

~~[Deleted Text Begins]THE STATE BAR OF CALIFORNIA[Deleted Text Ends]~~

SAMPLE WRITTEN FEE ~~[Deleted Text Begins]Agreement[Deleted Text Ends]~~[Inserted Text Begins]AGREEMENTS[inserted Text Ends] FORMS

~~[Deleted Text Begins](Prepared by the State Bar Committee on Mandatory Fee Arbitration.[Deleted Text Ends]~~

~~[Deleted Text Begins]Approved by the Board of Governors June 20, 1987; amended effective-[Deleted Text Ends]~~

~~[Deleted Text Begins]November 22, 1996; May 15, 2001; June 23, 2005; March 8, 2010;- November 20, 2010)[Deleted Text Ends]~~

## INSTRUCTIONS AND COMMENTS

### I. INTRODUCTION

~~[Deleted Text Begins] Attached are three sample attorney client fee agreements prepared by [Deleted Text Ends]The Committee on Mandatory Fee Arbitration of the State Bar [Deleted Text Begins]of California and approved by[Deleted Text Ends]~~[Inserted Text Begins]has prepared three sample attorney client fee agreements which[inserted Text Ends] the Board of [Deleted Text Begins]Governors[Deleted Text Ends][Inserted Text Begins]Trustees have approved[inserted Text Ends]. They are advisory only[Deleted Text Begins]. They[Deleted Text Ends][Inserted Text Begins], are not required, and[inserted Text Ends] are not binding [Deleted Text Begins]upon[Deleted Text Ends][Inserted Text Begins]on[inserted Text Ends] the Courts, the State Bar of California, [Deleted Text Begins]its[Deleted Text Ends][Inserted Text Begins]the[inserted Text Ends] Board of [Deleted Text Begins]Governors[Deleted Text Ends][Inserted Text Begins]Trustees[inserted Text Ends], any persons or tribunals charged with regulatory responsibility[Deleted Text Begins],[Deleted Text Ends] or any [Deleted Text Begins]member[Deleted Text Ends][Inserted Text Begins]members[inserted Text Ends] of the State Bar.

[Inserted Text Begins]The three attached agreements are : (1) an hourly litigation agreement (2) an hourly non-litigation agreement and (3)[inserted Text Ends] a contingency fee [Inserted Text Begins]agreement. There are also other documents entitled "[inserted Text Ends]Optional Clauses [Inserted Text Begins]" which lists optional provisions[inserted Text Ends] for specific circumstances [Inserted Text Begins]and "Disclosure Forms" which an attorney may need to consider in certain situations.[inserted Text Ends]

~~[Deleted Text Begins] The first two agreement forms are designed for use in non-contingent fee arrangements. They cover (1) litigation on an hourly basis, and (2) non-litigation on an hourly basis. The third form is for [Deleted Text Ends]a contingency fee [Deleted Text Begins]matter. Finally, There are "Other Clauses of Interest in Fee Agreements" which list [Deleted Text Ends]optional clauses for specific circumstances[Deleted Text Begins].[Deleted Text Ends]~~

## II. OVERVIEW

### A. Intended Purpose and Limitations

~~[Deleted Text Begins] The accompanying forms are samples. These “Instructions and Comments” and the forms are intended for use only by [Deleted Text Ends] Attorneys [Inserted Text Begins] who are [inserted Text Ends] admitted to practice in California [Deleted Text Begins], who are expected to utilize [Deleted Text Ends] [Inserted Text Begins] may use the attached sample agreements and should use [inserted Text Ends] their own independent legal and business judgment when [Deleted Text Begins] evaluating the forms and these comments [Deleted Text Ends] [Inserted Text Begins] creating their attorney-client fee agreement [inserted Text Ends].~~

The ~~[Deleted Text Begins] agreements are in the format of a relatively formal agreement while attempting to eliminate unnecessary “legalese.” For those attorneys who prefer a more colloquial style, such as a letter agreement, the language can be adapted to [Deleted Text Ends] [Inserted Text Begins] samples are prepared in a formal contract style and various provisions can be incorporated into a letter fee agreement if the attorney chooses to use [inserted Text Ends] that format. Attorneys are encouraged to [Deleted Text Begins] mold [Deleted Text Ends] [Inserted Text Begins] modify [inserted Text Ends] the samples to fit their needs.~~

### B. SUMMARY OF ~~[Deleted Text Begins] THE [Deleted Text Ends] STATUTES [Inserted Text Begins] AND RULES OF CONDUCT [inserted Text Ends]~~

- ~~[Deleted Text Begins] 1- [Deleted Text Ends] Non-Contingent Fee [Deleted Text Begins] Agreements [Deleted Text Ends] [Inserted Text Begins] Agreements-B&P 6148 [inserted Text Ends]~~

~~[Deleted Text Begins] In non-contingent matters, Section 6148 of the [Deleted Text Ends] Business and Professions Code [Inserted Text Begins] Section 6148 governs non-contingent fee agreements. It [inserted Text Ends] requires [Deleted Text Begins] California [Deleted Text Ends] attorneys to have [Inserted Text Begins] a [inserted Text Ends] written [Deleted Text Begins] fee agreements with their clients [Deleted Text Ends] [Inserted Text Begins] agreement [inserted Text Ends] whenever [Inserted Text Begins] it is reasonably foreseeable that [inserted Text Ends] the client’s total expense, including [Inserted Text Begins] attorneys’ [inserted Text Ends] fees, will [Deleted Text Begins] foreseeably [Deleted Text Ends] exceed \$[Deleted Text Begins] 1,000 and to provide [Deleted Text Ends] [Inserted Text Begins] 1000. [inserted Text Ends] A [Deleted Text Begins] duplicate copy of the fully executed agreement to the client. [Deleted Text Ends]~~

~~[Deleted Text Begins] The fee [Deleted Text Ends] agreement must state:~~

- ~~(a) Any basis for compensation including, but not limited to [Deleted Text Begins], [Deleted Text Ends] hourly rates, statutory or flat fees [Deleted Text Begins], and other standard rates, fees and charges; [Deleted Text Ends]~~
- ~~(b) The general nature of the legal services to be provided [Deleted Text Ends]~~

~~Begins]to the client;[Deleted Text Ends]~~  
~~[Deleted Text Begins](c) The responsibilities of attorney and client under the~~  
~~agreement. [Deleted Text Ends]~~

If an attorney fails to comply with the statute, the fee agreement becomes voidable at the client's option~~[Deleted Text Begins], whereupon the attorney is entitled to a "reasonable" fee.[Deleted Text Ends]~~

~~[Deleted Text Begins] A [Deleted Text Ends]written fee agreement is not required when services are rendered in an emergency[Inserted Text Begins],[inserted Text Ends] to avoid prejudice to the client or where [Deleted Text Begins]a[Deleted Text Ends][Inserted Text Begins]the[inserted Text Ends] writing is otherwise impractical[Deleted Text Begins]; when the client is a corporation;[Deleted Text Ends][Inserted Text Begins],[inserted Text Ends] when the client, after full disclosure, makes a written waiver of the benefits of Section 6148[Deleted Text Begins];[Deleted Text Ends][Inserted Text Begins],[inserted Text Ends] or when the fee agreement is implied in fact by prior services of the same general kind having been rendered to and paid for by the client.[Deleted Text Begins] The attorney is urged to use caution in relying upon these "exceptions." There can be very few circumstances where a written fee agreement is not advisable.[Deleted Text Ends]~~

[Inserted Text Begins]The[inserted Text Ends] agreement must state: [Inserted Text Begins](a)[inserted Text Ends] any basis for compensation including, but not limited to hourly rates, statutory or flat fees [Inserted Text Begins]and other standard, rates and charges; (b)[inserted Text Ends] the general nature of the legal services to be provided[Inserted Text Begins]; and (c) the responsibilities of attorney and client under the agreement. The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.[inserted Text Ends]

Section 6148(b) [Inserted Text Begins]also[inserted Text Ends] requires attorneys to provide their clients with written ~~[Deleted Text Begins]billing statements[Deleted Text Ends][Inserted Text Begins]bills[inserted Text Ends]~~. A client may request ~~[Deleted Text Begins]such statements at minimum[Deleted Text Ends][Inserted Text Begins]a bill at[inserted Text Ends]~~ intervals of 30 days[Inserted Text Begins] or greater[inserted Text Ends]. The attorney must provide ~~[Deleted Text Begins]a statement[Deleted Text Ends][Inserted Text Begins]the bill[inserted Text Ends]~~ within 10 days after [Inserted Text Begins]the[inserted Text Ends] demand. All ~~[Deleted Text Begins]statements, whether requested by the client or not,[Deleted Text Ends][Inserted Text Begins]bills[inserted Text Ends]~~ must state ~~[Deleted Text Begins]"...[Deleted Text Ends]~~the amount, rate and basis for calculation or other method of ~~[Deleted Text Begins]determination of[Deleted Text Ends]~~[Inserted Text Begins]determining[inserted Text Ends] the ~~[Deleted Text Begins]attorneys[Deleted Text Ends][Inserted Text Begins]attorney's[inserted Text Ends]~~ fees and costs.~~[Deleted Text Begins]" (subd.(b)).[Deleted Text Ends]~~

[Inserted Text Begins]Finally, if an attorney fails to comply with any provision of the statute, the fee agreement becomes voidable at the client's option and the attorney is only entitled to a reasonable fee.[inserted Text Ends]

- ~~[Deleted Text Begins]~~**2. Contingency**~~[Deleted Text Ends]~~[Inserted Text Begins]Contingent[inserted Text Ends] Fee [Deleted Text Begins]Agreements,[Deleted Text Ends][Inserted Text Begins]Agreements-B&P 6147[inserted Text Ends]

Business and Professions Code [Inserted Text Begins]Section 6147 governs contingent fee agreements. It[inserted Text Ends] contains the same requirements as [Inserted Text Begins]the Non-Contingent[inserted Text Ends] fee agreements [Inserted Text Begins]discussed in Section one above, and the following additional requirements:[inserted Text Ends]

~~[Deleted Text Begins]In contingency fee agreements, Section 6147 of the [Deleted Text Ends]Business and Professions Code contains the same requirements as [Deleted Text Begins]non-contingency [Deleted Text Ends]fee agreements [Deleted Text Begins](discussed above) for a written fee agreement and a duplicate copy of the executed agreement being provided to the client.[Deleted Text Ends]~~

~~[Deleted Text Begins]There are additional requirements for contingency fee agreements. The agreement must include:[Deleted Text Ends]~~

- (a) A statement of the contingency fee percentage amount.
- (b) A statement as to how disbursements and costs will affect the contingency fee and the client's recovery.
- (c) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee agreement. This may include any amounts collected for the client by the attorney.
- (d) Unless the claim is subject to the provisions of Business and Professions Code Section 6146 (Claim Against Health Care Provider)~~[Deleted Text Begins],[Deleted Text Ends]~~ a statement that the fee is not set by law but is negotiable between [Inserted Text Begins]the[inserted Text Ends] attorney and client.
- (e) If the claim is subject to Section 6146, a statement that the rates set forth ~~[Deleted Text Begins]in[Deleted Text Ends]~~[Inserted Text Begins]for[inserted Text Ends] that section are the maximum limits for the contingency fee and that the attorney and client may negotiate a lower rate. ~~[Deleted Text Begins]If the matter involves a claim for injury or damage against a health care provider based upon negligence, the attorney should carefully review Business and Professions Code Section 6146.1.[Deleted Text Ends]~~

[Inserted Text Begins]The attorney is required to provide a fully executed copy of the agreement to the client at the time the contract is signed.[inserted Text Ends]

~~[Deleted Text Begins]If any contingency fee agreement does not comply with the statutory provisions, the agreement is voidable at the option of the client, and the attorney is then entitled to a “reasonable” fee.[Deleted Text Ends]~~

[Inserted Text Begins]Finally,[inserted Text Ends] if an attorney fails to comply with [Inserted Text Begins]any provision of[inserted Text Ends] the statute, the fee agreement becomes voidable at the client’s option [Inserted Text Begins]and the attorney is only entitled to a reasonable fee.[inserted Text Ends]

- ~~[Deleted Text Begins] C. -SUMMARY OF RULE OF~~[Deleted Text Ends][Inserted Text Begins]Disclosure Concerning[inserted Text Ends] Professional [Deleted Text Begins]CONDUCT[Deleted Text Ends][Inserted Text Begins]Liability Insurance-CPRC[inserted Text Ends] 3-410

California Rule of Professional Conduct [Inserted Text Begins](CPRC)[inserted Text Ends] 3-410 requires ~~[Deleted Text Begins]that California [Deleted Text Ends]~~attorneys who know or should know that they do not have professional liability insurance ~~[Deleted Text Begins]must[Deleted Text Ends]~~[Inserted Text Begins]to[inserted Text Ends] inform a client in writing~~[Deleted Text Begins],[Deleted Text Ends]~~ at the time the client ~~[Deleted Text Begins]engages[Deleted Text Ends]~~[Inserted Text Begins]hires[inserted Text Ends] the attorney~~[Deleted Text Begins], that[Deleted Text Ends]~~[Inserted Text Begins].[inserted Text Ends] The attorney ~~[Deleted Text Begins]does not [Deleted Text Ends]have professional liability insurance-[Inserted Text Begins]must disclose they are not insured[inserted Text Ends] whenever it is ~~[Deleted Text Begins]reasonably [Deleted Text Ends]foreseeable [Deleted Text Begins]that the total amount of legal[Deleted Text Ends]~~[Inserted Text Begins]the[inserted Text Ends] representation ~~[Deleted Text Begins]in the client’s matter [Deleted Text Ends]~~will exceed four hours. [Inserted Text Begins]In the sample agreements, there is a provision to disclose whether you[inserted Text Ends] have professional liability insurance [Inserted Text Begins]or not.[inserted Text Ends]~~

~~[Deleted Text Begins]An attorney who must give a client the written disclosure has the option of doing so in the fee agreement. Rule 3-410 suggests the following language for inclusion in the fee agreement or in a separate writing:[Deleted Text Ends]~~

~~[Deleted Text Begins]“Pursuant to [Deleted Text Ends]California Rule of Professional Conduct 3-[Deleted Text Begins]410[Deleted Text Ends][Deleted Text Begins], I am informing you in writing that I do not have professional liability insurance.”[Deleted Text Ends]~~

~~[Deleted Text Begins]Rule 3-410 provides limited exemptions to the disclosure requirement. The written disclosure is not required of attorneys when they are government lawyers or in-house counsel and representing a client in that capacity; when they provide legal services in an~~

~~emergency to avoid prejudice to the rights or interests of a client; or when they have already advised the client in a fee agreement or separate writing that the attorney does not have professional liability insurance. Attorneys are urged to use caution in relying on the exemptions. Attorneys also should be aware that Rule 3-410 contains a separate written disclosure requirement if the attorney does not provide written notice to the client at the time of the client's engagement of the attorney.~~ [Deleted Text Ends]

[Deleted Text Begins] Attorneys are urged to review Rule 3-410 in its entirety. [Deleted Text Ends]

[Deleted Text Begins] [Deleted Text Ends]

### III. [Deleted Text Begins] GUIDELINES [Deleted Text Ends] [Inserted Text Begins] INSTRUCTIONS [inserted Text Ends] FOR [Deleted Text Begins] COMPLIANCE WITH THE STATUTES [Deleted Text Ends] [Inserted Text Begins] USE OF FORMS [inserted Text Ends]

[Deleted Text Begins] Compliance with the statutes requires the judgment of the individual attorney. Forms alone cannot tell an attorney how to comply. Rather, compliance will result from the attorney's understanding of the statutory provisions and the issues those provisions raise. [Deleted Text Ends]

#### [Deleted Text Begins] A. STANDARD FOR DISCLOSURE [Deleted Text Ends]

[Deleted Text Begins] Due to the consumer orientation of the statutes and the fiduciary nature of the attorney-client relationship, the statutes must be examined in the light most favorable to the client. Disclosures required by statute should be accompanied by all additional information necessary to make the disclosure complete, accurate, and not misleading. The statutory requirements should be considered minimum standards. [Deleted Text Ends]

#### [Deleted Text Begins] B. AGREEMENT IN WRITING [Deleted Text Ends]

[Deleted Text Begins] To meet the statutory requirement of an agreement in writing, the fee agreement must be signed by both the attorney and the client. An attorney must be firm in requesting that the client sign the agreement before work commences. [Deleted Text Ends]

#### [Deleted Text Begins] C. DISCLOSURE OF STANDARD RATES, FEES AND CHARGES [Deleted Text Ends]

[Deleted Text Begins] An attorney should err on the side of inclusion when enumerating standard rates, fees and charges. In an hourly case, fixed or minimum charges for specific functions should be clearly set forth in the agreement to avoid misleading the client. For example, most firms have a minimum billing unit; some charge a minimum time for a telephone call, letter, or court appearance; others charge flat fees for the use of standardized documents developed over the years, or for specific tasks. [Deleted Text Ends]

~~[Deleted Text Begins] Costs and expenses that are passed through should be enumerated in enough detail to avoid misunderstanding. Charges passed through other than “at cost” should be detailed to avoid omitting a “standard rate, fee or charge.” Caution should be exercised in “marking up” or “surcharging” costs, as some authorities consider such practices unethical. Caution should also be exercised in charging for items that would be considered general office overhead.[Deleted Text Ends]~~

~~[Deleted Text Begins] D. NATURE OF SERVICES/DUTIES OF PARTIES[Deleted Text Ends]~~

~~[Deleted Text Begins] When the statute requires disclosure of the nature of the services to be rendered and the respective duties of the attorney and the client, it simply enumerates two of the indispensable terms of an agreement. When the fee is on an hourly basis, these items can be covered in simple, short generalities. In flat or “premium” fee agreements, however, the scope of the attorney’s responsibilities should be defined carefully. In contingency fee agreements, the scope of the services and costs covered and excluded under the percentage fee is especially important.[Deleted Text Ends]~~

~~[Deleted Text Begins] E. BILLS: AMOUNT, RATE AND BASIS[Deleted Text Ends]~~

~~[Deleted Text Begins] All bills must state the amount, rate and basis for calculation (or other method of determination) of the [Deleted Text Ends] attorney’s fees and costs. [Deleted Text Begins] A bill that simply states “for services rendered” is not sufficient. In an hourly case, the bill should describe the services, identify the attorneys who performed services, the time each expended, their hourly rates and the resulting fee for each attorney’s time. In other types of cases, such as flat or premium fees, the bill should refer to the “basis of calculation” which should be set forth in the fee agreement. Bills for costs and expenses must clearly identify the costs and expenses and provide the amount of the costs and expenses incurred. It is recommended that costs be individually itemized.[Deleted Text Ends]~~

~~[Deleted Text Begins] F. EXEMPTIONS[Deleted Text Ends]~~

~~[Deleted Text Begins] Except for the provision exempting corporate clients from the required disclosures, the exemptions in the statute are narrow. Attorneys should rely on these exemptions with caution.[Deleted Text Ends]~~

~~[Deleted Text Begins] G. BREVITY AND CLARITY v. COMPLETE DISCLOSURE[Deleted Text Ends]~~

~~[Deleted Text Begins] The statute embraces two potentially inconsistent goals: detailed disclosure on one hand, and information in an understandable format on the other. Each attorney should strive to strike a balance between these goals when drafting fee agreements. In addition to a proper agreement, it is suggested that the attorney take the time and effort to explain the terms of the agreement and to determine that the client fully understands its terms.[Deleted Text Ends]~~



~~[Deleted Text Begins]~~IV. INSTRUCTIONS~~[Deleted Text Ends]~~

A. FORM NO. 1: HOURLY LITIGATION

- ~~[Deleted Text Begins]~~ 1. ~~[Deleted Text Ends]~~ Conditions (Par. 1) and Effective Date (Par. ~~[Deleted Text Begins]~~14~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#)17~~[inserted Text Ends]~~)

~~[Deleted Text Begins]~~ At the threshold, the attorney must determine at what point the agreement comes to life. Until it does, there is no written agreement that complies with the statute. Once it does, the attorney is obligated to render services, even if the client has not paid. If services are performed before the written agreement takes effect, the attorney will be limited to a "reasonable" fee. This form and the other samples embody one solution to these intertwined issues. It is not the only solution, nor will it always be the best solution.~~[Deleted Text Ends]~~

~~[Deleted Text Begins]~~ Par.~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#)Paragraph~~[inserted Text Ends]~~ 1 (Conditions) ~~[Deleted Text Begins]~~interacts closely with Par. 14~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#)and paragraph 17~~[inserted Text Ends]~~ (Effective Date)~~[Deleted Text Begins]~~. Working~~[Deleted Text Ends]~~ [\[Inserted Text Begins\]](#)work~~[inserted Text Ends]~~ together~~[Deleted Text Begins]~~, the two clauses are designed to delay the attorney's obligation to perform services until the client signs the agreement and pays the deposit; however, the clauses also are drafted to bring within the agreement any services performed before signing and payment. The delay in the attorney's obligation to perform services is based on a cautious reading of the statute's written agreement requirement. We assume that no written agreement exists until both~~[Deleted Text Ends]~~ [\[Inserted Text Begins\]](#)and outline various conditions which must be met before the fee agreement is binding on the~~[inserted Text Ends]~~ parties~~[Deleted Text Begins]~~ sign and perform~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#). If~~[inserted Text Ends]~~ the conditions ~~[Deleted Text Begins]~~precedent. At the same time, however, we recognize that attorneys frequently will (or must) perform services before signing and payment; they will often do so under circumstances that will not fall within the statute's exemptions for emergencies or impracticality. For that reason, "premature" services are brought under the agreement's protection; upon signing and payment~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#)are not met,~~[inserted Text Ends]~~ the agreement ~~[Deleted Text Begins]~~will~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#)may not~~[inserted Text Ends]~~ take effect~~[Deleted Text Begins]~~,~~[Deleted Text Ends]~~ but ~~[Deleted Text Begins]~~retroactively to the date ~~[Deleted Text Ends]~~the attorney ~~[Deleted Text Begins]~~first performed services. Without the retroactivity provision compensation for "premature" services would be limited to~~[Deleted Text Ends]~~[\[Inserted Text Begins\]](#)may still be entitled to recover~~[inserted Text Ends]~~ a reasonable fee~~[Deleted Text Begins]~~, because the services were performed without a written agreement~~[Deleted Text Ends]~~.

~~[Deleted Text Begins]~~ Of course, if the agreement never takes effect, then the statutory penalty limits the attorney to the reasonable value of any services performed.~~[Deleted Text Ends]~~



~~[Deleted Text Begins] If the attorney expects to perform services before the agreement is signed and the deposit paid, then the attorney should document the facts in a writing, preferably one signed by the client. [Deleted Text Ends]~~

~~[Deleted Text Begins] Likewise, document reliance on any statutory exemptions, such as emergency or impracticality. [Deleted Text Ends]~~

- ~~[Deleted Text Begins]~~ **2.** ~~[Deleted Text Ends]~~ Scope [Inserted Text Begins] of Services [inserted Text Ends] and [Inserted Text Begins] Attorney's [inserted Text Ends] Duties (Par. 2 [Inserted Text Begins]) [inserted Text Ends] and [Inserted Text Begins] Client's Duties ([inserted Text Ends] Par. 3)

~~[Deleted Text Begins] fill in a brief description of the subject of the representation (Par. 2) [Deleted Text Ends]. This is a statutory requirement. [Deleted Text Begins] Enumeration of the client's and attorney's duties likewise is required by the statute (Par. 3). [Deleted Text Ends]~~

[Inserted Text Begins] The attorney should fill in a detailed description of the services to be provided [inserted Text Ends]. This is a statutory requirement. [Inserted Text Begins] This paragraph excludes representation in an appeal, collection proceedings after judgment or proceedings regarding renewal of a judgment. It also provides that a separate written agreement is required for these services and any other services not provided in the description. Paragraph 3 lists all the duties the client must fulfill during the attorney-client relationship, which is a statutory requirement. [inserted Text Ends]

~~[Deleted Text Begins] The scope of services provided excludes appeal from the judgment and execution [Deleted Text Ends]~~

~~[Deleted Text Begins] proceedings. The attorney may exclude more, less or nothing. Any exclusion from the scope of services should be carefully drawn, and consistent with the duty of care owed by the attorney regarding the specific matter that is the subject of the representation. [Deleted Text Ends]~~

- ~~[Deleted Text Begins]~~ **3.** ~~[Deleted Text Ends]~~ Deposit (Par. 4)

[Inserted Text Begins] Although a deposit is not required, if the attorney chooses to require a deposit, he or she should keep this clause in the agreement and [inserted Text Ends] fill in the amount of [Inserted Text Begins] the initial [inserted Text Ends] deposit and the date it must be paid. [Inserted Text Begins] Since [inserted Text Ends] an attorney cannot withdraw funds from the trust account without the client's [Inserted Text Begins] authorization, an authorization is included in this paragraph. There is also a recitation that the deposit is not an estimate of the total fees and costs to be charged. [inserted Text Ends]

[Inserted Text Begins] When the initial deposit is exhausted, the provision permits the attorney to require a further deposit and the attorney should fill in the amount. Finally, in "Other Clauses"

there is a provision for a “Replenishing Deposit” which permits the attorney to require the client replenish the deposit each month.[inserted Text Ends]

~~[Deleted Text Begins] This is an optional clause. [Deleted Text Ends] fill in the amount of [Deleted Text Begins]any [Deleted Text Ends] deposit and the date [Deleted Text Begins]by which [Deleted Text Ends] it must be paid. an attorney cannot withdraw funds from the trust account without the client’s [Deleted Text Begins]express authorization. We have provided for that authorization. If a more cautious approach to the authorization question is preferred, the attorney might provide that sums will be withdrawn from the trust account only after they are invoiced to client and “x” days pass without client’s protest of any of the charges.[Deleted Text Ends]~~

~~[Deleted Text Begins] The attorney need not require a deposit of any kind. This paragraph sets forth one way to handle the deposit if the attorney opts for one. This clause places a ceiling on further deposits. Without a ceiling, the right to require further deposits is so open ended that it might be unenforceable for uncertainty. In addition, provision is made for advance payment of all fees and costs to be incurred in preparing for and conducting trial or arbitration. Because it is calculated based on objective facts, no ceiling has been placed on the pre trial deposit.[Deleted Text Ends]~~

~~[Deleted Text Begins] The “Replenishing Deposit” clause provided in the “Additional Provisions” forms may be used as an alternative.[Deleted Text Ends]~~

• ~~[Deleted Text Begins]~~ 4. ~~[Deleted Text Ends]~~ Legal Fees (Par. 5)

[Inserted Text Begins] Since Business & Professions Code Section 6148 requires the attorney to list hourly rates, the attorney should fill in the rates for each attorney and the attorney’s personnel. The provision also states that[inserted Text Ends] rates are subject to change [Inserted Text Begins]on 30 days written notice to the client. The attorney may withdraw from the representation if the client declines to pay the increased rate and if permitted under the California[inserted Text Ends] Rules of Professional Conduct. [Inserted Text Begins]The paragraph also contains a list of various tasks for which an attorney may charge the client. The agreement provides for a minimum charge of one-tenth of an hour. This list may be modified.[inserted Text Ends]

~~[Deleted Text Begins] The attorney must inform the client in the fee agreement whether and under what conditions [Deleted Text Ends] rates are subject to change [Deleted Text Begins].[Deleted Text Ends]~~

~~[Deleted Text Begins] Also, the attorney should add any standard or minimum time or dollar charges for specific functions for example, “x” hours for a telephone call or letter. Failure to disclose such practices probably misleads the client when the agreement states that fees are charged by the actual time by the hour and some fraction of an hour.[Deleted Text Ends]~~

~~[Deleted Text Begins] Some firms either do not charge for travel time or charge at reduced rates. The attorney should discuss this with the client.[Deleted Text Ends]~~

- ~~• [Deleted Text Begins] 5. [Deleted Text Ends] Costs and [Deleted Text Begins] Expenses [Deleted Text Ends] [Inserted Text Begins] Other Charges [inserted Text Ends] (Par. 6) [Inserted Text Begins]; Other Fees and Costs (Par. 7) [inserted Text Ends]~~

[Inserted Text Begins] In paragraph 6 there is a list of common costs and expenses in a litigation matter. The attorney can add to or delete from the list and should fill in the rates for certain charges to comply with the statute. The provision also allows the attorney to hire experts and consultants and to obtain the client's consent before a certain amount is incurred. The attorney should fill in the amount in subparagraph (d).[inserted Text Ends]

[Inserted Text Begins] Paragraph 7 describes the situation where the Court awards attorney's fees and costs to another party after trial or arbitration and states it is the obligation of the client to pay these fees and costs. It also recites the client understands that any award for attorney's fees to the client does not affect the amount of fees and costs the client owes the attorney under the fee agreement.[inserted Text Ends]

~~[Deleted Text Begins] This is not an inclusive list. The attorney may include more or less. The attorney should disclose the rate or charge for any items not passed through strictly at cost; if not done, the attorney may violate the statute's requirement that standard rates, fees and charges be disclosed.[Deleted Text Ends]~~

~~[Deleted Text Begins] A Rate Schedule should be included for charges that are not usually passed through strictly at cost. All such charges should be enumerated to comply with the statute's requirement that attorneys disclose their standard rates, fees and charges.[Deleted Text Ends]~~

~~[Deleted Text Begins] The attorney should specifically address how air travel other than economy, hotel accommodations and meals will be charged.[Deleted Text Ends]~~

~~[Deleted Text Begins] The sample paragraph allows the attorney to incur costs and retain consultants, etc., without client consent. Optional clauses, to be initialed by the client, would require client approval before costs in excess of a specific dollar amount or of a certain nature, (e.g., experts) were incurred.[Deleted Text Ends]~~

~~[Deleted Text Begins] Language is included notifying the client that in certain cases, it may be the client's responsibility to pay other parties' costs.[Deleted Text Ends]~~

~~[Deleted Text Begins] 6. Billing Statements [Deleted Text Ends] (Par. 7)~~

~~[Deleted Text Begins] Attorneys' statements shall describe the services rendered, and must state the "basis" of the charges, including the amount, rate, and basis for calculation or other method of determination of fees and costs.[Deleted Text Ends]~~

- ~~[Deleted Text Begins]~~ 7. ~~Lien[Deleted Text Ends]~~[Inserted Text Begins]Bills[inserted Text Ends] (Par. 8)

[Inserted Text Begins]Paragraph 8 complies with the statute regarding billing requirements. The attorney should fill in when payment is due. It also highlights the client's obligation to review each bill and communicate any objections, questions or concerns so the issue can be resolved promptly. [inserted Text Ends]

- [Inserted Text Begins]Client Approval[inserted Text Ends] for Settlement (Par. 9)

~~[Deleted Text Begins] This is an optional clause, but is recommended for the attorney's protection. The California Supreme Court has determined that a lien in an hourly fee case gives the attorney an interest adverse to the client, and therefore the attorney must comply with Rule 3-300 of the Rules [Deleted Text Ends] of Professional Conduct [Deleted Text Begins] by fully disclosing the acquisition and terms of the lien and transmitting that information to the client in writing in a manner which should reasonably be understood by the client, advising the client in writing that the client may [Deleted Text Ends] seek the advice of an independent [Deleted Text Begins] lawyer of the client's choice, and giving the client a reasonable opportunity to seek that advice before the client gives written consent to the lien. The Supreme Court left open whether the same requirements must be met for a valid lien in a contingent fee case, but caution dictates that the same procedure be followed.[Deleted Text Ends]~~

[Inserted Text Begins]Paragraph 9 recites the client has the absolute right to accept or reject settlement and the attorney will not settle or compromise the client's claim without the client's consent.[inserted Text Ends]

- ~~[Deleted Text Begins]~~ 8. ~~[Deleted Text Ends]~~ Discharge and Withdrawal (Par. ~~[Deleted Text Begins]9[Deleted Text Ends]~~[Inserted Text Begins]10[inserted Text Ends])

California Rule of Professional Conduct 3-[Inserted Text Begins]700[inserted Text Ends]  
[Inserted Text Begins]recites the circumstances in which an attorney can or must withdraw from the representation. Paragraph 10 lists these circumstances and whether the attorney may recover attorney fees and costs after withdrawal.[inserted Text Ends]

- Conclusion of Services (Par. [Inserted Text Begins]11[inserted Text Ends][Inserted Text Begins])[inserted Text Ends]

~~[Deleted Text Begins] This clause is declaratory of applicable law and the [Deleted Text Ends] Rules of Professional Conduct.~~

[Inserted Text Begins]This paragraph states that final payment is due on completion of the attorney services, when an attorney is discharged or withdraws. It also contains a description concerning return of the client's original file under CPRC 3-700(D) and whether the file will be maintained or disposed of when the client does not request its return. The attorney should fill in the period the attorney will keep the file. If the client wants the file to be retained for a different period of time, the provision requires that agreement to be in writing and specify who will bear the cost of storage.[inserted Text Ends]

- ~~[Deleted Text Begins]~~ 9. ~~[Deleted Text Ends]~~Disclaimer of Guarantee (Par. ~~[Deleted Text Begins]~~10~~[Deleted Text Ends]~~[Inserted Text Begins]12~~[inserted Text Ends]~~)

[Inserted Text Begins]This paragraph states the attorney makes no guarantee about the outcome of the client's matter and any statements the attorney makes should not be construed as a guarantee. It also provides that any client deposit or attorney statements about fees and costs are not a limitation on fees or any guarantee they will not exceed the deposit or estimate. Since this is an important provision, the attorney and client should initial it acknowledging their understanding and agreement.[inserted Text Ends]

- [Inserted Text Begins]No Tax Advice (Par. 14)~~[inserted Text Ends]~~

~~[Deleted Text Begins]This is an optional clause.[Deleted Text Ends]~~

[Inserted Text Begins]Since many documents an attorney prepares may have significant tax implications, this paragraph provides the attorney has not been retained to give tax advice and the client should consult with tax advisors regarding the matter. This paragraph should be deleted when the client hires the attorney to provide tax advice.[inserted Text Ends]

- ~~[Deleted Text Begins]~~ 10. ~~[Deleted Text Ends]~~Construction Clauses (~~[Deleted Text Begins]~~Pars~~[Deleted Text Ends]~~[Inserted Text Begins]Par~~[inserted Text Ends]~~. ~~[Deleted Text Begins]~~11~~[Deleted Text Ends]~~[Inserted Text Begins]15~~[inserted Text Ends]~~-~~[Deleted Text Begins]~~13~~[Deleted Text Ends]~~[Inserted Text Begins]18~~[inserted Text Ends]~~)

[Inserted Text Begins]Paragraphs 15-18 are standard provisions concerning the construction of the agreement.[inserted Text Ends]

~~[Deleted Text Begins]These are optional clauses found in many formal agreements.[Deleted Text Ends]~~

## B. FORM NO. 2: HOURLY NON-LITIGATION

~~{Deleted Text Begins}~~ With the exceptions and additions recited below, the~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ The Instructions and~~{inserted Text Ends}~~ Comments ~~{Deleted Text Begins}~~on the Hourly Litigation Form~~{Deleted Text Ends}~~~~{Inserted Text Begins}~~ concerning the Hourly Litigation Sample Agreement~~{inserted Text Ends}~~ apply ~~{Deleted Text Begins}~~equally~~{Deleted Text Ends}~~ to the Hourly Non-Litigation ~~{Deleted Text Begins}~~Form.~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ Sample with the following exceptions:~~{inserted Text Ends}~~

- ~~{Deleted Text Begins}~~ 1. ~~{Deleted Text Ends}~~ Scope ~~{Deleted Text Begins}~~and Duties~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~of Services~~{inserted Text Ends}~~ (Par. 2)

~~{Deleted Text Begins}~~ An exclusion for~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ The references to~~{inserted Text Ends}~~ litigation ~~{Deleted Text Begins}~~has been added~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ services are deleted~~{inserted Text Ends}~~.

- ~~{Deleted Text Begins}~~ 2. ~~{Deleted Text Ends}~~ Client's Duties (Par. 3)

~~{Inserted Text Begins}~~ The ~~{inserted Text Ends}~~ references to ~~{Deleted Text Begins}~~ appearances at ~~{Deleted Text Ends}~~ legal proceedings are deleted.

- ~~{Deleted Text Begins}~~ 3. ~~{Deleted Text Ends}~~ Deposit (Par. 4)

~~{Inserted Text Begins}~~ The ~~{inserted Text Ends}~~ references to trial and arbitration ~~{Deleted Text Begins}~~ dates and related fees ~~{Deleted Text Ends}~~ are deleted.

- ~~{Deleted Text Begins}~~ 4. ~~{Deleted Text Ends}~~ Costs and ~~{Deleted Text Begins}~~ Expenses~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ Other Charges~~{inserted Text Ends}~~ (Par. 6)

~~{Deleted Text Begins}~~ Reference to litigation-related~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ The references to litigation~~{inserted Text Ends}~~ costs ~~{Deleted Text Begins}~~ is~~{Deleted Text Ends}~~ ~~{Inserted Text Begins}~~ are~~{inserted Text Ends}~~ deleted.

~~{Deleted Text Begins}~~ 5. ~~Lien~~~~{Deleted Text Ends}~~

- ~~{Inserted Text Begins}~~ Other Costs and Fees~~{inserted Text Ends}~~ (Par. 7)

~~{Deleted Text Begins}~~ The attorney's lien has been deleted because it may be inappropriate in a non-litigation context.~~{Deleted Text Ends}~~

[Inserted Text Begins]The paragraph entitled “Other Costs and Fees” is deleted.[inserted Text Ends]

C. FORM NO. 3: ~~[Deleted Text Begins]CONTINGENCY[Deleted Text Ends]~~[Inserted Text Begins]CONTINGENT[inserted Text Ends] FEE

~~[Deleted Text Begins]With the exceptions and additions recited below, the comments on the Hourly Litigation Form 1 apply equally to the Contingency Form 3.[Deleted Text Ends]~~

[Inserted Text Begins]The Instructions and Comments concerning the Hourly Litigation Sample Agreement apply to the Contingent Fee Agreement with the following exceptions:[inserted Text Ends]

~~[Deleted Text Begins]1. Conditions (Par. 1) and Effective Date (Par. 19)[Deleted Text Ends]~~

~~[Deleted Text Begins]The instructions for these paragraphs are the same as those for the Hourly Litigation Form, Paragraphs 1 and 14.[Deleted Text Ends]~~



- ~~2. Scope of Services (Par. 2)[Deleted Text Begins], Responsibility of the Parties (Par. 3), and Limitation of Representation (Par. 10)[Deleted Text Ends]~~

~~[Deleted Text Begins] Fill in the defendant's name, the nature of the event giving rise to the claim and the date (Par. 2). this paragraph and Paragraph 10 (Limitation of Representation), describe the scope and limitations of the representation. A description of the subject of the representation is a statutory requirement. Enumeration of the client's and attorney's responsibilities likewise is required by the statute (Par. 3).[Deleted Text Ends]~~

[Inserted Text Begins]This paragraph excludes the defense of the client in any matter and the representation of the client on a cross-complaint or cross-claim.[inserted Text Ends]

~~[Deleted Text Begins] The point at which the covered services ends should be carefully defined to avoid any question of the obligation to provide additional services without additional fees. The scope of services in the sample excludes appeal from the judgment and execution proceedings. The attorney may exclude more, less or nothing. Any exclusion from the scope of services should be carefully drawn, and should be consistent with the duty of care owed by the attorney regarding the specific matter that is the subject of the representation.[Deleted Text Ends]~~

~~[Deleted Text Begins] The scope of representation is also limited to the specific matter defined in Paragraph 2. [Deleted Text Ends]Business and Professions Code Section 6147 requires [Deleted Text Begins]a statement as to what extent, if any, the client could be required to pay any compensation to the attorney that arises out of their relationship but is not covered by the contingency fee agreement. The sample (Par. 10) provides that representation as to related matters will require a separate agreement. As to the related matter of defending the client on cross-complaints, the option of a separate agreement or engaging separate counsel is given. Here again, the attorney may broaden the scope of the services to include those related matters which are excluded in the sample.[Deleted Text Ends]~~

- ~~[Deleted Text Begins]~~ **3.** ~~[Deleted Text Ends]~~Legal Fees (Par. 4)

~~[Deleted Text Begins] As required by statute, this paragraph explains the contingency on which fees become due, the method of calculation of fees at various points in the litigation, and deduction of costs. An optional clause includes non-monetary proceeds as part of the net recovery on which the fees are based. If this clause is used, consideration should be given to whether or not to enumerate the potential non-monetary items, e.g., the value of continued insurance coverage.[Deleted Text Ends]~~

[Inserted Text Begins]This paragraph complies with the statutory requirements of[inserted Text Ends] Business and Professions Code Section 6147[Inserted Text Begins], which governs contingent fee agreements. It also recites the attorney fee is based on the net recovery depending on the stage at which the settlement or judgment is reached. Since the amount of the fee is subject to negotiation, this provision can be changed. The optional clauses document contains other arrangements. The paragraph also addresses the situation where the Court orders another party to pay the client's[inserted

Text Ends] attorney's fees and costs. [Inserted Text Begins]It recites that the award is considered part of the client's recovery. Finally, the paragraph lists eleven (11) factors from Rule of Professional Conduct 4-200 that are considered when determining whether an attorney is entitled to a fee when the attorney fails to comply with the requirements of Section 6147, when the attorney is discharged or when the attorneys withdraws with justifiable cause.[inserted Text Ends]

~~[Deleted Text Begins] Neither the particular stages in litigation at which the percentage of the fee changes, nor the specific basis for computation of a reasonable fee in the event of discharge, should be viewed as being endorsed by the State Bar. It should be noted that no specific contingency fee amounts are recommended in these forms. These provisions are illustrative only. Other provisions may be more appropriate in particular cases.[Deleted Text Ends]~~

~~Business and Professions Code Section 6147 [Deleted Text Begins]provides that a reasonable fee is owed in the event of failure to comply with the statute, and existing case law provides for payment of a reasonable fee in the event of discharge of the attorney by the client prior to occurrence of the contingency on which fees become due. Accordingly, this paragraph states that the reasonable fee in such a case is payable on the occurrence of the contingency and provides assistance in the determination of the amount of a fee which may be considered reasonable.[Deleted Text Ends]~~

- ~~• [Deleted Text Begins] 4. [Deleted Text Ends]~~ Negotiability of [Inserted Text Begins]Legal[inserted Text Ends] Fees (Par. 5)

~~[Deleted Text Begins] This statement is required by statute.[Deleted Text Ends]~~

Business and Professions Code Section 6147 requires [Inserted Text Begins]this provision.[inserted Text Ends]

- ~~• [Deleted Text Begins] 5. Billing Statements[Deleted Text Ends]~~ [Inserted Text Begins]Costs and Litigation Expenses[inserted Text Ends] (Par. [Deleted Text Begins]8[Deleted Text Ends][Inserted Text Begins]6[inserted Text Ends])

~~[Deleted Text Begins] This optional paragraph is intended for use in the event the client is to pay costs as the litigation progresses, rather than deducting all costs from the recovery.[Deleted Text Ends]~~

[Inserted Text Begins]This paragraph requires the client to pay for the costs of litigation and lists various costs which can be charged. It also states that any award of fees and costs as a discovery or other sanction or under a contract or statute shall belong to the attorney. If the Court assesses monetary sanctions against the client for bad faith, this provision states the client must pay the sanction.[inserted Text Ends]

- ~~• [Deleted Text Begins] 6. Approval Necessary [Deleted Text Ends]for Settlement (Par. 9)~~

[Deleted Text Begins] This provision is optional. [Deleted Text Ends]

- [Deleted Text Begins] 7. Discharge and Withdrawal [Deleted Text Ends] [Inserted Text Begins] Lien [inserted Text Ends] (Par. [Deleted Text Begins] 11 [Deleted Text Ends] [Inserted Text Begins] 10 [inserted Text Ends])

[Deleted Text Begins] This is declaratory of applicable law and rules. Together with Paragraphs 4 (Legal Fees), 12 (Conclusion of Services) and 13 (Lien), This paragraph notifies the client of payment obligations if the attorney is discharged or withdraws. [Deleted Text Ends]

[Inserted Text Begins] This paragraph provides the attorney has a lien on all claims that are the subject of the attorney's representation. While under current law an attorney's lien in a contingency fee agreement (in contrast to an hourly engagement or a combination of hourly and contingency) is not an adverse interest as defined in Rule [inserted Text Ends] of Professional Conduct [Inserted Text Begins] 3-300, it is recommended that the paragraph recite the client may wish to [inserted Text Ends] seek the advice of an independent [Inserted Text Begins] attorney before agreeing to this provision. It is also recommended that both client and attorney should initial this paragraph to acknowledge their understanding. IV. OPTIONAL CLAUSES [inserted Text Ends]

[Deleted Text Begins] 8. [Deleted Text Ends] Conclusion of Services (Par. [Deleted Text Begins] 12 [Deleted Text Ends] [Deleted Text Begins]) [Deleted Text Ends]

[Deleted Text Begins] Returning the file and other property is required under existing law and the Rules of Professional Conduct. [Deleted Text Ends]

[Deleted Text Begins] 9. Receipt of Proceeds (Par. 14) [Deleted Text Ends]

[Deleted Text Begins] This is an optional clause. [Deleted Text Ends]

[Deleted Text Begins] • 10. Disclaimer of Guarantee (Par. 15) [Deleted Text Ends]

[Deleted Text Begins] This is an optional clause. [Deleted Text Ends]

[Deleted Text Begins] • 11. Construction Clauses (Pars. 16-18) [Deleted Text Ends]

[Deleted Text Begins] These are [Deleted Text Ends]

[Deleted Text Begins] optional clauses found in many formal agreements. [Deleted Text Ends]

[Deleted Text Begins] V. ADDITIONAL PROVISIONS [Deleted Text Ends]

There are [Deleted Text Begins] innumerable [Deleted Text Ends] [Inserted Text Begins] many [inserted Text Ends] additional [Deleted Text Begins] provisions that [Deleted Text Ends] [Inserted Text Begins] clauses [inserted Text Ends] an attorney may include in [Deleted Text Begins] a [Deleted Text Ends] [Inserted Text Begins] the [inserted Text Ends] fee agreement. [Deleted Text Begins] The following [Deleted Text Ends] [Inserted Text Begins] Below is a

compilation of additional clauses which are all optional. In addition, there~~[inserted Text Ends]~~  
are several ~~[Deleted Text Begins]~~which the~~[Deleted Text Ends]~~[Inserted Text Begins]disclosure  
forms an~~[inserted Text Ends]~~ attorney may ~~[Deleted Text Begins]~~wish~~[Deleted Text~~  
~~Ends]~~[Inserted Text Begins]need~~[inserted Text Ends]~~ to consider. ~~[Deleted Text Begins]~~All of  
~~these clauses are optional.~~~~[Deleted Text Ends]~~[Inserted Text Begins]They are appended in  
Section VI. -DISCLOSURE FORMS.~~[inserted Text Ends]~~

#### 1. Arbitration Clause

An attorney ~~[Deleted Text Begins]~~should~~[Deleted Text Ends]~~[Inserted Text Begins]may want  
to~~[inserted Text Ends]~~ consult the firm's malpractice insurance carrier regarding its position on  
arbitration and particular arbitration provisions, including any award of attorney's fees.

The suggested clause is appropriate for binding arbitration of all claims other than fee disputes  
which are subject to non-binding arbitration under Business and Professions Code Sections 6200,  
*et seq.* ~~[Deleted Text Begins]~~Such clauses may only be enforceable with~~[Deleted Text~~  
~~Ends]~~[Inserted Text Begins]The agreement provides for~~[inserted Text Ends]~~ full disclosure to  
the client of the ramifications of those choices and the comparative advantages and  
disadvantages of other alternatives. This clause advises the client of the right to have an  
independent attorney review it, and requires initialing to approve it.

#### 2. Mediation Clause

This is an optional clause. Under Business and Professions Code Section 6200, a mediation  
option may be offered to the parties after the attorney or client files a request for fee arbitration  
with some local bar association or the State Bar fee arbitration programs.

The attorney may want to consider this in determining whether to include a pre-filing mediation  
clause such as the suggested clause.

#### 3. Interest Clause

It is legally and ethically proper to charge interest on fees. If the attorney elects to do so, this  
clause provides appropriate language. Please keep in mind that interest, if charged, must be  
reasonable so as not to violate either the prohibition against unconscionable fees nor the usury  
provisions of the California Constitution. ~~[Deleted Text Begins]~~It must be simple interest, made  
a part of the agreement, and separately stated as an increment on the monthly or other periodic  
billing~~[Deleted Text Ends]~~[Inserted Text Begins]I A periodic interest rate that does not exceed  
10% per annum simple interest should not violate California's usury law~~[inserted Text Ends]~~.  
Generally, interest should begin running only after a certain specified period, i.e., thirty, sixty or  
ninety days after the billing invoice is rendered, if not paid within that time.

~~[Deleted Text Begins]~~If the Agreement uses the terms "finance charges," "late fees," "penalty-  
payment" or anything other than simple interest, this may create problems with the Federal Truth  
In Lending Law and the California Unruh Act.~~[Deleted Text Ends]~~

#### 4. Replenishing Deposit

This is an alternative to Par. 4 in Forms 1 and 2, and provides for an automatically replenishing deposit.

#### 5. Attorneys' Fees Clause

An attorneys' fees clause is permitted, except that attorneys' fees are not recoverable in fee arbitrations under Business and Professions Code Sections 6200, et seq. Further, an attorney may not usually recover fees for representing him or herself. If this clause and an arbitration clause are both used, the attorneys' fee provisions should be the same. Inclusion of this clause should be cleared with the attorney's malpractice insurance carrier.

#### 6. Other Payor ~~[Deleted Text Begins]Clauses[Deleted Text Ends]~~[Inserted Text Begins]Clauses- Insurance[inserted Text Ends]

[Inserted Text Begins]This clause may be used when an insurance company pays for some or all of the client's attorney fees. It also provides that if the insurance company refuses to pay the fees or only pays some of the fees, the client is still responsible for payment.[inserted Text Ends]

~~[Deleted Text Begins]These clauses [Deleted Text Ends]may be appropriate where someone other than the client is responsible for paying the attorney's fees[Deleted Text Begins], and may be used only in compliance with Rule 3-310(F) of the Rules of Professional Conduct.[Deleted Text Ends]~~

#### 7. ~~[Deleted Text Begins]Fixed[Deleted Text Ends]~~[Inserted Text Begins]Flat[inserted Text Ends] Fee Clause

This clause is a suggested alternative to Paragraph 5 (Legal Fees and Billing Practices) where the work is being performed on a fixed fee basis.

#### [Inserted Text Begins]8. Division of Contingency Fees[inserted Text Ends]

[Inserted Text Begins]This clause is required under California Rules of Professional Conduct 2-200 if the attorney wants to associate another attorney who is not a member of his or her firm and will split the contingency fee with the other attorney. The associated attorney should sign the fee agreement or other writing acknowledging the fee division.[inserted Text Ends]

~~[Deleted Text Begins]8[Deleted Text Ends]~~[Inserted Text Begins]9[inserted Text Ends].

[Inserted Text Begins]"[inserted Text Ends]Other Attorney[Deleted Text Begins]Clauses[Deleted Text Ends]" Clause-Hourly[inserted Text Ends]

~~[Deleted Text Begins]See[Deleted Text Ends]~~[Inserted Text Begins]This clause is required under[inserted Text Ends] California Rules of Professional Conduct Rule 2-200([Deleted Text Begins]A)[Deleted Text Ends]. [Deleted Text Begins]These clauses[Deleted Text Ends][Inserted Text Begins]This clause[inserted Text Ends] may be appropriate where the attorney contemplates working with another attorney who is not a partner, associate or shareholder of the attorney. Charging associate counsel fees as a cost in an hourly fee case is appropriate, but is a

suspect practice in contingency fee litigation. Separate sample clauses are therefore offered for hourly and contingency fee cases.

[Inserted Text Begins]10.      Payment of Referral[inserted Text Ends]

[Inserted Text Begins]This clause is required under California Rules of Professional Conduct 2-200 and provides that the payment of the referral fee to the referring attorney will not increase the client's legal fees.[inserted Text Ends]

[Inserted Text Begins]11.      Lien-Hourly Fee Agreement[inserted Text Ends]

[Inserted Text Begins]This clause satisfies the requirements set forth in the Supreme Court case, Fletcher v. Davis (2004) 33 Cal. 4th 61. In that case the court held an attorney who wishes to secure payment of hourly legal fees and costs with a lien must comply with California Rules of Professional Conduct 3-300. That rule requires the attorney must advise the client in writing of the adverse consequences of the lien and advise the client of his or her right to obtain an independent attorney to review the lien provision before the client signs the fee agreement.[inserted Text Ends]

[Inserted Text Begins]The attorney should have the client initial this clause.[inserted Text Ends]

[Inserted Text Begins]12.      Excluded Services[inserted Text Ends]

[Inserted Text Begins]An attorney may limit or exclude certain services in the fee agreement and this clause provides for the exclusion. Under Nichols v. Keller (1993) 15 Cal. App. 4th 1672 the attorney must alert the client of the possible need to employ other counsel to handle the excluded services. Pursuant to Meighan v. Shore (1995) 34 CA 4th 1025, an attorney also must alert the client's spouse of a possible claim for loss of consortium and whether the attorney will be handling the loss of consortium claim.[inserted Text Ends]

[Inserted Text Begins]13.      Contingency Language Options[inserted Text Ends]

[Inserted Text Begins]There are a variety of ways an attorney can represent a client in a contingent fee. These various clauses describe the various options including how the fee is paid, whether the client or the attorney advances cost and how it affects the client's recovery.[inserted Text Ends]

[Inserted Text Begins]V. DISCLOSURE FORMS[inserted Text Ends]

[Inserted Text Begins]There are two Third Party Payor agreements which are appended. These can be used when someone other than the client pays the client's attorney's fees and costs. One form allows an attorney to share information regarding the representation with the Third Party payor and the other form prohibits sharing information. Finally there is a form which is appended for disclosure and waiver of conflicts of interest in dual representation. [inserted Text Ends]

~~[Deleted Text Begins] 9 [Deleted Text Ends]~~[Inserted Text Begins] 1 [inserted Text Ends].  
~~[Deleted Text Begins] Professional Liability Insurance Clause. [Deleted Text Ends]~~[Inserted Text Begins] Third Party Payor Forms [inserted Text Ends]

[Inserted Text Begins] These forms [inserted Text Ends] may be appropriate where someone other than the client is responsible for paying the attorney's fees [Inserted Text Begins]. [inserted Text Ends]

[Inserted Text Begins] 2.        Joint/Multiple Client Disclosure and Consent Form [inserted Text Ends]

[Inserted Text Begins] This form may be appropriate for use when an attorney represents more than one individual/entity and wants to disclose potential conflicts of interest and obtain waivers. [inserted Text Ends]

~~[Deleted Text Begins] See California Rules of Professional Conduct Rule 3-410. An attorney who knows or should know that he or she does not have professional liability insurance at the time of the client's engagement of the attorney must make a written disclosure to the client, subject to limited exemptions listed in the rule. Rule 3-410 suggests the language of this clause for inclusion in the fee agreement or in a separate writing. [Deleted Text Ends]~~

## VII. CONCLUSION

These forms are disseminated in the hope that they will be useful to attorneys in their practices. Attorneys are urged to make alterations to these forms so that they conform to the attorney's practice and the needs and requirements of the attorney and clients, subject always to satisfying the statutory requirements for fee agreements and the Rules of Professional Conduct.