

## Checklist for Retainer Agreements and Engagement Letters

This Checklist is designed for lawyers and paralegals. You may choose to start from and customize a precedent retainer (e.g., [LawPRO precedent retainers](#)) or you may opt to prepare your own retainer agreement or engagement letter. Regardless of your starting point, use this Checklist to ensure that you consider including essential terms and follow best practices in administering the retainer agreement or engagement letter.

**Note:** This Checklist should not be used for limited scope retainers or contingency fee matters. For more information on the requirements for these matters, see the Law Society's [Limited Scope Retainer](#) and [Contingency Fees](#) pages.

### I. Prepare the Retainer Agreement or Engagement Letter

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Include terms that address the following:

#### 1. Identification of Parties and Description of Matter

- Identify each client using their proper legal name(s) and current contact information
- Include the firm's file identifier for the client matter
- Provide a brief description of the matter, including the parties involved (e.g., opposing or third parties)

#### 2. Scope of Legal Services

- Confirm each client's goals and outline the specific legal services that the client(s) will receive
- Identify the lawyer or paralegal primarily responsible for the file as well as any staff members (e.g., law clerks or articling, summer, or paralegal students) who will be involved and indicate which tasks or functions will be performed by each member of the firm
- Indicate the key steps in the matter and your role in the representation of the client(s) in each step
- Specify any actions or next steps to be taken by the client(s) (e.g., information or documents to be provided) or third parties (e.g., investigations or preparation of expert reports)
- Provide an estimated time to complete the key steps and provide the legal services
- Specify any limits to the representation (e.g., when the engagement will end, tasks or parts of the matter that the lawyer or paralegal will not perform, tasks that cannot be performed under the law, or goals that the lawyer or paralegal cannot achieve for the client(s))
- Indicate the results that you are likely to achieve

#### 3. Fees, Expenses, and Billing Arrangement

- Provide an estimate of the fees or disbursements that the client(s) will likely incur and any assumptions upon which the estimate is based

- Clearly outline the type and amount of fees you and other firm members involved in the matter will charge (e.g., hourly rate or flat rate), and whether the fees may change in the future
- Indicate the amount and payment date of any initial or ongoing monetary retainer
- Indicate the payment methods that are acceptable (e.g., cash, credit, debit, e-transfer)
- Set out if and how often you will provide the client(s) with interim bills, what they will include, and when the client(s) can expect the final bill
- Outline potential disbursements and indicate whether the client(s) is/are responsible for paying these directly or if you will pay them and later bill the client(s) for reimbursement (e.g., third-party experts, accountants, actuaries, valuers, and other advisors)
- Indicate the consequences of late payment, including the rate of interest to be charged on outstanding accounts in accordance with the *Solicitors Act* or as otherwise permitted by law
- Outline the consequences of the failure of the client(s) to provide a retainer or funds on account of disbursements or fees in accordance with the terms of the engagement, including potential withdrawal of services
- Explain your billing policy (enclose for the client's review) if you have one
- If third parties are financing the matter, outline the arrangements made to receive the funds, ensuring clarity about who the lawyer or paralegal represents and from whom the lawyer or paralegal will take instruction

#### **4. Sole Representation or Joint Representation**

- Indicate whether you will be representing the client solely in this matter or jointly with one or more persons (i.e., a joint retainer)
- If representing more than one client
  - advise the clients that you are acting for both or all and as a result cannot prefer the interests of one over any of the other clients
  - explain that no information received in connection with the joint representation can be treated as confidential as between any of the clients
  - discuss the impact a conflict of interest or a contentious issue arising may have on the joint representation, if it cannot be resolved
  - inform the joint clients that the fees and disbursements will be divided equally between them, unless they agree otherwise
  - provide that each client understands and consents to the nature of the joint representation

#### **5. Communications with the Client(s) and Others**

- Set out the method (e.g., telephone or email) and frequency of communication with the client(s), taking into account any special accommodations that may be necessary, and any risks associated with the particular method of communication
- State how you will keep the client(s) apprised of all relevant stages of the matter (e.g., sending the client copies of correspondence, documents relating to the matter, memos to file, telephone calls, or meetings)

- Indicate how the client(s) will keep you apprised of the matter on an ongoing basis
- Outline the frequency of your reporting to the client(s)
- Provide an estimated time that it will normally take for you to respond to client communications, including calls or emails
- Indicate any individuals (e.g., family member or other third party) that the client(s) has/have authorized you to speak with about the file and what confidential information, if any, may be disclosed and when

#### **6. Withdrawal from Representation**

- Outline the circumstances that will or may result in you terminating the engagement and withdrawing from representation
- Discuss ownership of file contents and work product and your retention and destruction policy

#### **7. Modifying Terms**

- Set out how terms of the retainer agreement or engagement letter can be changed or modified (e.g., in writing)

#### **8. Client Acknowledgement**

- Outline that the client(s) acknowledge(s) that they have read, understand, and agree to the terms of the retainer agreement or engagement letter

## **II. Use Best Practices to Administer the Retainer Agreement or Engagement Letter**

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Take the following steps:

- Sign the retainer agreement or engagement letter
- Review key terms of the retainer agreement or engagement with the client(s)
- Provide the client(s) with a reasonable opportunity to review and ask questions
- Have the client(s) sign the retainer agreement or provide an acknowledgment confirming receipt and review of the engagement letter
- Ensure both you and each client have a fully executed copy of the retainer or joint retainer agreement or a signed copy of the engagement letter