
Interactive Retainer Letter

General Notes on Retainer Agreements (Non-Contingency)

Retainer letters are recommended practice in Alberta for non-contingency retainers. The Code of Conduct makes reference to retainer letters in a number of places, specifically:

The duty of competence – Rule 3.1

The duty to keep clients informed – Rule 3.2

The duty to provide fee information – Rule 3.6-1

The requirement that limited scope retainers be in writing – Rule 3.2-2

If you are going to be retained on a contingency basis, you must comply with provisions of the Code of Conduct and the Rules of Court. Do not use this form of retainer letter for contingency fee matters.

Various modules in the Small Firm Practice Course contemplate putting specific information into retainer letters. There is no one-size-fits-all model for retainer letters. The clauses set out below are examples of basic provisions that form a retainer letter. Do not blindly cut and paste a retainer letter as it sets out important details of the relationship between you and your client and you will have to live with what it says.

Using this tool

A retainer letter contains information you want to communicate to your client. You may want to create a “bare bones” retainer letter and supplement it with specific information depending on the type of retainer—remember that it is your best opportunity to disclose (and prove that you disclosed) key information to your client.

If it is too long, your client may have difficulty absorbing all of the information so you want to think carefully about what you need the client to understand. However, do not sacrifice content solely because of length. You can break the letter into sections with distinct headings to make it easier to read.

Regardless of length, you should review the retainer letter with your client. It is a contract between you and your client and the client must understand it.

The bold and underlined words and phrases are titled sections that you can use in your retainer letter to make it easier for your clients to find things. The italicized words and phrases are instructions and/or considerations for your retainer letter. The words and phrases in regular font below are some sample clauses to consider when building your basic retainer letter. Please supplement it with what you decide is important for your own retainer letter as you work through the modules.

Letter

Open your letter professionally—it is your client’s first chance to see how you write but you also want to be friendly and approachable. There is no standard way of opening a retainer letter. It may depend on the history of your relationship with the client or it may acknowledge matters arising from your initial meeting. Write something that is genuine under the circumstances. If you call the client by his or her first name, then write “Dear Jane” rather than “Dear Ms. Doe”.

SERVICES

This is where you outline what you are retained to do.

You have asked us, and we have agreed, to act for you in the matter described below. On [date], we [met/spoke] to discuss the scope of our firm’s intended representation. We covered this subject in some detail and considered the nature of our fee arrangement. The purpose of this letter is to summarize and confirm the terms of your engagement of our firm.

You retain our firm to represent you in connection with [description of matter].

When appropriate, consider outlining the main steps involved

We anticipate that our representation will involve taking the following steps on your behalf:

- 1....
- 2...
- 3...

Clarify that you are not retained to do anything else if this is a specific matter. You would not use this type of language in a general matters file where you give advice on a variety of matters from time to time.

At this time, we have not been retained to represent you generally or in connection with any other matter.

Where the client may do some things on their own or has other legal matters that you are aware of

We will not be performing the following services:

- 1....
- 2...
- 3...

We also note that you have agreed to do the following tasks:

- 1.....
- 2.....
- 3.....

You may want to outline what the client's expected outcome is and preferred timeframe.

Your desired outcome and time frame for resolution of this matter are:

We will work with you towards your desired outcome. However, all legal actions are subject to many possible variations such as the demeanor and recollection of witnesses, the availability of substantiating documents and other evidence, and the evidence marshalled by the other side—all of which affect the decision of a judge or jury. Accordingly, we cannot guarantee that your desired result will be achieved.

Note that this sample paragraph is focused on litigation and may not fit with your specific representation. What do you need to tell this client?

Will you be the only person in your office working on the file? Explain to the client who else may be involved.

We expect that most of the work will be performed or supervised by me (say whether you are a partner or an associate) but I will be assisted by [name], an [associate/articling student] in this firm. However, we reserve the right to assign other lawyers in our firm to perform legal services if in our judgment that becomes necessary or advisable.

If you are going to be using non-lawyer staff, you can introduce them here and explain their roles.

If you have a formal client communication policy you may want to include it here. For instance if you only return telephone calls or email messages at specific times of the business day set that out clearly in your letter to avoid disgruntled clients later.

Our firm strives to effectively and efficiently provide communication to you on a regular basis. In addition to monthly status reports, please note we return voice messages...[within 3 hours, by the end of business day, or between the hours of 11:30 and noon and again at 4:00- 4:30] Emails will be read and dealt with at the end of each day.

If you have a document delivery policy, you may want to set that out as well.

To keep you informed on the progress of your file, we will deliver copies of all letters received and sent on your behalf. At the end of the file, or sooner, if required, we will provide electronic copies of all documents in a PDF format. Editable document formats will not be provided.

FEES

Explain how fees will be calculated and then bill in accordance with what you said.

If you are billing on an hourly basis, consider whether this is appropriate:

Our fee will be based principally on the time spent by us on your behalf. Records of all time will be kept and accounts will then be prepared and sent to you [monthly/semi-monthly/weekly etc.]
What will your billing cycle be?

Our hourly rates range from \$... for [articling students] to \$ for [my associate] and \$ for me.

While we expect that our fee will be calculated on the basis of our regular hourly rates, your legal fee will depend on factors including: the time and effort required and spent on your behalf, the complexity of the matter, the urgency of attention to the matter, the results obtained and any other special circumstances affecting your matter.

Or are you billing based on an estimate:

Based on our consideration of the materials and information you have provided to us, and assuming that there are no further developments or information which would cause us to vary our preliminary opinion and that nothing out of the ordinary is encountered in the course of completing this matter, we estimate that our fee, excluding disbursements and taxes, will be approximately \$000.00. We are not guaranteeing that we can accomplish the work for that sum, but are representing to you that in our judgment that amount seems to be reasonable under the circumstances as presented to us.

Or is there a firm price, as in a residential real estate conveyance?

The legal fee for this transaction based on the main steps set out above is \$000.00, excluding disbursements, other fees and taxes. In the event additional steps are required to complete the matter they will be billed at our professional hourly rates which are \$000.00/hr for Lawyer “A”, \$000.00/hr for Lawyer “B” and \$000.00 for paralegal services. In any event we will utilize the most cost effective professional to complete the work.

EXPENSES AND ALLOCATED CHARGES (CALLED “DISBURSEMENTS”)

Almost all lawyers charge disbursements to their clients but the types of disbursement can vary with the legal matter. Here is a sample paragraph—does it adequately cover the types of disbursements you typically incur?

You will also be responsible for reimbursing us for expenses (called disbursements) we incur on your behalf as well as office charges allocated to your file. These include long distance calls, faxes, postage, deliveries, travel expenses, photocopying, government filing, search charges, and the fees of agents who conduct investigations, searches and registrations and all other reasonable out-of-pocket expenses and charges. We do not charge for staff overtime on evenings or weekends in order to meet deadlines.

Consider what types of disbursements are actually associated with the matter. If you are acting for a lender in a commercial loan transaction, it is unlikely that you will be hiring investigators, for example. If you know that there are standard large disbursements that can be anticipated, tell the client about them. For example, highlight that your real estate vendor client may have to provide a survey or real property report and an estimate of the cost.

INTEREST

If you intend to charge interest on late payments, you need to explain it to your clients. Here is a sample basic provision:

Payment is due on all of our accounts when rendered. If any account is not paid within 30 days, interest will be charged on the outstanding balance at a rate of [rate]% per annum from the date of the account until paid.

Talk to your accountant about how to calculate compound interest and make sure that you explain the way you are calculating and charging interest.

If your retainer letter says that you will bill monthly, then do it. Clients who are surprised by a big bill after a few months can be unhappy about how the bill ran up without their knowledge.

FINANCIAL RETAINER

If you are going to hold a retainer in your trust account, you need to explain this and that you will be deducting your fees (and disbursements and taxes) from this retainer, as well as your procedure for replenishing the retainer. You should also explain if you are holding the retainer in trust as security for your account while your billed accounts are due monthly.

Here is a sample paragraph:

Before we begin working on your behalf, we require a financial retainer in the amount of \$[amount]. The financial retainer will be placed in our trust account and will serve as a source of payment for all or part of our account or accounts when rendered. You will be asked to replenish the financial retainer from time to time. Any unused portion will be returned to you upon completion or termination of our services. Financial retainers will only be transferred from our trust account when accounts have been rendered and sent to you.

DISPUTE RESOLUTION AND TERMINATION OF SERVICES

While it feels odd to talk about ending the relationship when you are just being retained, experience shows that it is beneficial to be upfront about how both you and the client can terminate the relationship. The wording below is generic—please consider whether there are particular circumstances that you should include as examples of reasons for termination.

We hope that we will have an enjoyable and productive working relationship. If you are not satisfied with the work being performed for you please speak to us immediately. In the event the lawyer responsible for your file is unable to resolve the issue, it will be referred to a senior member of the firm for assistance and advice. In the event it is not possible to resolve your concern, you may terminate our services by giving us written notice.

Subject to our obligation to you to maintain proper standards of professional conduct, we reserve the right to terminate our services to you for good reasons, such as a serious loss of confidence between us. We can also terminate our services if you do not pay accounts for fees or disbursements or to replenish our retainer by providing reasonable notice to you.

Note that if you are acting in a criminal case, Rule 3.7-4 of the Code provides additional guidance for withdrawals.

If you terminate our services or we withdraw, you would only have to pay our fees and expenses up until the time we stopped acting for you.

If this is what you put in your retainer letter, then abide by it. Think about how you will handle transition of the file to successor counsel and consider whether you want to say anything about this.

AGREEMENT

You should have a closing paragraph that asks the client to return a signed copy of the retainer letter indicating agreement. You should also review the retainer letter with the client, give the client time to read the letter and ensure that they understand it. You may want to recommend that they get legal advice, depending on the circumstances.

You may want to have this agreement reviewed by another lawyer to ensure that you understand your rights and obligation.

If you agree that we shall proceed on the basis described above, please sign the enclosed copy of this letter in the space provided and return it to us, together with a retainer in the sum of \$[amount] in the enclosed self-addressed stamped envelope. If you decide that you do not want us to proceed on your behalf in this matter, please inform us promptly.

Yours truly,

Law firm

Agreed to this ___ day of ___, 201__

Remember that the Rules of Court (Rule 10.6(1) and Rule 10.9) render void any provision of a retainer letter that purports to relieve a lawyer from liability or that purports to provide that an action, application, or proceeding cannot be abandoned, discontinued or settled without the lawyer's consent or that purports to limit the client's right to have the retainer agreement or subsequent accounts reviewed.

If you are drafting a retainer agreement in respect of a contingency fee matter, ensure that you comply with Rule 10.7 of the Rules of Court.