

Sample Letters

Disclaimer

The following sample letters are to be used as a guide or example, and must be adjusted to suit your client's needs. Lawyers Mutual Insurance Company of Kentucky hereby disclaims any and all responsibility or liability that may be asserted or claimed arising from, or claimed to have arisen from, reliance upon the use of any of these samples by any person.

Sample Letters And Optional Paragraphs

The basis for the following sample letters and optional paragraphs are taken from a variety of sources to include the state bars of California and Wisconsin, and several Internet risk management websites. They have been edited as necessary to better accommodate Kentucky practice.

1. Sample Letter of Engagement Hourly Fees -- Litigation

GULLETT, BREETZ & LONG
441 Main Street
Louisville, Kentucky 42000
(502) 680-9600
(Date)

GULLETT, BREETZ & LONG ("Attorney") and **JOHN RESOR** ("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 Client returns a signed copy of this Agreement and pays the advance retainer called for under Paragraph 4.

2. SCOPE OF SERVICES. Client hires Attorney to provide legal services in the following matter: [*describe matter*].

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 execution proceedings after judgment. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate written agreement.

3. CLIENT'S DUTIES. Client agrees to be truthful with Attorney, 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 in providing necessary information and documents and will appear when necessary at legal proceedings.

4. ADVANCE RETAINER. Client agrees to pay Attorney an advance retainer of \$___ by (date). The hourly charges will be charged against the retainer. The advance retainer, as well as any future retainer, will be held in a trust account. Client authorizes Attorney to use that fund to pay the fees and other charges as they are incurred. Payments from the fund will be made upon remittance to client of a billing statement. Client acknowledges that the advance retainer is not an estimate of total fees and costs, but merely an advance for security.

Whenever the advance retainer is exhausted, Attorney reserves the right to demand further retainers, each up to a maximum of \$___ before a trial or arbitration date is set. Once a trial or arbitration date is set, Client shall pay all sums then owing and deposit the attor-

neys' 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 retainer in the trust account.

Client agrees to pay all retainers after the advance retainer within ___ days of Attorney's demand. Unless otherwise agreed in writing, any unused retainer at the conclusion of Attorney's services will be refunded.

5. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Attorney's prevailing rates for all time spent on Client's matter by 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 the Kentucky Rules of Professional Conduct permit.

The time charged will include the time Attorney spends on telephone calls relating to Client's matter, including calls with Client, witnesses, opposing counsel or court personnel. 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. Attorney will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

Time is charged in minimum units of one-tenth (. 1) of an hour. The following have higher minimum charges:

- Telephone calls: ____
- Letters: ____
- Other: ____

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, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, profes-

sional, mediator, arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged at Attorney's cost.

- In-office photocopying: ____ /page
- Facsimile charges: ____ /page
- Mileage: ____ /mile
- Other: ____

(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's personnel. Client will also be charged 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.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

7. BILLING STATEMENTS. Attorney will send Client periodic statements for fees and costs incurred. Each statement will be payable within ____ days of its mailing date. Client may request a statement at intervals of no less than 30 days. If Client so requests, Attorney will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

8. DISCHARGE AND WITHDRAWAL. Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause if the Kentucky Rules of Professional Conduct permit. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matter or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney will, upon Client's request, deliver Client's file, and property in Attorney's possession whether or not Client has paid for all services.

9. 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. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given.

I cannot and do not guarantee favorable outcomes. Negotiations and litigation are not precise activities. Sometimes judges do not understand particular factual or legal nuances of a case and other times they may be looking for an opportunity to judicially modify the law. Thus, there are adverse risks associated with negotiations and litigation. Those risks will be present here. Unfavorable outcomes do in fact occur. With this in mind, I will represent your interests in this matter to the best of my ability.

10. 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.

11. 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.

12. 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, or an oral agreement only to the extent that the parties carry it out.

13. 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 SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED:
JOHN RESOR

Address:
Telephone:

DATED:
GULLETT, BREETZ & LONG

By: PETE GULLETT