



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET OO
CO-COUNSELING**

Worksheet OO is intended to facilitate a discussion about co-counseling. A new lawyer and mentor may choose to co-counsel in a case, if they follow the steps below and determine such a relationship would be mutually beneficial and appropriate.

- Follow this checklist for determining whether to co-counsel with your mentoring partner:
 - Determine whether one attorney has expertise that will further the representation and that one attorney will gain important legal skills in accordance with Prof. Cond. R. 1.1. See especially comments 2 and 5.
 - Determine whether any conflict of interest exists. See Prof. Cond. R. 1.7 – 1.12 and 1.18. Follow the conflict of interest rules articulated in the attached materials excerpted from the Louisiana State Bar Association’s *Practice Aid Guide: The Essentials of Law office Management* and compare it to Ohio’s disciplinary rules. Louisiana State Bar Association, *Practice Aid Guide: The Essentials of Law Office Management*, 2007 (See http://www.lsba.org/2007MemberServices/PracticeAidGuide/PAG_2006_update_Section_2.pdf)
 - Make sure that both the new lawyer’s employer and the mentor’s employer are comfortable with co-counseling in this particular case.
 - Discuss the scope of representation within the parameters of Prof. Cond. R. 1.2, .
 - Address the malpractice insurance requirements of Prof. Cond. R. 1.4. Disclose the amount of malpractice insurance that you carry to your mentoring partner. If a lawyer does not have malpractice insurance, the client’s written acknowledgement of that fact is required pursuant to Prof. Cond. R. 1.4.
 - Discuss the division of fees between the mentor and new lawyer in Prof. Cond. R. 1.5 with special attention to comment 7.
 - After careful consideration of each of the factors listed above, determine whether co-counseling is mutually beneficial and appropriate in this particular matter.

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- If upon your consideration of the factors above, you and your mentoring partner decide that co-counseling is both desirable and proper, draft a co-counseling agreement. You may consult the co-counseling agreement sample supplied with the materials for this worksheet.
 - The lawyer who has already established an attorney-client relationship with the client in this matter must discuss the co-counseling agreement with him or her, carefully explaining all of the points and considerations listed above. If the client agrees to the arrangement, the client shall be presented with a written copy of the co-counseling agreement for his or her review.
 - Obtain client's informed consent to the co-counseling arrangement in writing by having the client sign the co-counseling agreement.
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OHIO RULES OF PROFESSIONAL CONDUCT

I. CLIENT-LAWYER RELATIONSHIP

RULE 1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation *reasonably* necessary for the representation.

Comment

Legal Knowledge and Skill

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[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through

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necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

* * *

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c). The lawyer should consult with the client about the degree of thoroughness and the level of preparation required, as well as the estimated costs involved under the circumstances.

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RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

- (1) the representation of that client will be directly adverse to another current client;
- (2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

- (1) the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) each affected client gives informed consent, confirmed in writing;



(3) the representation is not precluded by division (c) of this rule.

(c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

(1) the representation is prohibited by law;

(2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding.

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RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or *knowingly* acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless all of the following apply:

(1) the transaction and terms on which the lawyer acquires the interest are fair and *reasonable* to the client and are fully disclosed to the client in *writing* in a manner that can be *reasonably* understood by the client;

(2) the client is advised in *writing* of the desirability of seeking and is given a *reasonable* opportunity to seek the advice of independent legal counsel on the transaction;

(3) the client gives *informed consent*, in a *writing* signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives *informed consent*.

(c) A lawyer shall not solicit any *substantial* gift from a client. A lawyer shall not prepare on behalf of a client an instrument giving the lawyer, the lawyer's *partner*, associate, paralegal, law clerk, or other employee of the lawyer's *firm*, a lawyer acting "of counsel" in the lawyer's *firm*, or a person related to the lawyer any gift unless the lawyer or other recipient of the gift is related to the client. For purposes of division (c) of this rule:

(1) "person related to the lawyer" includes a spouse, child, grandchild, parent, grandparent, sibling, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship;

(2) "gift" includes a testamentary gift.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in *substantial* part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer may do either of the following:



(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from someone other than the client unless divisions (f)(1) to (3) and, if applicable, division (f)(4) apply:

(1) the client gives *informed consent*;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;

(3) information relating to representation of a client is protected as required by [Rule 1.6](#);

(4) if the lawyer is compensated by an insurer to represent an insured, the lawyer delivers a copy of the following Statement of Insured Client's Rights to the client in person at the first meeting or by mail within ten days after the lawyer receives notice of retention by the insurer:

STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has retained a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation.

1. **Your Lawyer:** Your lawyer has been retained by the insurance company under the terms of your policy. If you have questions about the selection of the lawyer, you should discuss the matter with the insurance company or the lawyer.

2. **Directing the Lawyer:** Your policy may provide that the insurance company can reasonably control the defense of the lawsuit. In addition, your insurance company may establish guidelines governing how lawyers are to proceed in defending you—guidelines that you are entitled to know. However, the lawyer cannot act on the insurance company's instructions when they are contrary to your interest.

3. **Communications:** Your lawyer should keep you informed about your case and respond to your reasonable requests for information.



4. Confidentiality: Lawyers have a duty to keep secret the confidential information a client provides, subject to limited exceptions. However, the lawyer chosen to represent you also may have duty to share with the insurance company information relating to the defense or settlement of the claim. Whenever a waiver of lawyer-client confidentiality is needed, your lawyer has a duty to consult with you and obtain your informed consent.

5. Release of Information for Audits: Some insurance companies retain auditing companies to review the billing and files of the lawyers they hire to represent policyholders. If the lawyer believes an audit, bill review, or other action initiated by the insurance company may release confidential information in a manner that may be contrary to your interest, the lawyer must advise you regarding the matter and provide an explanation of the purpose of the audit and the procedure involved. Your written consent must be given in order for an audit to be conducted. If you withhold your consent, the audit shall not be conducted.

6. Conflicts of Interest: The lawyer is responsible for identifying conflicts of interest and advising you of them. If at any time you have a concern about a conflict of interest in your case, you should discuss your concern with the lawyer. If a conflict of interest exists that cannot be resolved, the insurance company may be required to provide you with another lawyer.

7. Settlement: Many insurance policies state that the insurance company alone may make a decision regarding settlement of a claim. Some policies, however, require your consent. You should discuss with your lawyer your rights under the policy regarding settlement. No settlement requiring you to pay money in excess of your policy limits can be reached without your agreement.

8. Fees and Costs: As provided in your insurance policy, the insurance company usually pays all of the fees and costs of defending the claim. If you are responsible for paying the lawyer any fees and costs, your lawyer must promptly inform you of that.

9. Hiring your own Lawyer: The lawyer hired by the insurance company is only representing you in defending the claim brought against you. If you desire to pursue a claim against someone, you will need to hire your own lawyer. You may also wish to hire your own lawyer if there is a risk that there might be a judgment entered against you for more than the amount of your insurance. Your lawyer has a duty to inform you of this risk and other reasonably foreseeable adverse results.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless the settlement or agreement is subject to court approval or each client gives *informed consent*, in a *writing* signed by the client. The lawyer's



disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement or agreement.

(h) A lawyer shall not do any of the following:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice or requiring arbitration of a claim against the lawyer unless the client is independently represented in making the agreement;

(2) settle a claim or potential claim for such liability unless all of the following apply:

(i) the settlement is not unconscionable, inequitable, or unfair;

(ii) the client or former client is advised in *writing* of the desirability of seeking and is given a *reasonable* opportunity to seek the advice of independent legal counsel in connection therewith;

(iii) the client or former client gives *informed consent*.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may do either of the following:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses;

(2) contract with a client for a *reasonable* contingent fee in a civil case.

(j) A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a *firm*, a prohibition in divisions (a) to (i) of this rule that applies to any one of them shall apply to all of them.

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RULE 1.9: DUTIES TO FORMER CLIENTS

(a) Unless the former client gives *informed consent*, *confirmed in writing*, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a *substantially related matter* in which that person's interests are materially adverse to the interests of the former client.

(b) Unless the former client gives *informed consent*, *confirmed in writing*, a lawyer shall not *knowingly* represent a person in the same or a *substantially related matter* in which a *firm* with which the lawyer formerly was associated had previously represented a client where both of the following apply:

(1) the interests of the client are materially adverse to that person;

(2) the lawyer had acquired information about the client that is protected by [Rules 1.6](#) and 1.9(c) and material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former *firm* has formerly represented a client in a matter shall not thereafter do either of the following:

(1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally *known*;

(2) reveal information relating to the representation except as these rules would permit or require with respect to a client.

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RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a *firm*, none of them shall represent a client when the lawyer *knows* or *reasonably should know* that any one of them practicing alone would be prohibited from doing so by [Rule 1.7](#) or [1.9](#), unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the *firm*.

(b) When a lawyer is no longer associated with a *firm*, no lawyer in that *firm* shall thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the *firm*, if the lawyer *knows* or *reasonably should know* that either of the following applies:

(1) the formerly associated lawyer represented the client in the same or a *substantially related matter*;

(2) any lawyer remaining in the *firm* has information protected by [Rules 1.6](#) and [1.9](#) (c) that is material to the matter.

(c) When a lawyer has had *substantial* responsibility in a matter for a former client and becomes associated with a new *firm*, no lawyer in the new *firm* shall *knowingly* represent, in the same matter, a person whose interests are materially adverse to the interests of the former client.

(d) In circumstances other than those covered by [Rule 1.10](#) (c), when a lawyer becomes associated with a new *firm*, no lawyer in the new *firm* shall *knowingly* represent a person in a matter in which the lawyer is personally disqualified under [Rule 1.9](#) unless both of the following apply:

(1) the new *firm* timely *screens* the personally disqualified lawyer from any participation in the matter and that lawyer is apportioned no part of the fee from that matter;

(2) *written* notice is given as soon as practicable to any affected former client.

(e) A disqualification required by this rule may be waived by the affected client under the conditions stated in [Rule 1.7](#).

(f) The disqualification of lawyers associated in a *firm* with former or current government lawyers is governed by [Rule 1.11](#).



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RULE 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) A lawyer who has formerly served as a public officer or employee of the government shall comply with both of the following:

(1) all applicable laws and [Rule 1.9](#) (c) regarding conflicts of interest;

(2) not otherwise represent a client in connection with a matter in which the lawyer participated personally and *substantially* as a public officer or employee, unless the appropriate government agency gives its *informed consent, confirmed in writing*, to the representation.

(b) When a lawyer is disqualified from representation under division (a), no lawyer in a *firm* with which that lawyer is associated may *knowingly* undertake or continue representation in such a matter unless both of the following apply:

(1) the disqualified lawyer is timely *screened* from any participation in the matter and is apportioned no part of the fee therefrom;

(2) *written* notice is given as soon as practicable to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer *knows* is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this rule, the term “confidential government information” means information that has been obtained under governmental authority and that, at the time this rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and that is not otherwise available to the public. A *firm* with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely *screened* from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall comply with both of the following:

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(1) [Rules 1.7](#) and [1.9](#);

(2) shall not do either of the following:

(i) participate in a matter in which the lawyer participated personally and *substantially* while in private practice or nongovernmental employment, unless the appropriate government agency gives its *informed consent, confirmed in writing*;

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and *substantially*, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by [Rule 1.12](#) (b) and subject to the conditions stated in [Rule 1.12](#) (b).

(e) As used in this rule, the term “matter” includes both of the following:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties;

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

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RULE 1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR, OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in division (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and *substantially* as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give *informed consent, confirmed in writing*.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and *substantially* as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and *substantially*, but only after the lawyer has notified the judge or other adjudicative officer.



(c) If a lawyer is disqualified by division (a), no lawyer in a *firm* with which that lawyer is associated may *knowingly* undertake or continue representation in the matter unless both of the following apply:

(1) the disqualified lawyer is timely *screened* from any participation in the matter and is apportioned no part of the fee therefrom;

(2) *written* notice is promptly given to the parties and any appropriate *tribunal* to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

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RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to division (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in division (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in division (d).

(d) When the lawyer has received disqualifying information as defined in division (c), representation is permissible if either of the following applies:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing;



(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client, and both of the following apply:

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to the prospective client.

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RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to divisions (c), (d), and (e) of this rule, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.

(b) [RESERVED]

(c) A lawyer may limit the scope of a new or existing representation if the limitation is *reasonable* under the circumstances and communicated to the client, preferably in *writing*.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer *knows* is *illegal* or *fraudulent*. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(e) Unless otherwise required by law, a lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional misconduct allegations solely to obtain an advantage in a civil matter.



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RULE 1.4: COMMUNICATION

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required by these rules;

(2) *reasonably* consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client *reasonably* informed about the status of the matter;

(4) comply as soon as practicable with *reasonable* requests for information from the client;

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer *knows* that the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent *reasonably* necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance is terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

(1) A lawyer shall maintain a copy of the notice signed by the client for five years after termination of representation of the client.

(2) A lawyer who is involved in the division of fees pursuant to Rule 1.5(e) shall inform the client as required by division (c) of this rule before the client is asked to agree to the division of fees.



(3) The notice required by division (c) of this rule shall not apply to either of the following:

(i) A lawyer who is employed by a governmental entity and renders services pursuant to that employment;

(ii) A lawyer who renders legal services to an entity that employs the lawyer as in-house counsel.²⁰

NOTICE TO CLIENT

Pursuant to Rule 1.4 of the Ohio Rules of Professional Conduct, I am required to notify you that I do not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

Attorney's Signature

CLIENT ACKNOWLEDGEMENT

I acknowledge receipt of the notice required by Rule 1.4 of the Ohio Rules of Professional Conduct that [insert attorney's name] does not maintain professional liability (malpractice) insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate.

Client's Signature

Date

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RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee 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 properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

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- (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 lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly

notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.



- (d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;
 - (2) a contingent fee for representing a defendant in a criminal case;
 - (3) a fee denominated as “earned upon receipt,” “nonrefundable,” or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.
- (e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:
- (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;
 - (2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;
 - (3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;²⁵
 - (4) the total fee is *reasonable*.
- (f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

Comment 7
Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in



which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial lawyer. Division (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. Within a reasonable time after disclosure of the identity of each lawyer, the client must give written approval that the fee will be divided and that the division of fees is in proportion to the services performed by each lawyer or that each lawyer assumes joint responsibility for the representation. Except where court approval of the fee division is obtained, closing statements must be in a writing signed by the client and each lawyer and must otherwise comply with division (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rules 1.1 and 1.17.

View other comments at

<http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>

Conflicts of Interest

Conflicts of interest can pop up at any time. The best advice is to perform a preliminary conflicts check before the initial consultation with a potential client, and then another, more comprehensive, conflicts check after the initial consultation but before accepting the representation. Finally, another conflicts check should be performed each time a new party enters into the legal matter. If a conflict is found and the conflict is one that is not consentable, or is consentable, but the consent was not obtained, then the lawyer must decline the representation, or if already representing the client, withdraw from the representation. Otherwise, the lawyer may face grave consequences, including disqualification, mandatory withdrawal, disciplinary actions, reversal of proceedings, forfeiture of fees, and malpractice claims. A non-engagement letter or a disengagement letter (see pages 30 and 32) should be sent to document such declination or termination of the representation.

Types of Conflicts

Generally, conflicts of interest fall into two categories. Conflicts may arise from directly adverse representations or where the representation of a client is materially limited as a result of the lawyer's other responsibilities or interests. A directly adverse conflict arises when you are called upon to represent one client against another client. A lawyer cannot represent two opposing parties in the same litigation. Moreover, a lawyer may not act as an advocate in one matter against a client the lawyer represents or represented in some other matter. Former clients are an excellent example of this type of conflict.

Even when there is no directly adverse conflict, a conflict of interest may nevertheless exist if there is a significant risk that the lawyer's representation may be materially limited as a result of the lawyer's responsibilities to other clients, to third persons, or as a result of the lawyer's own personal interest.

- ▶ This type of conflict may arise in the context of dual or multiple representations (*i.e.*, representing a husband *and* a wife, or a buyer *and* a seller, or two or more clients forming a business entity).
- ▶ It also may arise in the context of a financial interest (*i.e.*, owning a percentage of a client's business or making an agreement to limit malpractice liability to a client).
- ▶ Further, a conflict may arise in the context of a hidden interest (*i.e.*, romantic involvement with a client). You should not have sex with your clients. Nor should you enter into any business transactions with your clients, or knowingly acquire an ownership or other pecuniary interest adverse to your clients.¹
- ▶ You should not enter into an agreement to limit your malpractice liability without first making sure that your client is represented by independent counsel.

You should closely scrutinize the circumstances of each representation to determine whether the clients have "differing interests" that may call for different attorneys representing each client. It is also your duty to reject or disengage from any representation which is going to cloud your independent professional judgment and not allow you to render objective advice.

Consentable Versus Non-Consentable Conflicts

You must independently and objectively decide whether a conflict is consentable. "When a *disinterested* lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly

¹ Most legal malpractice insurance policies exclude from coverage claims where the insured attorney has a greater than 10 percent interest in his client's business.

ask for such agreement or provide representation on the basis of the client's consent." Annotated Model Rule of Professional Conduct at p. 124 (ABA 2d ed. 1992) (emphasis added). When in doubt, the attorney should decline the adverse representation.

While clients may consent to representation notwithstanding a conflict, some conflicts are non-consentable. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client. Consentability is typically determined by considering whether the interest of the clients will be adequately protected if the clients are permitted to give their informed consent to a representation burdened by a conflict of interest. Representation is prohibited if under the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation as required by Rules of Professional Conduct 1.1 (see page 76) and 1.3 (see page 77). For this reason, conflicts where clients are aligned directly against each other in the same litigation are non-consentable. Other conflicts are non-consentable because applicable law prohibits the representation. For example, under federal criminal statutes, certain representations by a former government lawyer are prohibited, despite the informed consent of the former client.

Consentable Conflicts

Not all representations containing the types of conflicts described above have to be declined or terminated, if the potential or existing client gives informed consent. The following types of transactions can be entered into, but only with the client's informed consent:

► **Business transaction or acquiring pecuniary interest adverse to the client.**

You may not enter into a business transaction or acquire an ownership or other pecuniary interest adverse to the client unless:

1. the transaction is fair and reasonable to the client;
2. the terms are fully disclosed and given to the client in writing, in a manner clearly understood by the client;
3. the client is advised in writing well in advance of the transaction to seek advice of independent counsel; and
4. the client consents in writing.

► **Using information relating to a client's representation.**

You may not use information relating to the representation of an existing or former client to the disadvantage of the client, unless the client has been fully informed and consents to its use.

► **Compensation from another party.**

You may not accept compensation for representing a client from any person other than the client unless the client gives informed consent, or the compensation is provided by contract with a third person, such as an insurance contract or a prepaid legal service plan; there is no interference with a lawyer's independence or professional judgment or with the client-lawyer relationship; and none of the client's confidential information is revealed.

► **Multiple client settlements.**

You may not enter into an aggregate settlement of the claims of multiple clients unless each client gives informed consent in a writing signed by the client.

► **Former clients.**

If you formerly represented a client in a matter, you may not represent another person in the same or a substantially related matter if that person's interests are materially adverse to the interest of the former client, unless your former client gives informed consent, confirmed in writing.

► **Imputation of conflicts of interest.**

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 (see page 79) or 1.9 (see page 80), unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

► **Special conflicts of interest for former and current government officers and employees.**

You may not represent a private client in connection with a matter in which you participated personally and substantially as a public government officer or employee, unless the government agency gives its informed consent, confirmed in writing, to such representation. Additionally, your firm and associates may not represent this client, unless you have been screened from any participation in the matter, you are not given any part of the fee, and your former government agency is notified immediately in writing.

► **Former judge, arbitrator, mediator or other third-party neutral.**

You may not represent a client in connection with a matter in which you participated personally and substantially as a judge, other adjudicative officer, or law clerk to such a person, or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing. Additionally, your firm may not represent this client, unless you are screened, you are not given any part of the fee, and written notice is given to the appropriate tribunal.

► **Organization as client.**

If an organization is your client, you may not represent any of its directors, officers, employees, members, shareholders, or other constituents unless the organization consents. If you represent an organization, you may also represent any of its directors, officers, employees, members, shareholders, or other constituents subject to the provisions of Rule 1.7 (see page 79). If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate officer of the organization.

Non-Consentable Conflicts

Some conflicts simply cannot be waived. Not even a very detailed consultation and a subsequent written client consent evidencing the client's desire for your representation will do. Consequently, you must not enter into certain prohibited representations and transactions with your clients. These prohibited transactions include, but are not limited to:

- Preparing an instrument giving yourself or any person related to you any substantial gift from your client, including a testamentary gift, unless you and your client are related.
- Negotiating an agreement giving yourself literary or media rights to a portrayal of the representation.
- Directly adverse representation in the same matter.
- Despite the prohibition in Rule 1.8(e) (see page 79) against providing financial assistance to clients, it is permitted under certain circumstances. (See page 37 in the Fees, Billing and Trust Accounts section.)
- Agreeing prospectively to limit your liability to a client for malpractice unless the client is independently represented in making the agreement or settle a claim or potential claim for malpractice liability with an unrepresented client or former client without first advising the client in writing that independent representation is appropriate.
- Acquiring a proprietary interest in the cause of action or subject matter of the litigation, except you may acquire a lien authorized by law to secure your fees/expenses and contract with your client for a reasonable contingent fee in a civil case.

Informed Consent

You've determined that there is a conflict and that the conflict is consentable. What do you do next? (Remember, if the conflict is non-consentable, your job is finished except for the mailing out of the non-engagement or disengagement letter.) First, you must conclude that the conflicting representation will not inure to the detriment of your client or clients. The Rules of Professional Conduct require that this decision must be made using objective, reasonable and independent standards. Second, each client must consent to the representation after being informed of the conflict. And the consent that is required is "informed consent." New Rule 1.0 Terminology paragraph "e" (see page 76) defines informed consent as the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risk of and reasonably available alternatives to the proposed course of conduct. Informed consent is voluntarily and knowingly granted after full disclosure of all relevant information that likely would influence the client's decision.² So what should be included in the client's informed consent letter?

1. The full disclosure of all relevant information transmitted in writing to the client in a manner reasonably understood by the client.
2. An acknowledgment that the client was given an opportunity in writing to seek the advice of independent counsel in consenting to the conflict.
3. The client's consent in writing.

² Schneider, Harry H. Jr., "An Invitation to Malpractice," ABA's Standing Committee on Lawyer's Professional Liability

4. An acknowledgment that all affected clients were sent the informed consent letter.
5. If applicable, an assurance that the disqualified lawyer is being screened from any participation in the matter and will not be given any part of the fee, nor reveal any protected confidential information.

See page 31 for a sample informed consent letter.

The following Rules of Professional Conduct should be reviewed when embarking on a conflicts of interest check:

- ▶ Rule 1.7 - Conflict of Interest: Current Clients (see page 79);
- ▶ Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules (see page 79);
- ▶ Rule 1.9 - Duties to Former Clients (see page 80);
- ▶ Rule 1.10 - Imputation of Conflicts of Interest: General Rule (see page 80);
- ▶ Rule 1.11 - Special Conflicts of Interest for Former and Current Government Officers and Employees (see page 80);
- ▶ Rule 1.12 - Former Judge, Arbitrator, Mediator or Other Third-Party Neutral (see page 81); and
- ▶ Rule 1.13 - Organization as Client (see page 82).

Additionally, all conflicts of interest checking systems should:

- ▶ Be integrated with other office systems;
- ▶ Provide conflicts data for everyone in the office;
- ▶ Check for varying spellings of names;
- ▶ Show any party's relationship with the client; and
- ▶ Remind lawyers to document all conflict search results with memos in the file.

Conflicts of Interest Checklist

- ☐ All attorneys and staff must disclose necessary information concerning potential conflicts relating to past clients at prior places of employment, but not confidential information. (See page 29.)
- ☐ Prior to the initial consultation, the potential clients must disclose all name information, including their other names (*i.e.*, maiden, other marital, etc.), opposing parties' names, and associated persons' and/or entities' names. (See pages 26-28.)
- ☐ Thereafter, at the initial consultation, the potential clients must disclose more detailed information in order for a more comprehensive conflicts check to be made. (See pages 26-28.)
- ☐ The attorney then performs the conflicts check, reviewing the master client list, the former client list, and the subject matter list, if applicable.
- ☐ The Conflicts Search Results Memo must be circulated to all attorneys and staff for their review and input. (See page 29.)
- ☐ Follow up with any attorney or staff member who fails to return the Conflicts Search Results Memo within 24 hours of distribution. (See page 29.)
- ☐ Analyze the results of the circulated memo and of the preliminary and comprehensive conflicts checks to determine whether there exists a conflict.
- ☐ If no conflict is found, the new client is entered into the conflict system and sent an engagement letter.
- ☐ If a conflict is found and the attorney is not allowed to accept the representation, send a non-engagement letter explaining the conflict. (See page 30.)
- ☐ If a conflict is found and the attorney is allowed to accept the representation:
 - disclose the circumstances which give rise to the actual or potential conflict;
 - disclose a description of actual/foreseeable adverse effects of those circumstances;
 - if the potential conflict arises out of dual or multiple representation, then disclose that no attorney-client privilege exists as between the clients;
 - if the potential conflict arises out of a past representation (*i.e.*, past representation of adverse party in an unrelated matter), then disclose all pertinent non-privileged facts necessary for the potential client to make an informed decision as to whether to waive the conflict.
- ☐ Obtain written informed consent after advising the potential client to seek independent legal advice regarding the waiver. (See page 31.)¹
- ☐ If a conflict is found, all necessary disclosures are made, and written informed consent is obtained, accept the representation by sending an engagement letter.²
- ☐ Once representation has been accepted, perform another conflicts check each time a new party enters into the legal matter. If the new party creates a conflict, withdraw and send a disengagement letter. (See page 32.)

¹ Remember, some conflicts cannot be waived, even though an informed consent was obtained

² However, we recommend that you *do not* accept the representation because informed consents do not cure all conflicts and there may still be a violation of the ethical rules.

Additional Resources for Conflicts of Interest

Book and Articles

- ▶ ABA, The Business Lawyer. Conflict of Interest Issues, 50 Bus. Law 1381 (1995).
- ▶ Lawyers Liability Review, Vol. 14, No. 10 (Oct. 2000).
- ▶ Mallen, Ronald E., Smith, Jeffrey M.. Legal Malpractice No. 2, Chapter 14, Fiduciary Obligations in General; Chapter 15, Fiduciary Obligations - Conflicting Interests; Chapter 16, Fiduciary Obligations Adverse Representation (4th ed. 1996).
- ▶ National Reporter on Legal Ethics and Professional Responsibility, Kansas Formal and Informal Opinions, Opinion No. 95-04, Conflict of Interest; Adverse Representation (University Publications of America).
- ▶ Ciolino, Dane S., *Louisiana Professional Responsibility Law and Practice 2004*. 2nd Edition (Louisiana State Bar Association, 2004).

Case Management (Conflicts) Software

- ▶ Case Master 10. Software Technology, Inc., (402)423-1440
- ▶ Amicus Attorney V, Gavel & Gown Software, (800)472-2289
- ▶ Abacus Law, Abacus Data Systems, (800)726-3339
- ▶ CLS/Summit, Computer Law Systems, (800)932-9038
- ▶ Thomson Elite, (800)977-6529
- ▶ Tussman Program 7.1, Tussman Programs, Inc., (800)228-6589
- ▶ TimeMatters, Data.Txt Corp., (800)328-2898
- ▶ Northshore Technology Center, (985)893-7062

Conflicts of Interest Search Form

(Privileged and Confidential)

The following must be completed by the potential client, attorneys and staff:

1. Obtain all the information on the potential client:

Name _____
Other names _____
Nicknames _____
Address _____
Spouse's name _____
Spouse's other names _____
Spouse's nicknames _____
Address (if different) _____
Opposing parties' names _____
Associated persons or entities _____

Potential client stops here and Preliminary Conflict Check performed. If no conflict is found, potential client completes § 2 and then attorneys and staff complete the remainder.

2. Determine which area of law is involved and write in the names, nicknames or other names of the associated persons/entities involved:

If litigation matter, who is the:

Insured _____
Plaintiff(s) _____
Defendant(s) _____
Insurer _____
Tutor/minor _____
Expert witness(es) _____

If divorce matter, who is the:

Client _____
Spouse _____
Child(ren) _____
What is/are the age/ages of the child(ren)? _____

Continued

If corporate/business/real estate matter, who is the:

Owner(s)/spouse(s) _____
Buyer(s) _____
Partner(s) _____
Seller(s) _____
Officer(s) _____
Directors _____
Shareholder(s) _____
Subsidiaries/affiliates _____
Key employees _____
Property address(es) _____
Any opposing party in a transaction _____

If probate matter, who is the:

Deceased _____
Spouse/child(ren)/heir(s)/legatee(s) _____
Succession representative _____
Attorney for succession representative _____

If worker's compensation matter, who is the:

Injured worker _____
Employer _____
Insurer _____

If estate planning matter, who is the:

Testator/testatrix _____
Spouse/child(ren)/heir(s)/legatee(s) _____
Trustee _____

Continued

If criminal matter, who is the:

Accused _____
Victim(s) _____
Witness(es) _____
Co-Defendant(s) _____

If bankruptcy matter, who is the:

Client _____
Creditor(s) _____
Spouse _____

Results of Search

Conflict System Search done by _____

Title _____ Relationship to firm _____

Instructions:

- Duplicate of this form and attached Conflicts Search Results Memo routed to and signed by all attorneys and staff.
- No conflict found: entered as new client into conflict system and engagement letter sent by _____
- Conflict found, analyzed, and client accepted (explain reasons)

- Engagement and Informed Consent letters sent by _____
- Conflict found, client not accepted, non-engagement letter sent by _____

Conflicts of Interest Search Results Memo

1. Circulate this form to all attorneys and staff, making sure to attach the completed Conflicts of Interest Search Form.

2. Give a deadline for the return of the memo: _____

3. Have all attorneys and staff answer all of the following questions:

a. Do you have any business interest with:

Client? Yes _____ No _____

Anyone associated with client? Yes _____ No _____

Anyone associated with persons/entities? Yes _____ No _____

b. Do you have any personal interests with:

Client? Yes _____ No _____

Anyone associated with client? Yes _____ No _____

Anyone associated with persons/entities? Yes _____ No _____

c. Have you had any current or past relationship, affiliation or association with this client? Yes _____ No _____

d. Do you know of any reason we should not represent this client? Yes _____ No _____

If you have answered yes to any of the above, please give details below:

Signature of Attorney/Staff: _____ Date: _____

Co-Counsel Engagement Letter

Dear (Client Name):

This letter will confirm that pursuant to our meeting in the offices of _____(Location of meeting)_____on ____ (Date)____, you have decided to be represented by ____ (Attorney name)_____ of _____(Firm name) and _____(Attorney name)_____of ____ (Firm name)_____as co-counsel in the following matter(s): _____(Give a full description of legal services to be provided, including level of services, if applicable, such as trial, appeal, administrative hearing, etc.)_____.

As we discussed in our meeting, since your co-counsel attorneys are not in the same firm, we may divide fees only in accordance with Rule 1.5 of the Ohio Rules of Professional Conduct. Our fee agreement provides, as specified in that Rule, we will divide the fees _____(Indicate which is applicable: in proportion to the services performed **OR** with each lawyer assuming joint responsibility for the representation and agreeing to be available for consultation with you.) Your signature of the fee agreement is your written consent to the division of fees after full disclosure of the identity of each lawyer, that the fees will be divided and the proportion of the division of .fees.

We are glad to have you as a client in the matter noted above. If you wish us to represent you in any matter other than that stated above, we will be happy to review that matter with you and determine if we can be of service to you. Our co-counsel relationship is limited to the matter for which we have agreed to provide representation as noted above.

We will keep you informed as this matter progresses as provided in our fee agreement. If you have any questions, please contact us. Thank you for choosing us to represent you in this matter.

Very truly yours,
(Attorney names)

Co-Counsel Hourly Fee Agreement

The undersigned, _____ (hereinafter known as Client) hereby requests the legal services of _____ and _____ (hereinafter known as Co-counsel) for representation concerning _____.

Client has been informed that attorneys who are Co-counsel are not in the same law firm. Therefore, they may divide the legal fees only in accordance with Rule 1.5 of the Ohio Rules of Professional Conduct. Pursuant to that Rule, their fees will be divided (specify: in proportion to the services performed by each attorney OR with each attorney assuming joint responsibility for the representation and agreeing to be available for consultation with Client.)

Legal services will be billed on an hourly basis, with time being charged in tenths of an hour, at the following rates:

Partners	_____ per hour	Paralegals	_____ per hour
Associates	_____ per hour	Law Clerks	_____ per hour

Co-Counsel will use their discretion in staffing, to provide services in the most economical manner possible. Please note that all time spent on your behalf in this matter, including telephone conversations, e-mails and text messages, will be charged to you. The initials of the person performing the services will be indicated on the invoice.

In addition to fees for legal services, Co-counsel will be entitled to payment or reimbursement for costs and expenses incurred for services, including but not limited to: photocopying, messenger and delivery service, fees for computerized research services, travel (including mileage, parking, air fare, lodging, meals and ground transportation), long distance telephone, telecopying, depositions, court costs and filing fees. Client agrees that Client is responsible for such expenses relating to this case. Depending upon the type of case, expenses may also include, but are not limited to: medical treatment, charges for medical examinations and reports, the cost of accident and credit reports, hospital records and pictures. Co-counsel are hereby authorized to charge such expenses and have such expenses billed to Client and Client agrees to pay them promptly. Unless other arrangements are made at the outset, fees and expenses of others will not be paid by Co-counsel and will be the responsibility of and billed directly to the Client.

Invoices for legal services rendered and costs advanced or incurred are issued (monthly or other time interval) and are payable upon receipt. Interest at the rate of ___ percent per month will be added to the balance due on amounts which remain unpaid thirty (30) days or more.

Co-counsel reserve the right to withdraw from representation if, among other things, Client fails to honor the terms of this **FEE AGREEMENT** by failing to pay Co-counsel's invoices, by failing to cooperate or follow Co-counsel's advice on a material matter, or if any fact or circumstance arises or is discovered that would, in Co-counsel's view, render our continuing representation unlawful or unethical.

Client should be aware of an ethical requirement imposed on all Ohio attorneys, that if a client, in the course of representation by an attorney, perpetrates a fraud upon any person or tribunal, the attorney is obligated to call upon the client to rectify the same, and if the client refuses or is unable to do so, the attorney is required to act in accordance with Rule 3.3 and Rule 4.1 of the Ohio Rules of Professional Conduct.

The outcome of negotiations and litigation is subject to factors which cannot always be foreseen. Therefore, it is understood that Co-counsel have made no promises or guarantees to Client concerning the outcome of this representation and cannot do so. Nothing herein shall be construed as such a promise or guarantee.

This **FEE AGREEMENT** pertains only to legal services rendered and costs and expenses for the matter expressly stated above. It does not relate to any other matter for which Client seeks representation by Co-counsel. Any other matter will require a separate **FEE AGREEMENT**.

Date: _____ Client: _____

Date: _____ Co-counsel: _____

Date: _____ Co-counsel: _____

Date: _____ Witness: _____

Co-Counsel Contingent Fee Agreement

The undersigned, _____, (hereinafter known as Client) requests the legal services of _____ and _____ (hereinafter known as Co-counsel) for representation to assert a claim for damages against _____ arising out of an occurrence on or about _____ in which Client was injured or claims to have sustained injury and damage.

The fee of Co-counsel shall be contingent upon the result obtained. There shall be no legal obligation by Client to pay Co-counsel any fee if nothing is recovered from the adversary or from the Client's insurer in an underinsured or uninsured situation.

The total legal fee of Co-counsel shall be _____ percent of the gross amount recovered, if settlement is achieved without the necessity of filing suit; _____ percent of the gross settlement or judgment if it is necessary to file suit; and _____ percent of the ultimate gross settlement or judgment following the trial and any appeal undertaken by the adversary.

Client has been informed that attorneys who are Co-counsel are not in the same law firm. Therefore, they may divide the legal fee only in accordance with Rule 1.5 of the Ohio Rules of Professional Conduct. Pursuant to that Rule, their fees will be divided (specify: in proportion to the services performed by each attorney OR with each attorney assuming joint responsibility for the representation and agreeing to be available for consultation with Client.) Except where court approval of the fee division is obtained, the written closing statement shall be signed by the Client and each lawyer Co-counsel and shall comply with the terms of division (c)(2) of Rule 1.5 of the Ohio Rules of Professional Conduct.

Co-Counsel shall perform all reasonable, necessary and usual services in matters of this kind including, but not limited to: investigation of facts, gathering of evidence, preparation of exhibits, interviewing witness(es), compiling records of expenses, and negotiations with the adversary's insurance carrier or other representative.

If a settlement is not effected which is satisfactory to the Client, Co-counsel agree to (specify: initiate alternative dispute resolution proceedings, arbitration, or bring an action against) _____ to attain the benefits provided by judicial oversight of the claim.

In connection with this, Co-counsel will file all necessary court papers, attend pretrial conferences and status conferences, prepare appropriate interrogatories, requests for admissions and requests for production of documents, attend and take appropriate depositions, and continue settlement negotiations. If a settlement satisfactory to Client cannot be attained, Co-counsel agree to try the case in the trial court unless permitted to withdraw pursuant to Rule 1.16 of the Ohio Rules of Professional Conduct.

If a judgment in favor of Client is obtained in the trial court and the adversary appeals, Co-counsel shall provide all appropriate services in resistance to the appeal, including review of the trial court's record, preparation of appropriate briefs, and oral argument in the reviewing courts. Co-counsel shall not be obligated to appeal. Co-counsel shall advise Client of the opinion concerning the advisability of appeal and may undertake to provide services as appellate counsel under a new, separate and distinct **FEE AGREEMENT**.

Client is responsible for all expenses incurred in the prosecution of the claim. Client gives permission to Co-counsel to advance the payment of costs and expenses, but Client acknowledges the Client remains responsible for payment of said costs and expenses and agrees to reimburse Co-counsel for any such costs and expense for which Co-counsel advances payment. Client may reimburse Co-counsel as costs and expenses are incurred or, if Client reimburses Co-counsel upon settlement, Client agrees that such costs and expenses shall be paid out of Client's portion of the settlement proceeds.

In the event Co-counsel are discharged by Client and in the event Client subsequently recovers money or other property as a result of this action, Client shall be indebted to Co-counsel for legal fees based upon the value in (name of city, Ohio) of legal services rendered and for any costs and expenses advanced by Co-counsel.

Co-counsel reserve the right to withdraw from representation if Client fails to cooperate or follow Co-counsel's advice on a material matter, or if any fact or circumstance arises or is discovered that would, in Co-counsel's view, render continuing representation unlawful or unethical. Client should be aware of an ethical requirement imposed on all Ohio attorneys that if a client, in the course of representation by an attorney, perpetrates a fraud upon any person or court, the attorney is obligated to call upon the client to rectify the same, and if the client refuses or is unable to do so, the attorney is required to act in accordance with Rule 3.3 and Rule 4.1 of the Ohio Rules of Professional Conduct.

Date: _____

Client: _____

Date: _____

Co-counsel: _____

Date: _____

Co-counsel: _____

Date: _____

Witness: _____