APPENDIX D

Sample Estate Administration Engagement Letter Involving Dual Representation[1]

[FIRM LETTERHEAD]

_____, 20_____

[Client Names and Address(es)]

Re: Engagement Agreement—Estate of _____, deceased.

PRIVILEGED AND CONFIDENTIAL

Dear _____ and _____:

On behalf of [Name of Law Firm], we appreciate the confidence demonstrated by your decision to engage us to represent [both of] you as the nominated Executors of the Estate of _____, deceased (the "Estate").

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 in your capacity as the nominated Executors of the Estate ("Client," "you" and "your").

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

a. We will seek to secure the probate of _____'s Will and your appointment as the Executors of the Estate;

b. We will provide such legal services as are appropriate to assist you as to collecting the assets of the Estate and transferring them into the name of the Estate;

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[1] Must be modified to suit the circumstances.

[2] Revise as appropriate.

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c. We will help you to establish a checking account for the Estate and show you how to maintain the Estate's checkbook and other records in an appropriate manner;

d. We will prepare, submit to you for review and execution and handle the filing of the [federal and] state estate tax return[s], as appropriate;

e. We will prepare and file the New York State Surrogate's Court Inventory;

f. We will provide such legal services as are appropriate to assist you with the transfer of the assets of the Estate to the beneficiaries at and, if appropriate, in part prior to the termination of the administration of the Estate, and prepare all related documents;

g. Upon request, we will [prepare or] review _____'s final gift and income tax returns;

h. Upon request, we will [prepare or] review the Estate's fiduciary income tax returns and advise you regarding income tax planning for the Estate; and

i. Upon request, we will prepare or arrange for the preparation of the schedules for your final accounting as Executors of the Estate. In such event we will also prepare and process appropriate cover papers for an informal accounting or a judicial accounting, as you direct.

In addition, upon request we will represent you in connection with the following matters (which may or may not occur):

a. Any litigation, and any threatened litigation whatsoever, whether by or against the Estate, and whether relating to probate, any accounting, claims by or against the Estate, estate, gift or income tax proceedings or any other matter, including appropriate legal research, subject, however, to any conflicts that may arise;

b. Any income tax, gift tax or estate tax audit, together with all related dealings with any taxing authorities or courts; and

c. The sale of Estate assets, such as [_____'s home].

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We will be representing you in this matter solely in your capacity as Executors of the Estate conducting the affairs of the Estate. Pursuant to the Rules of Professional Conduct, representation of you in this capacity will not constitute representation of the beneficiaries of the Estate or representation of you in any other capacity.

[We will not be responsible for]:[3]

During the course of our representation we will be available to answer your inquiries. We wish to emphasize, however, that we will not be in a position to render proper 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 attorneys [, paralegals and fiduciary accountants] will work with me.

5. **Our Charges**.

[Hourly Fee][4]

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 [, paralegals and fiduciary accountants] who perform services relating to the Estate, 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 rate billing is $_____; others who will be working with me generally have lower hourly billing rates. 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.

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[3] List all specific exclusions, if any (e.g., matters being handled by other counsel; matters that clients have decided not to pursue; matters that clients will handle themselves; and matters being handled by accountants).

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

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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 legal 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.

[Percentage Fee]

As agreed, our legal services for the work described in paragraphs 2(a) through (___) above will be provided for a fee equal to _____ percent (___%) of the gross estate as finally determined for federal [or, if none, state] estate tax purposes.

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]

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

9. **Simultaneous Representation**.[6] 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

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[5] Include such a provision if appropriate. In many cases the clients will not have access to estate funds at this point to pay a retainer.

[6] Address all known conflicts and describe any specific conflicts. For example: "As we have discussed, we represent _____ in unrelated matters and, although we do not believe that the other representation will interfere with our ability to represent [both of] you, this other work may create a conflict of interest. This Letter confirms your informed consent to waiver of any such conflict. Your execution of this Letter will confirm your waiver and understanding of the potential conflict."

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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 of you, 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 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 dating and 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.

In the interim, however, 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.

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Again, much as we are not pleased with what occurred to bring this about, we are 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 these provisions of this Letter and of the Terms, including, but not limited to, all disclosures regarding conflicts of interest, and hereby waives any conflict or potential conflict of interest as set forth therein.

_____ _____, 20____
[Client Name]

_____ _____, 20____
[Client Name]

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