

## **SAMPLE LETTERS FOR CO-COUNSEL RELATIONSHIPS**

**Letter 1. Cover letter to co-counsel enclosing below letters.**

**Letter 2. Agreement with co-counsel concerning terms of the co-counsel relationship.**

**Letter 3. Joint letter from co-counsel to client. Letter informs client of co-counsel relationship and of the responsibilities of each firm, and advises client that the firms are separate, each firm will have a separate engagement letter with client, and that each firm will separately bill client.**

**Letter 4. Engagement letter with client.**

**SAMPLE LETTER #1 of 4 FOR CO-COUNSEL RELATIONSHIPS**

[Insert Date]

[Name of Co-Counsel]

[Address]

Re: **[Style of Case or Description of Matter/Representation] -- Co-Counsel Relationship]**

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

In connection with the proposal we have been discussing concerning [Law Firm] serving as co-counsel with you [name of co-counsel law firm] in the representation of [name of client], in [describe matter] (“the matter”). I am enclosing three separate pieces of correspondence for your review. They are:

- (A) A letter which documents our co-counsel relationship,
- (B) A proposed joint letter to [name of client] concerning the co-counsel relationship.
- (C) An engagement letter that [Law Firm] will send to [name of client] concerning [Law Firm’s] engagement. We propose that you also send a similar engagement letter to the client and forward a copy to us.

**[Alternative insert: In addition, I will forward to you under separate cover a confirmation of [Law Firm’s] professional liability policy and, in turn, ask that you send me a confirmation of your [name of co-counsel law firm's] policy. This request is made in response to a requirement of our professional liability insurers. This letter will document both of our agreements to hold these policies in confidence and not to reveal their contents to anyone else, either inside or outside of our firms, without the other’s consent, except on a need to know basis that includes each of our own respective carriers and our loss prevention lawyers.]**

Thank you very much. We look forward to working with you [or name of co-counsel law firm] in the matter.

Sincerely,

[LAW FIRM]

By \_\_\_\_\_

Enclosures

**SAMPLE LETTER #2 of 4 FOR CO-COUNSEL RELATIONSHIPS**

[Insert Date]

[Name of Co-Counsel]

[Address]

**Re: [Style of Case or Description of Matter/Representation] Agreement of Co-Counsel Relationship**

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

We have discussed the advantages [Law Firm] and [name of co-counsel law firm or lawyer] of representing [name of client/s] as co-counsel in [describe matter] (“the matter”) in order to bring to [it/him/her/them] the expertise of each of our firms. To that end, [Law Firm] will be available to provide legal services to [name of client/s] in the matter on the following basis:

[Law Firm] will be engaged as co-counsel, but each firm will provide the client/s separate engagement letters to represent [it/him/her/them] in the matter and will send separate billings to the client/s. The engagement letters will establish each firm’s agreements with the client/s regarding terms of retention, including fees, billing, collection policies, conflicts of interest, and other matters governing each firm’s relationship with the client/s.

[Law Firm] and [name of co-counsel law firm or lawyer] hereby agree that, for the purposes of the representation of [name of client/s] in the matter, we will act as co-counsel. It is further agreed between us that [Law Firm] is an independent firm from [name of co-counsel law firm or lawyer] and that our co-counsel relationship for this matter will not alter such independence. Moreover, as our firms are independent of each other, we agree that no conflicts of interest will arise by virtue of our acting as co-counsel in the matter. We also will exercise due diligence to inform the client/s of our co-counsel relationship and the independence of our respective firms.

As is more fully described in our separate engagement letters, [Law Firm] and [name of co-counsel law firm or lawyer] will take on individual and specific roles with regard to the matter. [Law Firm’s] role will be [describe role]. [Name of co-counsel law firm or lawyer]’s role will be [describe role]. [Law Firm] will have no responsibility for [name of co-counsel law firm or lawyer]’s work. Similarly, [name of co-counsel law firm or lawyer] will have no responsibility for [Law Firm]’s work.

It is also agreed that [Law Firm] and [name of co-counsel law firm or lawyer] are each solely and fully responsible for the work that each respective firm performs for [name of client/s] in the matter and that neither firm will have vicarious, joint, or several liability for the

acts of the other. We also have agreed that each of our firms will exercise due care to protect the confidences of the clients of each firm.

If you **[or name of co-counsel law firm]** agree/s with the terms as stated above, please indicate your **[its]** agreement by signing below. Also, please return the executed copy to me as soon as possible, keeping a copy for your **[or name of co-counsel law firm's]** records. **[Insert if the return of the signed letter is to take place via facsimile and the appropriate fax number, or insert language that a stamped, addressed envelope is enclosed for return of the signed letter.]**

Thank you. We look forward to a very productive relationship as co-counsel in this matter.

Sincerely yours,

**[LAW FIRM]**

By:

**AGREED TO TERMS OF CO-COUNSEL RELATIONSHIP AS SET FORTH ABOVE:**

**[LAW FIRM]**

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

**[NAME OF CO-COUNSEL LAW FIRM OR LAWYER]**

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

**SAMPLE LETTER #3 of 4 FOR CO-COUNSEL RELATIONSHIPS**

[Insert Date]

**[Client ]**

**[Name of Client Contact]**

**[Company or Entity]**

**[Address]**

**Re: [Style of Case or Description of Co-Counsel Matter/Representation]—  
Co-Counsel Representation**

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

Thank you for retaining **[Law Firm]** and **[name of co-counsel law firm or lawyer]** to represent you **[or name of client]** as co-counsel with respect to **[describe matter]** (“the matter”). We understand that the scope of our engagement as co-counsel involves **[describe work to be done]**.

In order to bring to you our collective expertise, our two law firms will work as co-counsel on your behalf with respect to the matter. With your input we will determine how we will discharge our services to you concerning the individual aspects of each phase of the matter. While **[Law Firm]** and **[name of co-counsel law firm or lawyer]** are independent law firms working as a co-counsel, and, as such, are not to be considered part of the same firm, a joint venture, or otherwise affiliated, we anticipate and expect that our collaborative efforts and skills will inure to your **[or name of client’s]** benefit.

As is fully described in our separate engagement letters sent to you **[or name of client]**, **[Law Firm]** and **[name of co-counsel law firm or lawyer]** will take on individual and specific roles with regard to the matter. **[Law Firm’s]** role will be **[describe role]**. **[Name of co-counsel law firm or lawyer]**’s role will be **[describe role]**. **[Law Firm]** will not have responsibility for **[name of co-counsel law firm or lawyer]**. **[Name of co-counsel law firm or lawyer]** will not have responsibility for **[Law Firm’s]** work. Each law firm will have separate engagement letters with you **[or name of client]** describing the work to be performed, compensation and billing arrangements for each firm’s individual services, and other information based on the requirements and policies of each firm.

We look forward to working with you **[or name of client]** on the matter and hope that our collective expertise will effectuate a very successful conclusion to the matter. Please contact us should you have any questions.

Sincerely yours,

**[Law Firm]**

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

**[Name of co-counsel law firm or lawyer]**

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

**SAMPLE LETTER #4 of 4 FOR CO-COUNSEL RELATIONSHIPS**

[Insert Date]

**[Client ]**

**[Name of Client Contact]**

**[Company or Entity]**

**[Address]**

**Re: Engagement of Counsel**

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

Thank you for retaining [**Law Firm**] to represent you [**name of client**] in connection with [**describe matter**] (“the matter.”) as co counsel with [**name of co-counsel law firm or lawyer**]. Our engagement as co-counsel will involve [**describe work to be done**]. Our engagement began [**enter date**]. We look forward to serving your [**name of client’s**] needs in this matter and establishing a mutually satisfactory relationship.

The purpose of this letter is to confirm [**Law Firm’s**] engagement as co-counsel and to provide you [**name of client**] certain information concerning our fees, billing and collection policies, and other terms that will govern our relationship. Although we do not wish to be overly formal in our relationship, we have found it a helpful practice to confirm with our clients the nature and terms of our representation. Attached to this letter are our firm’s standard terms of engagement. Please review these and let me know if you [**name of client**] have/has any questions concerning our policies.

As we have agreed, [**Law Firm’s**] role in the matter will be [**describe role**]. [**Name of co-counsel law firm or lawyer**]’s role will be [**describe role**]. [**Law Firm**] and [**name of co-counsel law firm or lawyer**] will, as independent law firms, represent you [**name of client**] as co-counsel. However, [**Law Firm**] and [**name of co-counsel law firm or lawyer**] are not to be considered the same firm, a joint venture, or otherwise affiliated.

If the terms described above and in the attached terms of engagement are satisfactory, please so indicate by signing and returning the enclosed copy of this letter, keeping a copy for your records. [**Insert if the return of the signed letter is to take place via facsimile and the appropriate fax number, or insert language that a stamped, addressed envelope is enclosed for return of the signed letter.**]

We look forward to working with you to bring the matter to a successful conclusion.

Sincerely yours,

[LAW FIRM]

By \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[CLIENT NAME]

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

## TERMS OF ENGAGEMENT

We appreciate your decision to retain **[Law Firm]** as your legal counsel.

This document explains how we work, our obligations to you, your obligations to us, what we will do on your behalf, and how our charges will be determined and billed. Experience has shown that an understanding of these matters will contribute to a better relationship between us, and that in turn makes our efforts more productive.

Our engagement and the services that we will provide to you are limited to the matter identified in the accompanying letter. Any changes in the scope of our representation as described in the letter must be approved in writing. We will provide services of a strictly legal nature related to the matters described in that letter. You will provide us with the factual information and materials we require to perform the services identified in the letter, and you will make such business or technical decisions and determinations as are appropriate. You will not rely on us for business, investment, or accounting decisions, or expect us to investigate the character or credit of persons or entities with whom you may be dealing, unless otherwise specified in the letter.

We cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control.

### ***Confidentiality and Related Matters***

We wish to emphasize several points regarding the ethics of our profession that will govern our representation. As a matter of professional responsibility, we are required to hold confidential all information relating to the representation of our clients, subject to certain exceptions that we will discuss with you. This professional obligation and the legal privilege for attorney-client communications exist to encourage candid and complete communication between a client and lawyer. We can perform truly beneficial services for a client only if we are aware of all information that might be relevant to our representation. Consequently, we trust that our attorney-client relationship with you will be based on mutual confidence and unrestrained communication that will facilitate our proper representation of you.

Additionally, you should be aware that, in instances in which we represent a corporation or other entity, our client relationship is with the entity and not with its individual executives, shareholders, directors, members, managers, partners, or persons in similar positions, or with its parent, subsidiaries, or other affiliates. In those cases, our professional responsibilities are owed only to that entity, alone, and no conflict of interest will arise or be asserted by you because we represent persons with respect to interests that are adverse to individual persons or business organizations who have a relationship with you. That is to say, unless the letter accompanying this document indicates otherwise, **[Law Firm's]** attorney-client

relationship with the entity does not give rise to an attorney-client relationship with the parent, subsidiaries or other affiliates of the entity, and representation of the entity in this matter will not give rise to any conflict of interest in the event other clients of the firm are adverse to the parent, subsidiaries or other affiliates of the entity. Of course, we can also represent individual executives, shareholders, directors, members, managers, partners, and other persons related to the entity in matters that do not conflict with the interests of the entity, but any such representation will be the subject of a separate engagement letter. Similarly, when we represent a party on an insured claim, we represent the insured, not the insurer, even though we may be approved, selected, or paid by the insurer.

The firm attempts to achieve efficiencies and savings for its clients by managing the firm's administrative operations (e.g., file storage, document duplication, word processing, accounting/billing) in the most efficient manner possible, including outsourcing certain functions to third parties. Outsourcing in this manner may require the firm to allow access by third parties to your confidential information, and in some cases, these third parties may be located outside the United States. The firm will follow applicable legal ethics rules with regard to such outsourcing and protection of confidential information.

### ***Fees and Billing***

Clients frequently ask us to estimate the fees and other charges they are likely to incur in connection with a particular matter. We are pleased to respond to such requests whenever possible with an estimate based on our professional judgment. This estimate always carries the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed fee quotation. The ultimate cost frequently is more or less than the amount estimated.

Legal Fees. We encourage flexibility in determining billing arrangements. For example, we often agree with our clients to perform services on a fixed-fee or other basis that we believe will encourage efficiency and reflect the value of our services in relation to a particular objective.

If we have agreed on a fixed fee arrangement with you, our fees will not be limited to the fixed amount if you fail to make a complete and accurate disclosure of information that we have requested and that we reasonably require for our work, or if you materially change the terms, conditions, scope, or nature of the work, as described by you when we determined the fixed amount. If any of these events occurs, our fees will be based on the other factors described below, unless we agree on a revised fixed fee.

If the accompanying engagement letter does not provide for a fixed fee, or if we do not otherwise confirm to you in writing a fee arrangement, our fees for services will be determined as described in the following paragraphs.

When establishing fees for services that we render, we are guided primarily by the time and labor required, although we also consider other appropriate factors, such as the novelty and difficulty of the legal issues involved; the legal skill required to perform the particular assignment; time-saving use of resources (including research, analysis, data and documentation) that we have previously developed and stored electronically or otherwise in quickly retrievable form; the fee customarily charged by comparable firms for similar legal services; the amount of money involved or at risk and the results obtained; and the time constraints imposed by either you or the circumstances. In determining a reasonable fee for the time and labor required for a particular matter, we consider the ability, experience, and reputation of the lawyer or lawyers in our firm who perform the services. To facilitate this determination, we internally assign to each lawyer an hourly rate based on these factors. Of course, our internal hourly rates change periodically to account for increases in our cost of delivering legal service, other economic factors, and the augmentation of a particular lawyer's ability, experience, and reputation. Any such changes in hourly rates are applied prospectively, as well as to unbilled time previously expended. We record and bill our time in one-tenth hour (six minute) increments.

When selecting lawyers to perform services for you, we generally seek to assign lawyers having the lowest hourly rates consistent with the skills, time demands, and other factors influencing the professional responsibility involved in each matter. That does not mean that we will always assign a lawyer with a lower hourly rate than other lawyers. As circumstances require, the services of lawyers in the firm with special skills or experience may be sought when that will either (a) reduce the legal expense to you, (b) provide a specialized legal skill needed, or (c) help move the matter forward more quickly. Also, to encourage the use of such lawyers in situations where their services can provide a significant benefit that is disproportionate to the time devoted to the matter, we may not bill for their services on an hourly rate basis but, if you agree in advance, we will adjust the fee on an "added value" basis at the conclusion of the matter if and to the extent their services contribute to a favorable result for you.

Disbursements. In addition to legal fees, our statements will include out-of-pocket expenses that we have advanced on your behalf and our internal charges (which may exceed direct costs and allocated overhead expenses) for certain support activities. Alternatively, the firm may charge for such internal charges as a percentage of the fees charged. Advanced expenses generally will include, but are not limited to, such items as travel, postage, filing, recording, certification, and registration fees charged by governmental bodies. Our internal charges typically include, but are not limited to, such items as toll calls, facsimile transmissions, overnight courier services, certain charges for terminal time for computer research and complex document production, and charges for photocopying materials sent to the client or third parties or required for our use.

We may request an advance cost deposit when we expect that we will be required to incur substantial costs on behalf of the client.

During the course of our representation, it may be appropriate to hire third parties to provide services on your behalf. These services may include such things as consulting or testifying experts, investigators, providers of computerized litigation support, and court reporters. Because of the legal "work product" protection afforded to services that an attorney requests from third parties, in certain situations our firm may assume responsibility for retaining the appropriate service providers. Even if we do so, however, you will be responsible for paying all fees and expenses directly to the service providers or reimbursing us for these expenses.

The firm attempts to achieve efficiencies and savings for its clients when dealing with independent contractors. The firm may be able to obtain a reduced charge from the contractor if the firm provides certain functions, such as billing, collection, equipment, space, facilities, or clerical help. For these administrative and coordination services, the firm may charge an administrative fee, which will be separately disclosed to you.

Billing. We bill periodically throughout the engagement for a particular matter, and our periodic statements are due when rendered. If our fees are based primarily on the amount of our time devoted to the matter, our statements will be rendered monthly. In instances in which we represent more than one person with respect to a matter, each person that we represent is jointly and severally liable for our fees and expenses with respect to the representation. Our statements contain a concise summary of each matter for which legal services are rendered and a fee is charged.

If a statement remains unpaid for more than 30 days, you will be contacted by a **[Law Firm]** representative inquiring why it is unpaid. Additionally, if a statement has not been paid within 30 days from its date, the firm may impose an interest charge of 1.25 percent per month (a 15 percent annual percentage rate) from the 30th day after the date of the statement until it is paid in full. Interest charges apply to specific monthly statements on an individual statement basis. Any payments made on past due statements are applied first to the oldest outstanding statement.

It is the firm's policy that if an invoice remains unpaid for more than 90 days, absent extraordinary circumstances and subject to legal ethics constraints, **[Law Firm]**'s representation will cease, and you hereby authorize us to withdraw from all representation of you in such circumstances. Any unapplied deposits will be applied to outstanding balances. Generally, the firm will not recommence its representation or accept new work from you until your account is brought current and a new deposit for fees and costs, in an amount that the firm determines, is paid to it.

In addition, if you do not pay **[Law Firm]**'s statements as they become due, the firm may require a substantial partial payment and delivery of an interest-bearing promissory note as part of any arrangement under which it may, in its discretion, agree to continue its representation. Any such promissory note will serve merely as evidence of your obligation, and shall not be regarded as payment.

If allowed by applicable law, **[Law Firm]** is entitled to reasonable attorneys' fees and court costs if collection activities are necessary. In addition, **[Law Firm]** shall have all general, possessory, or retaining liens, and all special or charging liens, recognized by law.

Payment of our fees and costs is not contingent on the ultimate outcome of our representation, unless we have expressly agreed with you in writing to a contingent fee.

**Questions About Our Bills.** We invite you to discuss freely with us any questions that you have concerning a fee charged for any matter. We want our clients to be satisfied with both the quality of our services and the reasonableness of the fees that we charge for those services. We will attempt to provide as much billing information as you require and in such customary form that you desire, and are willing to discuss with you any of the various billing formats we have available that best suits your needs.

#### ***Relationships with Other Clients***

Because we are a large, full-service law firm **[with offices located in various cities]** we may be (and often are) asked to represent a client with respect to interests that are adverse to those of another client who is represented by the firm in connection with another matter. Just as you would not wish to be prevented in an appropriate situation from retaining a law firm that competes with **[Law Firm]**, our firm wishes to be able to consider the representation of other persons or entities that may be competitors in your industry or who may have interests that are adverse to yours, but with respect to matters that are unrelated in any way to our representation of you. The ethics that govern us permit us to accept such multiple representations, assuming certain conditions are met, as set forth below.

During the term of this engagement, we will not accept representation of another client to pursue interests that are directly adverse to your interests unless and until we make full disclosure to you of all the relevant facts, circumstances, and implications of our undertaking the two representations, and confirm to you in good faith that we have done so and that the following criteria are met: (i) there is no substantial relationship between any matter in which we are representing or have represented you and the matter for the other client; (ii) any confidential information that we have received from you will not be available to the lawyers and other **[Law Firm]** personnel involved in the representation of the other client; (iii) our effective representation of you and the discharge of our professional responsibilities to you will not be prejudiced by our representation of the other client; and (iv) the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances, and implications of our undertaking the two representations. If the foregoing conditions are satisfied, you agree that we may undertake the adverse representation and all conflict issues will be deemed to have been resolved or waived by you.

By making this agreement, we are establishing the criteria that will govern the exercise of your right under applicable ethical rules to object to our representation of another client whose interests are adverse to yours. If you contest in good faith the facts underlying our confirmation to you that the specified criteria have been met, then we will have the burden of reasonably supporting those facts.

### ***Knowledge Management Tool***

In order to better and more economically serve our clients, we have implemented a document search engine that will allow us to search the firm's institutional work product to determine whether there exist documents created for one client that can be used as a starting point for the preparation of new documents for other clients. Documents that are subject to ethics wall restrictions, have extraordinary confidentiality requirements, or contain sensitive client information will not be included in this system.

### ***Termination***

Upon completion of the matter to which this representation applies, or upon earlier termination of our relationship, the attorney-client relationship will end unless you and we have expressly agreed to a continuation with respect to other matters. We hope, of course, that such a continuation will be the case. The representation is terminable at will by either of us. The termination of the representation will not terminate your obligation to pay fees and expenses incurred prior to the termination and for any services rendered or disbursements required to implement the transition to new counsel.