# APPENDIX C

## Sample Estate Planning Engagement Letter Involving Dual Representation[1]

**[FIRM LETTERHEAD]**

_____, 20_____

[Client Names and Address(es)]

Re: Engagement Agreement

PRIVILEGED AND CONFIDENTIAL

Dear _____ and _____:

It was a pleasure meeting _____ on _____. On behalf of [Name of Law Firm], we appreciate the confidence demonstrated by your decision to engage us to work with you in connection with your estate planning.

1. **Our Client**. The purpose of this engagement letter ("Letter"), as well as the associated Terms of Business ("Terms"), is to set forth the agreement pursuant to which [Name of Law Firm] (the "Firm," "we," "us" and "our") will represent you.

2. **Scope of Representation**. We anticipate that we will provide (and, to some extent, have already begun to provide) the following services to you:

(a) Discussions regarding your wishes with respect to your estate planning and how best to implement them;

(b) Preparing documents to implement your wishes; and

(c) Reviewing with you and supervising the execution of such documents.[2]

During the course of our representation, we will be available to answer your inquiries. We wish to emphasize, however, that we will not

---

[1] Must be modified to suit the circumstances.

[2] Add more detail if appropriate at this point.

Sample

be in a position to render proper estate planning services to you unless you provide us with all the relevant facts, figures and documentation in a timely manner.

3. **Terms of Business**. Attached is a copy of our Terms of Business. Unless stated otherwise, defined terms in this Letter have the meaning stated in the Terms. In the event of a conflict between the provisions of this Letter and of the Terms, the provisions of this Letter shall control.

4. **Our Team**. Although I will be principally responsible for this engagement, it is anticipated that other Firm lawyers and, potentially, legal assistants will work with me.

5. **Our Charges**.[3]

**[Hourly Fee]**

Our fees will be based upon the time devoted to the work that we do and our standard hourly billing rates as to each of the attorneys and, if appropriate, legal assistants who perform services relating to your estate planning, plus disbursements. Time is charged in tenths of an hour so that, for example, if we speak for ten minutes you are not charged for an entire hour. My current standard hourly billing rate is $_____. These billing rates are subject to adjustment by us from time to time (typically at year-end), and fees will be charged at the rates in effect when the services are performed. We maintain detailed time records that are available to you upon request.

[4] [I have estimated that the total of such fees to be incurred in connection with the legal services described in paragraphs 2(a) through (_) above will be between $_____ and $_____. Because, at this point, we cannot know how many times you will wish to meet or speak, how long those conversations will last, how much correspondence we will have, what unanticipated (by us) problems may arise, what changes you will decide to make, etc., this estimate is only an estimate, is not a fixed fee and does not constitute a commitment by us to perform all appropriate legal services for that amount (or an obligation by you to pay that amount if our time charges are lower). Our fees ultimately must be a function of factors over which we have little or no

---

[3] Use only *one* of these fee provisions, but *omit bracketed titles*. Modify as appropriate.

[4] Include if appropriate.

Sample
Sample

control, and thus may be more or less than our estimate. We will be pleased to update our estimate if you request us to do so, but absent such a request, we will have no obligation to do so.]

You are responsible for the payment of our fees and disbursements on the basis described in this Letter and in the Terms.

**[Flat Fee]**

As agreed, our services for the work described in paragraphs 2(a) through (___) above will be provided to you for a fee of $_____, plus disbursements.

You are responsible for the payment of our fees and disbursements on the basis described in this Letter and in the Terms.

6. **Additional Services**. If at any time you request that we perform additional services, additional fees will be charged for such services and you will be responsible for the payment of our resulting fees for such additional services at our standard hourly billing rates in effect at the time such services are rendered, plus disbursements.

7. **Retainer**.[5] Please send us $_____ as a retainer when you return the signed copy of this Letter to us. By signing this Letter, you authorize us to apply this amount toward payment of our invoices. Any unused balance remaining when our work has been concluded and all our fees and disbursements have been paid will be refunded. The amount of the retainer does not constitute an estimate of the fees and disbursements that will be incurred in connection with the work that we will do for you.

8. **Conflicts**. [*Address any specifically identified conflicts*:] Please refer to our Terms regarding provisions as to conflicts.

9. **Simultaneous Representation**. You have agreed [between] yourselves that [Name of Law Firm] should simultaneously represent [both] of you. To the extent that your interests coincide, such joint representation should be more efficient and economical than would be the case if separate counsel were retained by each of you. Thus, each of you is our client.

Sample

---

[5] Include this provision, and obtain a retainer, if appropriate.

It is important that you understand that, since you are asking us to represent [both] of you, if one of you shares a matter with us in confidence, that matter is not protected by the attorney-client privilege from disclosure to [the] other of you. Occasionally, one of you may wish to speak in confidence with me or with another Firm attorney. We are, of course, available to meet with one of you individually but, since we represent [both] of you, we will *not* be in a position to agree with one of you not to communicate with [the] other of you regarding such a meeting or as to what was discussed. In fact, if one of you shares any information with us that might affect [the] other, you agree that we may, but shall not be obligated to, disclose such information to [the] other of you. Furthermore, we obviously cannot commence litigation on behalf of one of you if it is against [the] other of you while we are representing [both of] you. [Either] of you may terminate this joint representation at any time, but [the] other of you would have to know of that development.

Moreover, because of our access to such confidential information, each of you may be precluded from claiming, against one another, the attorney-client privilege of confidentiality with respect to matters involved with the joint representation.

It is, of course, possible that a conflict [between] you will arise in the future. Should such a conflict arise and be known to us, unless you [both] consent to our continued representation of [both] of you, we will be required to withdraw from the joint representation and thereafter may not be able to represent [either] of you.

Your execution of this Letter will confirm your consent to and also your understanding of the potential advantages and disadvantages of simultaneous representation.

10. **Conclusion**. Please confirm your agreement with the provisions of this Letter and of the Terms by promptly signing the enclosed copy of this Letter and returning it to me [, together with your check, in the amount of $_____, payable to [Name of Law Firm] as the retainer,] in the enclosed envelope. The original is for your records.

Upon receipt, we will commence work based upon the understanding contained in this Letter and the Terms.

Should you have any questions as to this Letter, the Terms or any other aspect of our representation of you, please do not hesitate to contact me.

Sample
Sample

Again, we are very pleased to have this opportunity to work with you.

Sincerely,

[Name of Law Firm]

By: _____
[Name of Partner], Partner

Enclosures:

Terms of Business
Copy of Letter
Return Envelope

**Agreement and Acceptance**

Each of the undersigned hereby acknowledges and agrees that [he or she] has reviewed and understands this Letter and the Terms. Each of the undersigned further agrees to and accepts the provisions of this Letter and of the Terms, including, but not limited to, all disclosures regarding conflicts of interest, and hereby waives any conflict and/or potential conflict of interest as set forth therein.

_____ _____, 20__
[Client Name]

_____ _____, 20__
[Client Name]

Sample
Sample