representation (for this matter) will end at the conclusion of the matter. You will still need to separately provide a termination letter but including this provision strengthens the argument the scope of services were limited and prevents any argument that you owed duties beyond what was outlined in the engagement letter.*

Conclusion of Services. This representation will conclude upon [DESCRIBE WHAT TRIGGERS THE CONCLUSION, i.e., settlement or jury verdict; completion of the investigation; etc.] Upon conclusion of the matter, Lawyer will provide a letter acknowledging the termination of the representation.

- XVI. File Retention and Destruction: *Generally discuss your firm's file retention policy, here, and then follow-up with additional details in your termination letter. Note, the below is drafted to encourage the client to pick up their file quickly but you will likely never destroy a file after sixty days. [Click here for more information about file retention policies.](#)*

File Retention and Destruction. The client will have sixty (60) days to pick-up their file at the conclusion of the matter. Thereafter, the firm reserves the right to destroy or otherwise dispose of any documents or other materials retained by the firm within a reasonable time after the termination of the representation and in accordance with standard file retention guidelines.

- XVII. Miscellaneous Concluding Provisions

Disclaimer of Guarantee. Nothing in this Agreement and nothing in Lawyer's statements to Client will be construed as a promise or guarantee about

the outcome of this matter. There can be no assurance that Client will recover any sum or sums in this matter. Client acknowledges that Lawyer has made no promise or guarantees about the outcome.

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. Any changes to the representation must be reduced to writing and signed by all parties.

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.

Modification by Subsequent Agreement. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by all parties. An oral agreement is valid only to the extent that all parties carry it out.

- XVIII. Signature by Lawyer and Client: *Obtain the client's signature prior to engaging in legal services. In the event there are extenuating circumstances that require an appearance before a letter can be executed (for example, appearing at an arraignment) make sure you have something in writing (i.e., an email) stating that you are only representing them for this appearance until you can meet to discuss the terms of engagement for the matter.*

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM, AS OF THE DATE LAWYER FIRST PROVIDED SERVICES. [IF MORE THAN ONE CLIENT IS INVOLVED IN MATTER, EACH AGREES TO BE LIABLE JOINTLY AND SEVERALLY FOR ALL OBLIGATIONS UNDER THIS AGREEMENT.] THE CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

[INCLUDE CLIENT SIGNATURE BLOCK: Client name, address, phone, and email address; ALSO INCLUDE LAWYER SIGNATURE BLOCK]

Legal Fees: Contingency Fee Agreement

I. Legal Fees: A contingent fee arrangement must be in writing (SCR 3.130 (1.5)(c)). The rule requires the written agreement to include:

- Method for determining the lawyer’s fee;
 - The agreement must address the percentage (or percentages) that accrue to the lawyer in the event of settlement, trial, or appeal
- Expenses to be deducted from the recovery;
- Statement of whether expenses owed out of the recovery will be deducted before or after the lawyer’s fee is calculated;
- Expenses client is responsible for regardless of outcome, if any; and
- Client’s signature

Lawyers should also take care to include how anticipated liens will be satisfied. Before entering into a contingency fee agreement, lawyers should review SCR 3.130 (1.5) for additional requirements and prohibitions.

Below is one approach to calculating fees in a contingency arrangement. This can be tailored to the method you use. However, we urge utilizing this or a similar method to demonstrate the calculation instead of relying on narrative language to explain the calculation.

Legal Fees. Lawyer will only be compensated for legal services rendered if recovery is obtained for Client. If no recovery is obtained, Client will not be required to pay fees or costs.

The fee paid to Lawyer will be a percentage of the “net recovery,” depending on the stage at which the settlement or judgment is reached. Any expenses owed will be subtracted before calculating the Lawyer’s fee, as shown, below. The term “net recovery” means:

Total of all amounts received by settlement, arbitration award or judgement, including any award of lawyer fees.	Minus	All costs and expenses set forth in Paragraph [#] .	= Net Recovery*
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**Net recovery shall also include the reasonable value of any non-monetary proceeds.*

Net Recovery	Multiplied by	Lawyer Fee Percentage (see below)	= Lawyer Fee
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Lawyer's fee shall be calculated based on the stage of the case, as outlined, below:

If resolution occurs:	...then the Lawyer's fee will be:
(a) Before filing a lawsuit or formal initiation of proceedings	_____ percent (____%) of the net recovery.
(b) _____ days before the date initially set for the trial or arbitration of the matter	_____ percent (____%) of the net recovery.
(c) Anytime after (a) or (b), above	_____ percent (____%) of the net recovery.

The following calculation will be used to determine amount owed to client:

Net Recovery	MINUS	Lawyer Fee	MINUS	Subrogation or liens, if any	=Amount paid to Client
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If there is a recovery, the lawyer will notify the client upon receipt of the settlement funds. The lawyer will need to take care of any final paperwork and confirm with the financial institution that the funds are available before beginning disbursements of the funds.

- II. Final Invoice: Explain that a written statement will be provided outlining all of the above calculations as required by SCR 3.130 (1.5)(c).

Final Invoice. Upon the conclusion of a contingent fee matter, Lawyer will provide Client with a written statement stating the outcome of the matter. If there is a recovery, the statement will show the remittance to the client and the method of its determination.

Legal Fees: Billable Hour Agreement

I. Legal Fees: Fees are governed by SCR 3.130(1.5) as well as SCR 3.130(1.15) (Safekeeping Property). SCR 3.130(1.5)(f) requires the following for an advance fee or retainer:

- Written agreement stating the:
 - Dollar amount of the fee
 - Application to the scope of the representation
 - Timeframe in which the agreement will exist
- Client's informed consent
- Client's signature

Advance Retainer. Client agrees to pay Lawyer an advance retainer of \$_____ by [DATE]. The advance retainer will be held in a trust account for security of payment of Lawyer's fees. Client authorizes Lawyer to use the retainer to pay the fees and other expenses as they are incurred. Payments from the fund to the Lawyer for fees incurred at the hourly rates below and any expenses incurred will be made upon remittance to client of the billing invoice.

Client acknowledges that the advance retainer is not an estimate of total fees and costs.

If the advance retainer is exhausted, Lawyer reserves the right to demand further retainers, each up to a maximum of \$_____.

Once a trial or arbitration date is set, Client shall pay all fees and expenses then owed. Lawyer may also require Client to pay an additional retainer in anticipation of trial, up to a maximum of \$_____.

Lawyer Fees. Client agrees to pay by the hour at Lawyer's prevailing rates for all time spent on Client's matter. Current hourly rates are as follows:

- Lawyer \$
- Associate \$
- Paralegal \$
- Law Clerk \$

The rates above are subject to change with thirty (30) days' written notice to Client. If Client declines to pay increased rates, Lawyer will have the

right to withdraw from the matter if permitted under the Kentucky Rules of Professional Conduct.

Client will be billed for time personnel spend on communications relating to the matter, including calls and emails with Client, witnesses, opposing counsel, or court personnel. The personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. Additionally, more than one member of the team may attend a meeting or proceeding. When they do so, each person will charge for the time actually expended (including waiting time and travel time), as long as the work done is reasonably necessary and not duplicative.

Time is billed in six (6) minute increments (or one-tenth (0.1) of an hour).

- II. **Billing Procedures:** *It is important to explain your billing procedures at the outset so there are no surprises. This can also help facilitate a discussion about the ability to pay and what happens if the client is unable to pay. It can even be helpful to attach an example bill to the agreement.*

Practice Pointer: when billing, be sure to include entries for ALL of your time, even if you plan to discount it for the client.

Billing Procedures. Lawyer will send Client monthly invoices for lawyer's fees and costs incurred. Invoices will be sent via **[email/mail]**.

Lawyer will first deduct amounts owed from the retainer. If the amount owed exceeds the balance of the retainer, Client will be required to pay the remainder of the invoice within thirty (30) days by **[credit card/check]**. If Client fails to pay fees timely, Lawyer will have the right to withdraw from the matter if permitted under the Kentucky Rules of Professional Conduct.