

# LAW OFFICES OF MARK D. SVEJDA

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

6909 EAST GREENWAY PARKWAY  
SUITE 245  
SCOTTSDALE, ARIZONA 85260

Mark D. Svejda

June 29, 2006

Telephone (480) 991-9561

Facsimile (480) 991-9563

RE: LITIGATION FEE AGREEMENT

Dear

1. Clients Represented. It is understood that our Clients for the purpose of this representation are \_\_\_\_\_, husband and wife.

2. Representation. Our representation is effective as of the date we first begin providing services to you as a result of the requested representation. We will undertake your representation and work with you to achieve the desired objectives by using our best judgment and skill in representing you. You understand that we cannot and have not made any guarantee regarding the outcome of the matter.

3. Fees. We anticipate billing for professional services in accordance with Rule 1.5 of the Rules of Professional Conduct promulgated by the Arizona Supreme Court, primarily based upon the schedule of hourly rates established by the Firm for the lawyers and other members of the professional staff of the Firm. In order to help us determine the value of services that we render, our attorneys, paralegals and document clerks maintain written records of the actual time they spend working for Clients. The hourly rates are based on years of experience, specialization in training and practice and level of professional attainment. We periodically review our hourly rates and make adjustments as necessary. The hourly rate you will be charged for time spent on this matter is \$250.00 per hour for attorney time and \$100.00 for paralegal time.

4. Costs. In addition to our fees for services, Clients will be responsible for all out-of-pocket disbursements that we incur on their behalf. Typical of such costs are travel expenses, long distance telephone calls, Federal Express, courier services and delivery charges, photocopying (at \$.10 per page), and online database retrieval charges (Lexis, Westlaw, etc.). We anticipate making advances to cover out-of-pocket costs incurred, but reserve the right to forward to Clients any larger items with the request that they pay them directly to the service providers.

5. Billings. Our statements for services rendered and costs incurred will be prepared and mailed to you during the month following the month in which services are rendered and costs advanced. We will make every effort to include our out-of-pocket disbursements in the next monthly statement. However, some disbursements are not immediately available to us and, as a result, may not appear on a statement until sometime after the charges were actually incurred. All statements are due and payable upon receipt and considered past due thirty (30) days after the statement date. The Firm reserves the right to decline to perform further services if any account is sixty (60) days or more past due.

6. Advance Deposit. It is our policy to ask clients without an established payment history with the Firm to provide us an advance deposit before commencing work. We believe that it is appropriate here and an advance deposit of \$5000.00 is requested. Except as provided herein, the advance deposit amount will be held by us in a trust account until our representation is concluded. If any monthly statement is not paid before coming past due, we will have the right, in our discretion, to apply the amount being held in trust to Clients' outstanding balance. Should that become necessary, Clients will still be responsible for any remaining balance, and we will have the right to withdraw from further representation if it remains unpaid. If we use the advance deposit to pay an outstanding statement, we reserve the right to notify Clients that we have done so, whereupon Clients will then promptly replenish the advance deposit so that at all times there is \$1000.00 on deposit. If the advance deposit is not replenished within ten (10) days, we reserve the right to terminate our representation.

7. Fee Shifting. The matter for which Clients have retained us is one in which attorneys' fees may be recovered by the prevailing party from the losing party. Although if Clients prevail, we will press a claim asking the Court to award you your fees incurred in this matter, please also understand that, if Clients lose, the other party may attempt to shift their fees to Clients. Moreover, the provisions under which a Court may shift fees generally leave that decision to the discretion of the Court to decide whether, and in what amount, to award fees.

8. Settlement. The Firm will not enter into a settlement without Clients' consent.

9. Clients' Responsibilities. Recognizing that the Firm cannot effectively represent Clients without their cooperation and assistance, Clients agree to cooperate fully with the Firm and to provide promptly all information known or available to Clients relevant to the Firm's representation, including providing information and documents requested in a timely fashion, assisting in discovery, disclosure and trial preparation; cooperating in scheduling and related matters, responding to telephone calls and correspondence in a timely manner, and informing the Firm of changes in Clients' address and telephone numbers.

10. Arizona Disclosure Rules. It is important that Clients understand how Arizona's Rules of Civil Procedure may apply to this case. Arizona's rules substantially change the litigation process that Clients may be familiar with from federal court or from other states. The purpose of the rules is to reduce the time and expense involved in civil litigation. The rules encourage early Court involvement in case management, require disclosures by the parties and contain presumptive discovery limits. For example:

- A. The rules require each party to file a detailed, verified, disclosure statement forty (40) days after the last responsive pleading. The disclosure statement must detail nine categories of information, including all facts and legal theories upon which Clients rely for any claim or defense, the identities of all persons whom Clients believe may have knowledge or information relevant to the case, and a description of all documents relevant to the subject matter of the case. The disclosure statement must be updated continuously during the litigation within thirty (30) days after new or different information is discovered.
- B. Each side is entitled to only one independent expert on an issue.
- C. Absent agreement or court order, only parties and expert witnesses may be deposed, and depositions are limited to four (4) hours in length.
- D. Deposition objections and conferences with the deponent are limited.
- E. There is a presumptive limit of forty (40) interrogatories, including subpart, for each party.
- F. There is a presumptive limit of no more than ten (10) distinct items or categories or items for requests for production.
- G. There is a procedure for mandatory settlement conferences.

There are numerous rules that give the Court the power to impose sanctions on a party or an attorney for failure to comply with these rules.

There are several aspects of the rules that have a direct impact on how we proceed with the case. The rules require Clients and their attorneys to conduct a reasonable inquiry and investigation about all matters to be revealed in the disclosure statement as described in Ariz.R.Civ.P. 26.1. We have the duty to investigate facts that are good and bad for clients. The failure of Clients or their attorneys to conduct a reasonable inquiry and investigation into these topics, and to disclose all relevant information, may subject Clients, their attorneys, or both, to sanctions. Furthermore, any evidence favorable to Clients that is not timely disclosed in accordance with Rule 26.1 cannot be used at trial.

I shall assume that you have talked or will talk with someone knowledgeable about all the facts that give rise to Clients' defenses. You or we need to talk with all the people that may have information about the case. You or we need to identify and review all documents that may be relevant to Clients' defenses or to plaintiff's claims.

As you can see, one effect of the rules is to "front-load" a lot of the legal investigation and analysis to be done in this case. Obviously, this will also "front-load" some of Clients' legal expenses. However, please keep in mind that the other side must abide by these same rules, and that a benefit

to be derived is that both sides should know relatively early on in the litigation the relative strengths and weaknesses of their cases. The rules were designed precisely for that purpose, to allow both sides to assess the whole case well in advance of trial, and to focus their resources on exchanging information and resolving the dispute, rather than waging discovery battles.

11. Document Retention. During the course of our representation to Clients, they may have occasion to provide us with documents and other materials from their files. At the end of our engagement, we will return the documents and materials to Clients in care of your office, or retain them as Clients direct. If we receive no such direction from Clients, and the documents and materials are not returned to Clients, we would like Clients' agreement that the documents may be destroyed at such time as the file itself is destroyed in accordance with our document retention policy. Currently, it is our policy to destroy files after they have been closed for three (3) years. We will deem Clients' acknowledgment of our engagement as an assent to the handling of Clients' documents in this respect.

12. Termination of Engagement and Post-Engagement Matters. Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect Clients' interests in this matter and, if you so request, we will suggest to you possible successor counsel and provide successor counsel of your choosing with whatever papers you have provided to us. Unless previously terminated, our representation of Clients will terminate upon our sending our final statement for services rendered. Clients are engaging the Firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in laws or regulations that are applicable to Clients that could have an impact upon their future rights and liabilities. Unless Clients continue to engage us to provide additional advice, this Firm will assume that it has no continuing obligation to advise Clients with respect to future legal developments.

13. No Advice Regarding This Fee Agreement. The Firm is not acting as Clients' counsel in advising them with respect to this letter, as we would have a conflict of interest in doing so. If Clients, or any of them, wish to be advised by independent counsel on the question of whether they should be so represented, we recommend that they consult with independent counsel of their choice. In addition, if they have any questions or would like additional information, we would be happy to discuss this matter with any of them.

I am enclosing two originals of this agreement. If the foregoing correctly states our understanding regarding the Firm's representation of Clients, please have an appropriate representative of Clients sign one of the originals in the space provided and return it to the undersigned at your earliest convenience.

**LAW OFFICES OF  
MARK D. SVEJDA, P.C.**

By: \_\_\_\_\_  
Mark D. Svejda

THE TERMS OF THE ENGAGEMENT OF THE FIRM AS STATED ABOVE ARE  
ACCEPTED AND APPROVED BY:

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