

Optional Provisions to Consider Including in a Basic Engagement Letter

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Meet Mark:

Mark Bassingthwaighte, Esq., serves as Risk Manager at [ALPS](#), a leading provider of insurance and risk management solutions for law firms. Since joining ALPS in 1998, Mark has worked with more than 1200 law firms nationwide, helping attorneys identify vulnerabilities, strengthen firm operations, and reduce professional liability risks.

He has presented over 700 continuing legal education (CLE) seminars across the United States and written extensively on the topics of risk management, legal ethics, and cyber security.

A trusted voice in the legal community, Mark is a member of the State Bar of Montana and the American Bar Association and holds a J.D. from Drake University Law School. His mission is to help attorneys build safer, more resilient practices in a rapidly evolving legal environment.



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1. Social Media and Online Activity Warning:

During the course of our representation, we strongly encourage you to limit your use of social media platforms (such as Facebook, Instagram, X/Twitter, TikTok, Snapchat, LinkedIn, Reddit, blogs, discussion boards, dating apps, and similar services). Content posted online is rarely private, may be discoverable in litigation, and can be used in ways that may harm your legal interests even if later deleted.

Accordingly, unless we specifically advise otherwise, you should avoid posting about the facts, parties, claims, injuries, finances, travel, relationships, employment, or any other subject that could relate directly or indirectly to your matter. You should also avoid asking others to post about you or your matter, tagging you, or sharing photos, videos, location data, or comments concerning you.

2. Do Not Delete or Alter Online Content Warning:

Do **not** delete, alter, hide, deactivate, or destroy existing social media content, messages, accounts, texts, emails, photographs, videos, or other electronically stored information that may be relevant to your matter. Preservation of potentially relevant evidence is important, and improper deletion or alteration may result in sanctions, adverse inferences, or other legal consequences. If you have concerns about existing content, discuss them with us before taking any action.

3. Use of Devices and Email Accounts Warning:

To protect confidentiality, do not communicate with us using:

- any device owned or monitored by your employer,
- any shared or publicly accessible computer or device, or
- any email account or text messaging app that others can access.

You should communicate with us only through a private, password-protected account or app that you access exclusively from a secure personal device. Employer-provided devices and accounts are often subject to monitoring, and communications sent through them may not be considered private.



4. Succession Planning/Backup Attorney Notice:

While I strive to deliver excellent legal services to all of my clients, I also have an ethical obligation to protect your interests during any extended absences, such as a vacation, or in the event of my unexpected death or disability. To accomplish this, I have named [Insert name] as my backup attorney who will be available during any extended absences or will step in to assist in the winding up of my practice should that ever prove necessary. I will personally provide you advance notice of any planned absences, and my office staff or backup attorney will contact you with information on how to proceed should any unexpected event ever occur.

5. Fee Dispute Resolution Notice:

We work hard to avoid misunderstandings about fees. However, if a fee dispute does arise, you agree to resolve that dispute through binding arbitration with [Insert name of local bar's fee dispute resolution program].

By signing this agreement, you acknowledge that you could otherwise bring a fee dispute in court, but you are choosing to waive that option and use binding arbitration instead. A binding arbitration decision, whether in your favor or ours, is final, not subject to appeal, and has the same force and effect as a court judgment.

Arbitrations are conducted in [List locality]. The bar association selects the arbitration panel from trained attorney and public volunteers who have agreed to hear fee disputes. There is no cost for the panelists.

If you have any questions or concerns about agreeing to binding arbitration for fee disputes, we encourage you to seek independent legal advice before signing.

6. Sample Multiple Client Conflict Waiver Notice:

You have asked us to represent you, [Client A] and [Client B], jointly in connection with [Full description of the scope of representation].

Based on the information currently available, we have not identified a conflict of interest that would prevent us from undertaking this joint representation. However, because you are separate clients, ethical rules require us to explain the implications of joint representation and obtain your informed consent.



1. Nature of Joint Representation

Although your interests are presently aligned, differences may arise during the course of our representation. By agreeing to joint representation, you acknowledge that:

- We will represent both of you equally and cannot advocate for one of you against the other in this matter,
- We cannot provide advice to one of you that is adverse to the interests of the other, and
- If a disagreement arises between you, our ability to continue representing both of you may be limited or eliminated.

2. Potential Conflicts

Potential conflicts that could arise include, but are not limited to:

[Describe, with specificity, reasonably foreseeable areas of divergence and risk]

These risks may affect our ability to recommend or pursue certain courses of action on behalf of one or both of you.

3. Confidentiality and Information Sharing

In a joint representation, information provided by either of you that is relevant to the representation will generally be shared with the other. Accordingly:

- We will not keep relevant information from one client that is material to the representation of the other.
- Communications between you and us remain privileged as to third parties, but not as between the two of you.

If either of you wish to maintain separate confidences or receive independent advice, you should retain separate counsel.

4. Withdrawal if Conflicts Arise

It is possible that circumstances may arise in which our continued joint representation would adversely affect one of you. Should such a situation occur, we would be required to withdraw from representing both of you, and each of you would need to retain separate, independent counsel. In light of this possibility, we recommend that you consider obtaining independent legal advice to determine whether consenting to joint representation is in your best interests.



7. Deepfake and Digital Evidence Risk Notice

1. Authenticity of Digital Evidence.

Modern technology allows audio, video, image, and document files to be altered or fabricated in ways that can be extremely difficult to detect. These “deepfakes” and other forms of digital manipulation can create false or misleading evidence. We will take reasonable steps to assess the authenticity of digital materials relevant to your matter, but no law firm can guarantee that all such materials, whether provided by you, third parties, or opposing counsel, are genuine or unaltered.

2. Client Responsibility for Preserving and Authenticating Evidence.

You agree to cooperate with us in preserving original evidence and documenting its source and chain of custody. This includes maintaining original files (including metadata) for any photos, videos, documents, or electronic communications you provide to us. If questions later arise regarding the authenticity of your materials, additional work, such as obtaining expert analysis, affidavits, or forensic review, may be necessary to verify that the evidence has not been manipulated.

3. Costs of Challenging or Authenticating Evidence.

In the event that opposing parties submit potentially fabricated or altered evidence, or if the authenticity of your evidence is challenged, we may recommend retaining qualified forensic or technical experts to analyze, verify, or refute such materials. The costs associated with such expert services, as well as related discovery, motion practice, or evidentiary hearings, are not included in our standard fees and will be billed as additional expenses. We will consult with you before incurring such costs and will make reasonable efforts to provide estimates when possible.

4. Limitations of the Firm’s Role.

We are not digital forensics experts and cannot independently verify the authenticity of all digital evidence. Our role is to identify potential authenticity issues, advise you regarding legal implications, and assist in obtaining expert assistance where warranted. The ultimate responsibility for the integrity of evidence provided to us rests with you.

5. Evolving Risks.



The technologies enabling digital manipulation are advancing rapidly. We may periodically update our practices or recommendations to address new risks as they arise. You acknowledge that emerging “deepfake” technologies may impact litigation strategy, discovery costs, and evidentiary decisions, and that these risks are inherent in the current digital environment.

8. Anti-Fraud / Payment Instructions and Cybersecurity Notice

Fraudsters frequently target law firms and clients with fake emails, spoofed messages, and altered payment instructions. For your protection, please treat any message involving money, wiring instructions, account changes, or urgent requests for confidential information with caution.

Our payment instructions **will not change** during your matter unless we confirm the change with you **in writing and by phone**. If you receive any message suggesting different instructions, do not act on it. Instead, call our office using a phone number you already know or have independently verified.

Before sending any wire transfer or other payment, you agree to confirm the instructions verbally with us or through another secure method we designate. We may also require identity verification before releasing funds.

We are not responsible for losses caused by third-party fraud, spoofing, or compromised client accounts or devices if these verification steps are not followed, except where such responsibility cannot be limited by law.

Please notify us immediately if your contact information changes, your email or device is compromised, or you receive any suspicious communication relating to your matter.

9. Use of Artificial Intelligence Tools and Non-Attorney Legal Information Notice:

Do not rely on AI-generated legal content for decisions about your matter. Generative AI tools, including chatbots, legal document generators, and AI assistants, can produce content that appears authoritative but may be inaccurate, incomplete, outdated, or entirely fabricated. These systems cannot provide legal advice and do not account for your specific circumstances, jurisdiction, or goals.



Risks of using AI tools for legal matters include:

- **Hallucinated content** — AI systems may generate fictitious case citations, statutes, or legal principles that do not exist
- **Jurisdictional errors** — Legal rules vary significantly by state, county, and court; AI tools frequently apply incorrect or inapplicable law
- **Outdated information** — AI training data has cut off dates and may not reflect recent legislative changes, court decisions, or procedural updates
- **Missing context** — These tools cannot assess the strategic, factual, or risk considerations unique to your situation
- **Confidentiality concerns** — Entering details about your matter into AI platforms may waive attorney-client privilege or expose sensitive information, depending on the platform's data retention and usage policies

If you use AI tools to research legal issues, draft documents, or prepare materials related to your matter, please disclose this to us. We need to review any AI-generated content before it is filed, sent, or relied upon, as it may contain errors that could harm your case or create legal liability.

Our commitment to you: All legal advice, strategy, and work product from this firm will come directly from our attorneys, who are responsible for understanding your matter and exercising professional judgment on your behalf. If you encounter information, whether from AI systems, websites, or other non-attorney sources, that seems relevant to your case, please share it with us for evaluation rather than acting on it independently.

We are not responsible for consequences arising from:

- Your reliance on AI-generated legal content or automated legal tools,
- Decisions made based on non-attorney sources of legal information, and
- Confidentiality issues resulting from your use of third-party AI platforms.