## REPORT ON ENGAGEMENT LETTERS IN TRANSACTIONAL PRACTICE

### **TABLE OF CONTENTS**

**INTRODUCTION** 1

#### I. THE BASIC ENGAGEMENT LETTER 4

#### SAMPLE ENGAGEMENT LETTER (REAL ESTATE DEVELOPMENT PROJECT) 5

- 1. Acceptance of Engagement 6
- 2. Identification of the Client 6
- 3. Identification of the Matter 6
- 4. Scope of the Engagement
- 5. Fees and Billing
- 6. Conflicts of Interest 8
- 7. Termination of Engagement 8

#### **II. SAMPLE ENGAGEMENT LETTER--ALTERNATIVE PROVISIONS** 11

7

7

1.	Acceptance of Engagement 11 Opening Paragraph Stating Execution Requirement Passive Acknowledgment of Engagement Terms 11
2.	Identification of the Client11Single Client Corporation12Single Client Association12Multiple Clients 1212
3.	Identification of the Matter 13 Generic Development Project 13
4.	Scope of the Engagement14Single Client Transactional Representation14Single ClientRegular Representation14Single ClientSpecial Representation14
5.	Fees and Billing 15 Hourly RateSample 1 15 Hourly RateSample 2 15 Variation from Hourly Rate 15 Result FactorSample 1 16 Result Factor Sample 2 16 Fixed Fee 16

Page

11

RetainerSample 118RetainerSample 218RetainerSample 319RetainerSample 419	
RetainerNonrefundable 19	
6. Conflicts of Interest 19	
Current ConflictsSample 1 19	
Current ConflictsSample 2 20	
Current ConflictsSample 3 20	
Prospective Conflict Admonition 21	
Disclosure of Multiple Representation 22	
Association 23	
Simultaneous Representation of Partnership and of Individual Partner 2	23
Preparation of Shareholder Agreement 24	
Possible Future Conflict with Client of Firm 24	
Law Firms as Co-counsel 25	
Double Imputation 25	
Assurances Regarding Protection and Nontransmittal of	
Confidential Information 25	
7. Termination of Engagement 26	
General Termination Provision 26	
Automatic TerminationInactivity 26	
Termination by Discharge 26	
Termination by Withdrawal 27	

# **III. REPORTER'S NOTES AND ADDITIONAL COMMENTARY** 28

1. Acceptance of Engagement 28
2. Identification of the Client 28
3. Identification of the Matter 29
4. Scope of the Engagement 30
5. Fees and Billing 31
Reporter's NotesFees and Billing 32
a. Reasonableness of Fees 32
b. Disclosure of Fee Arrangement in Writing 35
c. Financial Arrangements between Lawyers and Clients 35
6. Conflicts of Interest 37
A. In General 37
Reporter's NotesConflicts of Interest, In General 38
B. Client Consent to Conflicts of Interest 40
Reporter's NotesClient Consent to Conflicts of Interest 41
C. Prospective Waivers of Conflicts of Interest 42
Reporter's NotesProspective Waivers of Conflicts 42
D. Conflicts of Interest with Former Clients 44
Reporter's NotesConflicts of Interest with Former Client
1. Rationale for Standard 69 46
2. "Substantially Related" Matters 47
E. Conflict of Interest in Representing an Organization or

45

Multiple Parties Organizing a Business Entity 48 Reporter's Notes--Organizational Representation 50 1. Joint Representation 51 2. The Corporate Client 51 F. Imputation of Conflicts of Interests 53 Reporter's Notes - Imputation of Conflicts of Interest 55 1. **Ordinary Imputation** 56 a. Georgia Law 56 b. ALI Restatement 58 2. Double Imputation 60 a. Georgia Law 60 b. ABA Standards, etc. 62 c. Conclusion 63 3. The "Chinese Wall" 64 7. Termination of Engagement 65 Reporter's Notes--Termination 66

#### APPENDIX

Appendix A Recommended Changes in Georgia's Ethical Standards and ConsiderationsA-1Appendix B BibliographyB-1