**Form 2-2: Joint Retainer Agreement**

[[Textbox Start]]

For a married couple, potential conflicts and fees

[[Textbox End]]

**Joint Retainer Agreement**[[1]](#footnote-1)

Dear Mr. and Mrs. (*insert name*):

This confirms our discussion earlier this week in which it was agreed that we would prepare Wills for both of you and advise you generally regarding your joint estate plan. We take this opportunity also to confirm the understanding we reached on the points discussed below.

**Legal Conflicts**

Spouses can have differing, and sometimes sharply conflicting, interests and objectives regarding their estate plan. For example, they may have different views on how property should pass after the death of one or both of them. Further, we may recommend that family assets and property holdings be restructured to take advantage of available tax benefits. Among other things, restructuring may involve gifts from one spouse to the other, and the spouses may disagree about the gifting and restructuring in general. These are just two examples of the many potential conflicts that sometimes arise in the estate planning process.

If each of you had your own separate attorney, you would each have an advocate for your position, and you would each receive totally independent and confidential advice. All information that you gave to your separate attorney would be confidential, and none of that information could be disclosed to your spouse without your consent.

That is not the case when one firm advises both of you jointly. We cannot be an advocate for one of you against the other if we represent both of you. Information that either of you give to us relating to your Will and your general estate plan cannot, and will not, be kept by us from your spouse. You have asked us to advise you jointly, so our effort will be to assist you in developing a coordinated overall estate plan and to encourage the resolution of any differences of opinion or conflicting interests in an equitable and logical manner. As to those matters in which your individual interests may differ, we will attempt to explain to both of you the interests of each spouse and the effect on each spouse of a particular course of action.

In the interests of efficiency, you may choose to communicate with us primarily through one of you, in which event we will provide any necessary explanation of the issues to that individual. Of course, we will respond at any time to any questions put to us by either of you.

By signing this letter, each of you confirms that you have requested and consented to our joint representation of both of you in connection with the preparation of your Wills and your general estate plan, and each of you agrees that communications and information we receive from either of you that is relevant to your Wills and estate plan will not be kept confidential from your spouse.

If at any time during the estate planning process either of you wishes to retain separate counsel, the one desiring to retain separate counsel may terminate our representation. In that event we will be free to continue to represent the other spouse, except that, if one of you retained separate counsel because of a serious disagreement or conflict of interest in connection with your estate plan, we will not continue to represent the other spouse without the consent of the one who retained separate counsel. In general, we will be unable to continue to represent either one of you without the consent of the other in this or any substantially related matter in which your interests may be adverse. If we conclude that a serious or potentially serious conflict of interest between the two of you has developed or is likely to develop and that we should therefore not continue to represent either one of you, we will promptly notify both of you that we can no longer continue to represent either one of you. In that event we will not be obliged to disclose to either of you the precise reason or reasons why we have concluded that we should discontinue our representation.

1. (*insert Attorney name*) is the attorney who will be handling the majority of this matter, and the attorney’s
2. fees will be based on a flat fee of $ (*insert amount*) or the standard hourly rate of

$ (*insert amount*). Other staff members may work on this matter and their hourly rates are as follows:

Legal Assistant $ \_\_\_\_\_\_ / hour

Associate Attorney $ \_\_\_\_\_\_ / hour

You will be notified prior to any rate increase. All time expended on your behalf, including meetings and telephone conferences, will be charged at this rate. Time for travel, if under thirty (30) minutes in one direction, will not be charged; however, mileage reimbursement at $\_\_\_./mile will be charged. Any travel time over thirty (30) minutes wi1l be charged at the regular hourly rate. Your invoice will show all time charges in increments of tenths of an hour.

2. Expenses for photocopying lengthy documents will be charged at $0.10 per page, and postage of $0.80 or more will be charged. Faxing and long-distance telephone calls will be absorbed by (*insert firm's name*) Law Office; however, you will be responsible for the payment of other charges and expenses incurred in providing legal representation. This may include courier or overnight delivery fees and certified mail delivery.

3. You will receive a monthly invoice for fees and expenses. We ask that you pay each invoice within thirty days of its date or make arrangements for monthly payments if necessary. However, if your work is done on a flat-fee arrangement, payment is not required until the work is complete. The costs of any legal proceedings necessary to affect collection of sums due, including, but not limited to, reasonable attorney's fees, will be your responsibility.

After your new Wills are signed, unless you and this firm otherwise explicitly agree, we shall have no obligation to advise you of subsequent changes in the federal estate tax laws or other matters of fact or law that may affect your estate plan, and thereupon and thereafter you will not be considered to be an ongoing client of this firm. Of course, after your Wills have been signed, we would be pleased to respond at any time thereafter to your request that we review your estate plan and/or the then applicable estate tax provisions and other relevant laws for the purpose of determining whether we would suggest any changes. Indeed, we strongly recommend that you consult us, or some other attorney of your choice, for that purpose at least once every three years.

I encourage you to write or call if you would like to have clarification of any of the terms of this letter. Assuming the foregoing accurately states the general understanding between us that we discussed at the conference earlier this week, please indicate your agreement by promptly signing and returning a copy of this letter to me. I am enclosing two additional copies, one for each of you.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*insert firm's name*) Law Office

By(*insert name of managing partner*)

We hereby agree to the terms and understanding of this letter.

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(*insert name of Spouse)* date

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(*insert name of Spouse*) date

1. Adapted from Maryland Attorney Fee Agreements (MlCPEL1998).

   [↑](#footnote-ref-1)