

The Art, Science & Ethics of the 21st Century Retainer Agreement

by Carolyn Elefant on June 6, 2012 ·

The legal profession is transitioning to what's been branded the **new normal**, but the development of the necessary tools for serving 21st Century clients is lagging far behind. Sure, the infrastructure that we use to serve clients is changing; lawyers are *finally* coming up to speed on **Cloud Computing**, transitioning from desktops to more mobile and cost-effective laptops and **ipads** and accelerating **adoption** of **client portals** to more efficiently and effectively meet the needs of clients. But technology advancements, while significant, are also superficial if we don't adapt the way we practice law to the needs of today's clients.

Of course, there's also lots of big-picture, blue-skying at various blogs about what lawyers need to change. The ABA Journal has an ongoing feature on the **New Normal** authored by various high-profile thought leaders, and I've mused on various futuristic topics [here](#) at MyShingle. But absent from these conversations offering the 30,000-foot blueprints are the nuts-and-boltsy changes that we need to make the shift, specifically, developing new ways of analysis that add order to information overload, creating documents that are easily read and understood by today's diminished attention-span and fast-paced consumers or developing simple to use, standardized metrics for setting alternative fees.

Two of my friends and colleagues are doing some of the "grunt" work on this new frontier. Ken Adams at **Koncision** painstakingly crafts **exquisitely high-end templates for use in automated contract assembly**, while **Lisa Solomon** teaches a program entitled **Pixel Persuasion: Legal Writing for the Twenty-First Century**. And now, it's my turn to jump in with my own offering, initially unrolled at the ISBA Solo/Small Firm Conference: **The Art, Science and Ethics of the 21st Century Retainer Agreement**.

It's no secret that today's retainer agreements haven't kept pace with the times. Few of them reflect the realities of today's practice, such as use of outsourcing and offshoring, alternative billing and electronic document storage and communication. Moreover, retainers are written in legalese, often long and bulky and incomprehensible to today's consumers. Still, that's not the case everywhere; a few years back, Sam Glover at Lawyerist offered a **shortened-version of the retainer agreement**. Embedded above is one that I threw together that doesn't just streamline the terms but attempts to account for new developments like outsourcing and digital documents

SIMPLIFIED 21ST CENTURY AGREEMENT FOR LEGAL REPRESENTATION

1. SCOPE OF SERVICES

Define what services are being offered and any limitations (e.g., 2 rounds of contract review, 8 monthly phone calls, etc...)

Magic language/caveats for limited scope agreements

2. FEE

The fee for the work described above is \$X. The Firm will begin work once payment is received. [If flat fee, specify if earned on receipt or does it go to trust? OR

The Firm bills at a rate of \$X/hr. Initial payment of \$X is required. Thereafter, [describe how you will bill and include evergreen provisions

**Magic language for contingency*

3. BILLING

Monthly? Late fees?
Electronic [or include in fee provision]

4. COMMUNICATION

The firm will communicate with you via email and phone. You must provide us with an email address connected to a secure account that is inaccessible to others and refrain from emailing the Firm or accessing email from us from a computer owned by your employer.

6. THE TEAM

You are hiring the firm and not any particular individual. To best serve you, the Firm will assemble the team of professionals best suited to your specific needs at each stage of the Representation. Sometimes, these professionals are contractors who are supervised by Firm attorneys, but not employed by the Firm, and sometimes they may reside outside the United States. As a client, you specifically consent to the firm's use of these professionals.

7. SECURITY

The firm may store electronic files on a variety of platforms, including on third-party cloud based servers. You specifically consent to the Firm's use of these services for document storage and management.

6. GUARANTEES

The Firm cannot and does not guarantee particular results. [Money back guarantees, if applicable]

7. DISPUTE RESOLUTION
[Arbitration? Choice of law?]

8. CLIENT FILES

while reflecting emerging concepts of **form design**.

The retainer embedded here is just a mock-up sample. In a few weeks, I'll be unveiling a full-blown webinar on the Art, Science & Ethics of the 21st Century Retainer Agreement. The webinar will consist of a presentation, along with an ebook collection of sample retainer agreements along with clauses and phrases, citations to ethics rules and opinions – and, as a bonus, forms for outsourcing arrangements, options for mobile signature, vendor agreements and more. Right now, I'm trying to get a sense of the interest level in this product – so if it sounds like something that might interest you, please fill out the form below. You'll receive a copy of a short-version of my presentation on the 21st Century Retainer just for entering your name.

5. TERMINATION

As a client, you have the right to terminate the Firm at any time and for whatever reason. If you decide to terminate the Firm, you will be billed for any outstanding balance on your account, or issued a refund for any unearned funds paid in advance.

The Firm retains copies of client files in electronic format only [NOTE: if permitted by ethics rules]. At conclusion of a matter, paper copies will be [discuss what happens to files]

Office Policies: [ATTACHED – OR...]



SIGNATURES: _____

Register today for the Art, Science & Ethics of the 21st Century Retainer Agreement Webinar on June 26th, 2012. For more details visit <http://myshinglelegaltypist010.eventbrite.com/> .