

Attorney Retainer Agreement

PERSONAL AND CONFIDENTIAL PROTECTED UNDER ATTORNEY-CLIENT PRIVILEGE

The purpose of this Attorney Retainer Agreement (“Agreement”) is to set forth our understanding and agreement, pursuant to which our law firm, _____ (“Firm”), has agreed to represent _____, (“Client” or “you”) in the following referenced matter(s): _____ (“Matter”). We have, of course, discussed this Matter with you, but it is prudent that our understandings be documented to prevent any confusion or misunderstanding in the future. **We have also recommended that you hire separate counsel to advise you concerning the terms of this Attorney Retainer engagement, and especially the provision concerning arbitration.**

I.

EMPLOYMENT OF ATTORNEY

The Client is in need of legal advice and counsel and hereby employs the Firm under the following conditions:

- A. The Firm will represent the Client in the above-referenced Matter by advising and counseling, by investigating the law and facts, by preparing for any hearing or trial and negotiating with the opposing attorneys, and or by conducting mediation or arbitration if directed by the Client or ordered by the Court, and by representing the Client at the trial if a trial becomes necessary or by negotiating a settlement if so directed by the Client.
- B. The Client hereby authorizes Firm to act as its agent in all matters affecting the above Matter, including but not limited to, the following:
- (1) To appear before any court or administrative hearing on the Client’s behalf; to negotiate a proper disposition of the above Matter;
 - (2) To waive the Client’s appearance at any proceedings in reference to this Matter;
 - (3) To request that the hearing or setting of the Matter be postponed and reset with the Client’s approval;
 - (4) To appear in any hearing or trial that may be requested; and
 - (5) To further the interest of the Client to attempt to reach a successful resolution of this Matter.
- C. The Client has not employed the Firm to handle the appeal of this Matter or any other matter.

II.

COMPUTATION OF FEES

A. In consideration for the services rendered and to be rendered on the Client's behalf by the Firm, the Client hereby agrees to pay a reasonable fee. The factors to be considered as guides in determining the reasonableness of a fee and agreed upon and understood by the Client are set out in the Texas Disciplinary Rules of Professional Conduct and approved by the Supreme Court of Texas, include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service promptly.
- (2) The likelihood that the acceptance of the particular employment will preclude other employment by the Firm.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the Client or by the circumstances.
- (6) The nature and length of the professional relationship with the Client.
- (7) The experience, reputation and ability of the Firm in rendering services in disciplinary litigation and related matters.
- (8) The difficulty presented by the case due to civil, criminal, and professional exposure of the allegations.

B. The Firm presently uses the hourly fee schedule below as a factor in determining a reasonable fee:

Partners	\$350.00-\$450.00/Hour
Of Counsel	\$150.00—\$250.00/Hour
Associates	\$85.00—\$200.00/Hour
Law Clerk/JD	\$55.00—\$75.00/Hour
Paralegal	\$50.00/Hour

The hourly fee schedule may be adjusted by the Firm. The Client acknowledges the right of the Firm to adjust the hourly fees during the course of the above referenced Matter. **Any adjustment will only be done after discussion with the Client.**

C. The Firm reserves, in accordance with what the Firm, in its discretion, determines to be the reasonable hourly rate for each attorney, the right, upon thirty (30) days advance notice and approval of the Client, to adjust these hourly rates. Pursuant to the Firm's standard billing procedure, the Client will be billed in no less than 0.10 (1/10) hour increments for work and services performed.

D. The Client understands that the representation in the above referenced Matters may require the use of more than one attorney with the Firm. Accordingly, the Client authorizes the Firm to use its discretion in choosing the number of attorneys or staff that should perform any task involved in the above referenced Matter.

III. EXPENSES

- A. The Client hereby authorizes Firm to incur expenses in the legal representation of the Client and the Client hereby agrees to pay in advance (if requested) the expenses incurred by the Firm on behalf of the Client as the expenses are incurred by Firm.
- B. The Client is obligated to pay all expenses which the Firm incurs on the Client's behalf, such as court costs, filing fees, deposition charges, expert witness fees, witness expenses, long distance telephone expenses, court reporter fees and transcriptions, non-local travel (including but not limited to room, board and incidental travel expenses), parking, photocopies at the rate of \$0.10 per page, and incoming facsimiles at the rate of \$0.10 per page. The Firm will keep contemporaneous records of all disbursements made in the case and will provide the Client with an accounting on a monthly basis.

IV. DISCLOSURE STATEMENT OF FINANCE CHARGES INVOICES FOR SERVICES AND EXPENSES

- A. The Firm bills on a monthly basis, or at otherwise appropriate intervals, and will provide the Client with a statement setting forth, in reasonable detail, all advances for the above mentioned expenses, and a reasonable description of services rendered by the Firm on the Client's behalf. The Firm requests payment upon receipt of the invoice. **Accounts become past due on the thirtieth day following the date they were billed, and will accrue interest thereafter on unpaid balances at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is greater.**
- B. The usual practice of the Firm is to send to the Client for direct payment by the Client invoices received by the Firm from third parties such as court reporters, expert witnesses, and reproduction services. The Client will be expected to pay such invoices promptly upon receipt.
- C. If in the course of the Firm's representation of the Client, the Firm anticipates a significant increase in the level of its activity on the Client's behalf (e.g., the commencement of trial preparation or trial), the Firm may bill the Client on a basis more frequent than monthly. **The Firm will expect that such statements will also be paid promptly. The Firm has requested a security deposit retainer of \$_____ for anticipated fees. This amount shall remain in the Firm's trust account as a security deposit during the pendency of the representation and shall be used to insure the payment of fees. The Firm shall apply the Retainer against the fees and expenses arising during the final month of its representation against any invoice that is outstanding for more than thirty (30) days. If no fees or expenses are owed at the end of the assignment, the security deposit retainer shall be returned in full.** It should be noted that the current amount of this retainer is agreed upon only in connection with the administrative dispute of this Matter, and therefore if this Matter should proceed to civil litigation, an additional retainer will be necessary.

V. WITHDRAWAL FROM EMPLOYMENT

- A. The Firm may withdraw from the representation of the Client in the above referenced Matter at any time if:
- (1) The Client renders it unreasonably difficult for the Firm to carry out its employment;
 - (2) The Client insists that the Firm engage in conduct that is contrary to the judgment or advice of the Firm;
 - (3) The Client deliberately disregards an agreement or obligation to the Firm as to expenses or fees, or for services rendered, including not paying bills upon presentation or in advance, such as when a retainer is requested or required by the Firm;
 - (4) The Firm determines that a conflict of interest has arisen as a result of the representation of the Client and Firm and Client agree that the conflict requires new counsel; or
 - (5) The Client refuses to indemnify the Firm prior to any actions that the Client has requested the Firm to undertake and that the Firm believes and has advised the Client might result in possible sanctions for alleged groundless or bad faith actions or defenses.
- B. In the event that the Firm's financial arrangements are not met by the Client or in the event that any of the above events in subparagraph V.A. occur, or any other matter or issue presents itself during the representation that makes it difficult for the Firm to continue the representation, the Firm may withdraw as counsel. The Client specifically agrees to the Firm's withdrawal if the Firm's fees and expenses are not timely paid by the Client as set forth herein or any of the events in subparagraph V.A. above occur. By execution hereof, the Client authorizes the Firm to represent to any Court, should any litigation then be pending, the fact of and the Client's acquiescence in the Firm's withdrawal. The Firm's withdrawal in such circumstances would not relieve the Client from the legal obligation to pay the balance due the Firm's fees and expenses incurred before the date of withdrawal.
- C. The legal fees agreed upon herein are for representation of the Client in the above referenced Matter and do not include Firm's legal services in any other Matter. For instance, if the Client is charged in a new grievance a new engagement agreement shall be prepared. In the event that representation is required in any other court or an appeal or regarding any other matter, not related to the above referenced Matter, a new agreement may be made between the Firm and the Client, after the parties have discussed the situation.
- D. The Client has the right to terminate the relationship with the Firm at any time and upon written notification. The Client's termination of the Firm does relinquish any of the financial obligations or other obligations set forth herein. If the Client terminates the Firm's representation, the Firm will promptly return to the Client any and all papers and property, as well as the balance of the Retainer not previously applied against outstanding invoices or the last month's fees and expenses.

VI. FAVORABLE OUTCOME NOT GUARANTEED

The Client understands that the Firm has not made to the Client any representations or statements concerning the outcome of the above referenced Matter, or the favorable outcome of any legal action that may be filed. No representation has been made by the Firm to the Client regarding reimbursement to the Client of any of the fees, costs, and/or expenses incurred by the Client in the above referenced Matter. The Client further expressly acknowledges that all statements of the Firm on this Matter are statements of opinions only; there have been no representations as to the outcome of any Matter. The Client further understands that if the above referenced Matter is litigated and a judgment is rendered against the Client, the Client may be responsible for court costs and fees.

VII. LIEN AND SECURITY INTEREST

By the Client's signature on this Agreement, (i) the Client hereby grants to the Firm a lien and security interest on all cash or other property received or recovered by the Client or the Firm under or related to any settlement or judgment to secure payment of the Client's fees and expenses to the Firm, and (ii) the Client also understands that under Texas law, the Firm has a right to assert a lien against the Client's files to secure payment of any unpaid amounts the Client owes to the Firm.

VIII. ARBITRATION

We do not anticipate that you will have any complaints about our services. It is possible, however, that disputes between us might arise. In order to facilitate a quick and inexpensive resolution of any such disputes, you and we both agree that any disputes arising out of our representation, whether contractual or tortious in nature, will be resolved exclusively by submission to binding arbitration pursuant to the rules of the American Arbitration Association ("AAA") under the Texas General Arbitration Act ("TGAA") or at the Houston Bar Association ("HBA") Fee Dispute Committee. The parties shall attempt to reach a decision as to whether the AAA or the HBA Fee Dispute Committee shall hear the arbitration. If no agreement can be reached, the decision shall be made by the Firm. **You should have separate counsel review this contract and this provision concerning the TGAA.**

To further clarify our agreement on arbitration, arbitration would apply to any controversy, claim or dispute in the course and scope of the lawyer-client relationship or arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate. The arbitrator will specifically include in a final decision any claim for a premium pursuant to paragraph II.D, if an agreement as to the premium can not be reached prior to the request for arbitration. **Our dispute shall be determined by arbitration in Houston, Texas before a solo arbitrator, in accordance with the laws of the State of Texas for agreements made in and to be performed in Houston, Texas, and the TGAA.**

"Disputes" shall include, without limitation, those involving fees, costs, billing, and breach of ethical or fiduciary duties. The arbitration shall be administered by the American Arbitration Association (AAA) pursuant to its Commercial Arbitration Rules and Supplementary

Procedures for Large, Complex Disputes. The arbitrator shall be a member of the AAA Law Practice Dispute Resolution Panel.

The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys fees of the prevailing party, against the party who did not prevail. A finding of the prevailing party shall be done by the arbitrator. Judgment on the award may be entered in any court having jurisdiction.

Upon the request of any party, mediation shall be conducted prior to the arbitration pursuant to the Commercial Mediation Rules of the AAA, if both parties agree. The mediator shall be a member of the AAA Law Practice Dispute Resolution Panel or a person agreed upon by both parties to this Agreement.

By the Client's signature on this letter, the Client agrees that the arbitrator's decision in any such arbitration shall be binding, conclusive and non-appealable.

IX.

ARBITRATION PURSUANT TO THE RULES OF THE HOUSTON BAR ASSOCIATION FEE DISPUTE COMMITTEE

In order to facilitate a quick and inexpensive resolution of any disputes concerning this Agreement, we agree that any disputes arising out of the Agreement, whether contractual or tortious in nature will be resolved by submission to binding arbitration pursuant to the rules of the Houston Bar Association Fee Dispute Committee. As part of this contract, each party will execute the attached Consent To Arbitration form for the Houston Bar Association Fee Dispute Committee. To further clarify our Agreement on arbitration, arbitration would apply to any controversy, claim or dispute in the course and scope of the business relationship or arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate. Our dispute shall be determined by arbitration in Houston, Texas before a panel selected by, and per the rules of the Houston Bar Association Fee Dispute Committee, in accordance with the laws of the State of Texas for Agreements made in and to be performed in Texas. "Disputes" shall include, without limitation, those involving fees, costs, billing, and breach of ethical or fiduciary duties. The arbitration shall be administered by the Houston Bar Association Fee Dispute Committee, pursuant to its Rules and Regulations. Judgment on the award **may** be entered in any court having jurisdiction and shall include an award for attorneys' fees, and a premium charge if sought. Upon the request of any party, mediation shall be conducted prior to the arbitration pursuant to the Texas Civil Practices & Remedies Code. The mediation shall be handled through the Center for Dispute Resolution by a mediator agreed upon by both parties to this Agreement. By the signatures on this contract, the Client and Bennett agree that the arbitrator's decision in any such arbitration shall be binding, conclusive and non-appealable pursuant to the Rules and Regulations of the Houston Bar Association Fee Dispute Committee.

X.

"OF COUNSEL" ARRANGEMENTS

The Firm has entered into "Of Counsel" relationships with various attorneys who may from time to time, perform services for the Firm's clients. In such cases upon notification and

agreement, the Client will be billed for services performed for the Client by such persons as if they were a partner or associate of the Firm, as the Firm deems appropriate. This arrangement should be to the Client's advantage and will not affect the amount the Client would otherwise have to pay if the same services were performed by a full time associate or partner of the Firm, as the case may be.

XI. MISCELLANEOUS PROVISIONS

- A. The Client will advise the Firm in writing of any change of address and/or employment within ten (10) days of the making of such change.
- B. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, or unenforceability shall not affect any other provisions, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision does not exist.
- C. The Client hereby acknowledges that the Client has carefully read this entire Agreement, and the Client fully understands and agrees to abide by all of the terms, conditions and obligations of this Agreement, and that the Client has received a true and correct copy of this Agreement.
- D. This Agreement constitutes the full and complete understanding and agreement of the parties hereto, supersedes all prior understandings and agreements, if any, and cannot be changed or terminated orally. **All changes or modifications must be in writing and signed by the parties hereto.**
- E. **This Agreement shall be construed in accordance with the laws of the State of Texas and all obligations of the parties are performable in Harris County, Texas.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- F. If Client should become seriously displeased or dissatisfied with any aspect whatsoever of his legal representation or in the event the Client should have any serious question concerning the same, Client should notify the attorney in writing by certified mail, return receipt requested of that dissatisfaction or question.
- G. The following Client's file will be retained for two (2) years after our representation has been completed and will then be discarded, except for information that may be used by the attorney in the future. Client shall, however, promptly pick up material furnished to attorney and attorney shall have no responsibility of retaining Client's information after the case has been closed for forty-five (45) days. The Firm has the authority to return to the Client what it deems appropriate.
- H. Client further understands that this employment agreement extends through the hearing and trial of this cause. The Firm will not have any duty to undertake an appeal under this contract of employment. If there is to be an appeal of this case and Firm and Client agree to appeal this case, the attorneys' fees for the appeal will be negotiated at that time.

- I. We do not anticipate that you will have any problems in making payment for our services. The Firm reserves the right to use the services of a collection agency to collect unpaid balances owed by you. Therefore, you consent and agree that the Firm may disclose confidential information to a collection agency to enable the agency to collect the fees, which might be due to the Firm from you, pursuant to Tex. Comm. on Professional Ethics, Opinion 495. **You should have separate counsel review this contract and this provision concerning your consent to the disclosure of this confidential information.** _____ (Initial)

**XII.
CONFLICT OF INTEREST**

As of the date of this agreement, Attorney has conducted an extensive search of his other client relationships in order to determine whether representation of Client would create a conflict of interest in connection with other attorney-client relationships of the Attorney. The Attorney's search for relationships will be a continuing one. The Attorney has discovered no existing attorney-client relationships that create a present conflict of interest. Notwithstanding that fact, issues involving the legal affairs of other clients of the Attorney, while not present now, may raise an adverse interest of such other Attorney clients and Client may be adversely affected at a future date. In the event such circumstance occurs, the Attorney would not represent Client in matters adverse to another Attorney's client. Client would be required to retain counsel other than the Attorney to represent its interest in such matter. In addition, if such adverse representation pertains to an Attorney's client, with whom the Attorney has an attorney-client relationship as of the date of this agreement, to the extent the Attorney's representation of such existing Attorney's client is acceptable by that client as being permitted under applicable ethical standards, and to the extent permitted by law, Client consents to the Attorney's continued representation of such existing Attorney's client and Client will not object to any disqualification of Attorney as the legal representation of such other Attorney's client.

UNDERSTOOD and AGREED TO this _____ day of _____, 20__.

By: _____

ACCEPTED BY:

LAW FIRM

By: _____