

Example Appraiser Expert Witness Engagement Letter Appraisal Consultant/Potential Expert Witness Designation

General Notes:

The sample engagement agreement for litigation assignments has been titled as an “engagement letter” and uses a letter format because that is the conventional practice followed by most law firms and litigation consults/experts. Although it is titled as a letter, however, it is no less of a written contract when executed by both parties.

The engagement letter is designed to be as brief as feasible, while still covering the most important elements of an agreement for these kinds of services. It is intended for litigation-specific assignments as either a consulting expert or testifying witness, not general appraisal work.

Basic/formatting edits:

- √ Letterhead. Remove the heading at the top and replace with letterhead of your own design (printed or created in your word processor), indicating your and/or your firm’s name, address and contact information.
- √ Date. Date the letter.
- √ Recipient. Insert the recipient information for the attorney/law firm (or other party) engaging you. For most litigation consulting or testimonial assignments, this will be an attorney who is retaining you for the purpose of the attorney’s representation of a party-litigant. A primary reason for this is that when the attorney engages a consultant (as opposed to party in litigation), the communications and work by the consultant will likely be protected from disclosure by the attorney-work product doctrine. There may be some matters, however, where you may be retained directly by a party, such as in marital dissolutions or tax litigation or when the party is not represented by an attorney.
- √ Matter. Identify the “matter” for which you are being retained on the “re” line. A shortened case name (*e.g., Jones v. Smith*) should generally be sufficient.
- √ Salutation. Insert the attorney’s name (or party’s name, if applicable) in the salutation.

Editing “I/we” and “my/our”:

The sample letter uses alternative phrasing such as “I/we” and “my/our.” These should be changed throughout the text to fit the context of your operation. If you work as a sole proprietor, you may want to use the singular “I” and “my” in the text. If you work within a firm of multiple appraisers or are working on the matter with other colleagues, “we” and “our” may be more appropriate.

[Date]

[Attorney Name]

[Law Firm]
[Address]

Re:
[Name of matter or case]

Dear [Attorney]:

I/We are pleased to be retained by you as consulting experts in connection with your representation of _____ in the above matter. I/We also understand that I/we may be asked to provide expert witness services and testimony in the matter should it become necessary.

This engagement letter sets forth the terms of my/our services. If these arrangements are acceptable, please sign the enclosed copy of this letter, have your client sign it as well, and return it to me/us at your earliest opportunity along with the \$_____ retainer mentioned below.

Independent Nature of Services. My/our services will be delivered in a manner that is independent, impartial and objective. I/We do not warrant the outcome of this matter, and neither the amount nor payment of my/our fees is not contingent on any result.

Fees and Expenses. My/Our fees will be based on the actual hours expended at my/our standard rates, plus out-of-pocket expenses.

Current hourly rates are:
[Name(s)] – \$xxx per hour
Analyst – \$xx to \$ xxx per hour

My/Our billing will include all time spent, including without limitation, telephone consultations, emails, interviews, depositions, document review, research, report drafting, travel and court appearances (including time waiting to testify). My/Our rates are subject to change periodically. When balances are owed, I/we will provide invoices on a monthly basis to you for delivery to your client. My/Our invoices will include my/our out-of-pocket expenses such as research costs, delivery services, postage, telephone, travel, and photocopying. Invoiced amounts are due and payable upon receipt of the invoice. Any invoices which are past due x days or more are subject to a service charge of x percent (x%) per annum.

Responsibility for Payment. I/we understand you are retaining my/our services in connection with the representation of your client. While we will be issuing our invoices directly to you for delivery to your client, your client shall be responsible for payment in accordance with the terms stated in this letter and has acknowledged that responsibility by signing below. However, in the event that your client fails to pay for our fees and expenses on a timely basis, your firm agrees to pay the balance owed.

[Note: The above provision makes both the attorney and the attorney's client responsible for payment of the appraiser expert. Many attorneys resist committing themselves to

payment of their experts. This issue needs to be considered and negotiated between the attorney and the prospective expert with the wording then adjusted accordingly.]

Retainer. It is my/our policy to collect a retainer and receive the fully executed engagement letter before I/we begin providing services. The retainer for this matter shall be \$_____. This retainer will be applied to my/our final invoice for time and expenses, with any unused amount refunded to the party who paid the retainer unless that party directs, in writing, that the refund be paid to a different party.

[Note: When an expert has a trusted relationship with the attorney or with the party represented by the attorney, the expert might not require an upfront retainer. In many circumstances, however, it is common for an expert to require a retainer before commencement of work to assure payment. The example provision above requires a refundable retainer and makes it applicable to the to final invoice, with any unused amount refunded. The expert may want to adjust this wording to suit their preferences or a client request.]

Right to Withhold Services and/or Withdraw. Without liability on my/our part and without regard to the stage of litigation, I/we shall have the right to withhold providing services (including delivering any report or providing testimony) or withdraw completely, at my/our sole option, if any of my/our invoices are not timely paid or if I/we determine that an irreconcilable conflict has arisen.

Reliance on Expert Reports: In the event that I/we prepare any expert reports as part of this engagement, the use of any such expert reports shall be limited to litigation of the above referenced matter. The expert reports may not be used or relied on, in whole or in part, for any other purposes.

Valuation Dates: If the development of any appraisal opinions are needed in this engagement, your firm shall have responsibility for determining and advising me/us of the date(s) of value that are legally pertinent to the matter.

Confidentiality and Recordkeeping. I/We will maintain the confidentiality of all information and documentation received during my/our work and will abide by all court orders and applicable professional appraisal standards regarding the disclosure of information relating to this matter.

Other Clients and Matters. The value of my/our services to you and your client is based, in part, on my/our reputation for independent professionalism and integrity. It is possible that I/we may be engaged by other law firms representing parties adverse to you or your client in other matters in the future. Your engagement of my/our services is expressly conditioned on your agreement not to use the fact of my/our current or previous engagement by other counsel in other matters as a means to enhance or diminish the credibility of my/our opinions or testimony in this matter or in any other matter.

Subpoenas and Testimony. In the event that my/our firm or any of its owners, appraisers or employees is required by subpoena or other legal process to provide testimony or produce

documents relating to my/our services or work product in connection with this engagement, whether as an expert or percipient witness, and whether in court, deposition, arbitration or in any other proceeding, and regardless of the identity of the party requiring such testimony or production of documents, I/we shall be entitled to payment under this engagement for the time incurred in connection with preparation for and provision of such testimony and/or documents at my/our regular hourly rates in effect at that time for expert/testimonial services and to reimbursement for my/our reasonable actual expenses. The foregoing shall not apply to the extent that a third party pays my/our fees or expenses.

[Consider Inclusion of the following Provision]

Hold Harmless and Limitation of Liability. To assure that my/our services in this matter can be rendered freely and independently, your client agrees to indemnify, defend and hold harmless my/our firm, its owners, appraisers and employees from and against any and all liabilities, losses, costs and expenses relating to my/our consulting or testimonial services under this engagement. The foregoing shall not apply to any matter resulting from my/our gross negligence or willful misconduct. In any case, however, the total collective liability of my/our firm, its owners, appraisers and employees for all claims of any kind arising out of, relating to or connected with this engagement shall be limited to the total fees paid to me/us under this engagement.

Sincerely,

[Name]
[Firm]

Approved as to engagement:

By: _____
[Attorney Name]
[Firm Name]
Date: _____

Approved as to engagement terms and fees by [insert name of Attorney's client]:

By: _____
Name: _____
Title: _____
Company: _____
Date: _____