THE LAW OFFICE OF
MICHAEL J. HOWELL, P.A.
A TRUSTS AND ESTATES LAW FIRM

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_____, 2023

Name
Address
City, State Zip

Re: Estate and/or Trust of _____
Representation/Engagement Letter

Dear Client:

Thank you for letting us represent you in the settlement of the estate and/or trust of the following decedent:

_____.

Your relationship to the decedent is as follows:

_____.

We realize that this is a difficult time for you and we are here to help whenever and however needed. My staff and I will do all that we can to make matters go as smoothly as possible.

Legal Fees

I want to let you know what it may cost to administer an estate and/or settle any trusts created by the decedent that either terminated at the decedent's death or that continue for additional beneficiaries. I also want you to understand our responsibilities, your responsibilities and the time period involved.

We have ***three billing options*** as outlined in the attached fee schedule which is part of this representation letter. Basically, you can elect to be charged *hourly* for all work, or you can be

charged a *percentage fee*. We also have a *fee match with a 5% discount* program that you may be eligible for. Please note that the attached fee schedule is quite long. It is designed to answer any and all questions you may have about the three types of billing.

The percentage fee is only for ordinary work, as defined in the attached information. If we do any work that is not considered as ordinary, then there are additional charges, all as outlined in the attached fee schedule. The percentage fee is a version of the Florida Statutory presumptively reasonable percentage fee, modified for South Carolina.

We will also match and discount the *published fee* schedule of any South Carolina law firm that locally employs an attorney who is certified by the South Carolina Supreme Court as a specialist in estate planning and probate law. Additionally, we will also consider matching and discounting the published fee schedule of a firm that locally employs an attorney with comparable education, training, and experience, but who is not a certified specialist in estate planning and probate law. Please take time to review the attached fee schedule information, as it will be signed along with this agreement.

How Long Does It Take?

When opening a probate estate or trust estate and filing a Federal estate tax return, it can take 18-24 months, and sometimes more, before you receive the closing letter from the IRS and the file is closed. If there is not a fully funded trust and no estate tax return is required, then probate can also take 12-18 months and sometimes longer.

In other situations, with a fully funded trust and no estate tax return, we are usually completed in under 12 months; although, it can be a longer or shorter period of time. The estate tax return and probate are the primary reasons for the longer period in most cases.

Uniform Trust Code Notices

If you are the Trustee named in the decedent's trust, there are also a number of notice requirements under the South Carolina Trust Code, which became effective January 1, 2006 that need to be taken care of. We will review these with you and draft any necessary notices.

Keeping Accounts

If there are any liquid assets such as CDs, or stocks and bonds not already in an account, I recommend that you use a broker to transfer the assets into a brokerage account as soon as it is feasible. Sometimes this process can be delayed if there are CDs or other assets that will trigger a large penalty, if taken out too early. In other cases, there is no penalty if the withdrawal is due to death. The longer that you wait to address this issue, the longer it can take to properly administer the estate and/or settle the trust.

We will leave the interaction with the banks and brokers to you. This can save considerable legal fees. However, we are here to help if and when needed. If there is something during the process of administration and settlement that you prefer not to do, please let us know.

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Liquidating Assets

Prior to liquidating any assets, you should not only consult with us, but also with your CPA. The tax basis rules for estates and trusts are not the same as for individuals. We normally also suggest that you consult with the beneficiaries and, if feasible, obtain their consent before liquidating assets, to make sure that no one objects after the fact.

Tax Returns

Unless you tell us otherwise, we will assume that there were no significant gifts made by the decedent. This can be important because certain lifetime gifts are added back to the gross value of the estate, for Federal estate tax purposes, to determine if an estate tax return is due. *If our assumption is not correct, you should let us know immediately.* Also, please keep in mind that our representation does not include income or employment tax returns. These are the responsibility of your CPA or other tax return preparer. *We only prepare estate tax returns*. All other tax returns are the responsibility of your CPA. In some postmortem cases, we will also prepare any past due gift tax returns.

Our Non-Lawyer Staff Members Cannot Give Legal Advice

With respect to our staff members who are not attorneys, they often perform many of the labor-intensive functions in the administration or settlement of trusts and estates. They are also well trained. Their work helps to keep the cost of our services lower than they would otherwise be, when we are charging hourly. However, such staff members are not allowed to give legal advice or practice law. They are allowed to gather and distribute information, do research, and work on legal documents, but only under the supervision of an attorney.

If you ever receive what you believe may be construed as legal advice from a non-attorney staff member, you should not accept the advice. You should instead immediately check with one of our attorneys. Our staff members understand the rules and will not be offended.

Who Do We Not Represent?

Under South Carolina statutory law and our policies and procedures, we only represent you in your capacity as a fiduciary, whether as Personal Representative or as Trustee. Under our statute and our policies, we do not represent any individual beneficiary, including you, absent a separate written agreement to the contrary. I hasten to add that such agreements are almost never applicable.

This letter is to serve as an agreement to only represent you as Personal Representative and/or Applicant (i.e. person filing a Will for probate) in the filing of the decedent's Last Will and Testament for probate, and/or Trustee, up until the estate tax return is filed, if one is necessary, the Probate Court closes its file, if applicable, and you distribute the assets to the beneficiaries, unless the assets are not to be currently distributed.

At that time, assuming all required closing letters have been received from the Beaufort County Probate Court and the Internal Revenue Service, all Receipt and Distribution Agreements and Receipt and Releases have been received, our representation will terminate. When our

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representation terminates, the attorney-client relationship and our obligation to do any further work on your behalf or keep you informed also terminates, unless or until we mutually agree, in writing, to do further legal work.

Termination of Services

You may also terminate our representation at anytime. We also reserve the right to withdraw from the case or quit. To the extent reasonably possible, in such a case, we will give you a thirty (30) day written notice. We would then turn the files over to any lawyer that you designate, or to you, if there is no other lawyer involved.

However, in such a case, we will be allowed to wrap up anything we are then currently working on. In addition, in some cases, we have to notify the Probate Court and the Court has to approve before we can be terminated or quit. *In such a case, we bill for and you are agreeing to pay for all charges necessary to wind up our representation, obtain Court approval, and transfer the files.*

If we are terminated, or we withdraw from representation and we were charging on an hourly fee basis, we will be paid at our standard hourly rates. If we are charging a percentage fee and we are terminated, then we will receive the *greater* of the following amounts: (1) our hourly rates multiplied by the hours expended upon the case, (2) our minimum fee, (3) our percentage fee multiplied by the percentage of the work that was completed as compared to the total work, or (4) the reasonable value of our services. In all cases, we are also paid for out-of-pocket costs.

The File

In such a case, it is customary for us to be paid prior to turning over the file, unless there is some significant prejudice involved to you as our client. You agree that in addition to any other remedy that may be available to us, we may exercise our right to a retaining lien, with respect to the file, which means we can withhold all information in our files, pending full payment of any amounts owed to us. *You also grant us a security interest in the form of a charging lien in all assets of the trust and estate, as security for the payment of all amounts due to us.* This is in addition to any priorities otherwise granted our legal fees under law. For example, in probate matters, legal fees have one of the highest statutory priorities for payment.

Services We Do Not Handle

Please note that except in very limited instances, we do not handle any litigation or real estate matters. Also, we cannot practice law in states where we are not licensed. If there are adversarial or real estate matters, you must hire a litigator and/or a real estate attorney. Legal work in another state will also require an attorney licensed in that state. There may also be other matters that we do not handle and we will let you know if this circumstance arises.

Keeping You Informed and Disclosing Information

In all cases, you will be kept informed of what is going on and will be copied on all correspondence going out of our office and related to this matter. While all information is

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confidential, we may divulge information to third parties, and do any work that is reasonably and impliedly necessary to perform our representation in this matter.

Divulging information includes matters that may come up in the future after this case is closed and that are related to this case. For instance, occasionally disputes arise or information is *reasonably* needed by third parties after a case is closed. Some of the issues and information needed may relate to what was done in this case.

In such a situation, you are authorizing us to disclose information, which is reasonably and impliedly necessary for us to carry out our representation in this case, to assist others who may need relevant information, which you would normally want them to have. Naturally, if you are available, you will be consulted first. However, there are times when clients have died, or cannot be found with reasonable efforts, and information is needed. In such a case, you are allowing us to disclose information that is reasonably necessary and related to this representation. If you do not want us to be able to do this, please strike through the italicized wording in this paragraph and place your initials in the margin next to it.

Help with Non-Related Matters

The attached fee information more specifically outlines the work that we do, and how we are compensated. We will also try to assist, if we are needed, on other non-related matters or on matters that we were not originally asked to do, as you may request. However, one of our attorneys has to approve any and all requests for additional work, or the consent can be expressed by simply doing the work requested.

Client Files and Our Files

A client's file consists of the following materials in our possession or control and related to the representation: (1) All papers or property provided by the client to us in connection with the representation, (2) property we purchased or obtained with client funds, or for which we have been fully reimbursed, (3) all pleadings, motions, discovery, memoranda, and other materials which have been served, fully executed, or filed of record in connection with the representation, (4) all correspondence sent by, or received by, the lawyer to the client or a third party in connection with the client's matter, including email; but excluding material internal to the lawyer's office, as defined below, (5) materials received by the lawyer from third parties in connection with the representation (such as the fruits of discovery), (6) notes of interviews with third party witnesses or opposing parties, (7) to the extent no third party claims an interest in the items, any other items that you and this firm have agreed to in writing or confirmed in writing to treat as client file materials, (8) all original documents with legal significance such as Wills, Trust Agreements, deeds, and contracts, unless required to be turned over to the Probate Court or other Court or governmental agency.

Notwithstanding the previous paragraph, a client's file does not include the following materials: (1) Research materials, drafts of documents, unexecuted documents, and work products prepared by us, (2) materials internal to our office, including attorney notes, conference notes, metadata, internal assignment documents, internal billing records, purely private impressions of a lawyer or staff member, and internal memos, internal emails, or other written communications between the

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lawyer and staff or other lawyers in the firm or co-counsel or other third parties intended for internal use and not intended to be provided to the client, (3) any material that, if released, would violate the lawyer's duty of confidentiality to another client, former client or third party, (4) any material or work for which we have not been paid in full.

With respect to files, we do not keep any original documents in our files. We give these to you and they are your responsibility to be kept in your permanent files. We also retain electronic or digital copies of the files. We no longer keep paper files.

We retain our electronic or digital copy for up to six (6) years after our representation terminates, unless we provide digital or other forms of copies of documents or other material during the representation.

At all times during the representation period, you will be provided with substantially all copies of any relevant information that we receive for our files. *This also means that if you switch law firms, you already have the complete file and there is nothing for us to give the new law firm that has not already been given to you.*

Keep in mind that we keep a digital file, even if you change law firms. Pursuant to this agreement, you are approving *our retention of the digital file as our property*, unlike the paper file and the electronic copes that we provide to you, which are your property, and not our property. It is this concept of who actually owns the file that is one reason why we give you any paper documents or other material, as well as a copy of all relevant digital documents.

If you do not believe you received copies of any particular documents or correspondence that you are entitled to, please let us know and we will send you a copy during our period of representation. If after the representation terminates you need copies, we will make them for you and charge our normal hourly rates.

At our option, we may provide you with electronic copies, if you need copies during the six (6) year period after our representation terminates, rather than making physical copies. Often, this is much less expensive and easier to research, as well as produce.

If you use email, we prefer to use it to PDF copies of papers and documents to you and vice versa, rather than mail the paper, itself. We have found that this can produce a significant cost reduction over using paper and the U.S. mail service. Once we email the copy, the paper document, itself, if not an operative legal document, will be shredded.

Naturally, there are some items, such as original signed or court certified documents that must be mailed. In addition, there are some limits, depending upon your internet service provider, as to how large a file can be sent through the internet. If you have an email address, please furnish it to us, unless you have already done so.

If the process of providing you with digital copies is carried to its logical conclusion, you may also end up with an electronic or digital file rather than a paper file and by signing this agreement, you are agreeing to this electronic or digital file, in lieu of a paper file. The exception will be original operative documents, such as signed contracts and deeds, or court certified

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documents, such as Certificates of Appointment and certified court security copies. These paper documents will be provided to you in all cases.

Use of Email

With respect to email, we use it to send and receive information including documents. However, it should never be used if a prompt response is needed. ***In any situation where a prompt response is needed, you should call our office rather than use email.***

We prefer not to send emails to you at your employee account at work. Otherwise, you may waive your attorney-client privilege. This is especially so if you use your work email address, since you probably have no protected reasonable expectation of privacy. Also, keep in mind that your employer owns the computer, the software, and your email account and likely has the right to read your email. For these reasons, you should have your own personal account.

With respect to communicating with our office, we encourage you to use email. This includes sending and receiving information. However, you need to be careful who you share emails with. We have worked on a number of cases where emails ended up in the possession of people who were never intended to receive the information. This is because people have a tendency to "forward" emails to others to let them know what is going on. This can waive confidentiality and attorney-client privilege, if information gets in the wrong hands; therefore, it is our recommendation not to forward an email to anyone not already included in the email.

In other cases, we have found that people keep forwarding emails back and forth and forget what is down at the bottom and it ends up in the wrong hands. We caution you not to keep using an old email. Again, this can waive confidentiality and attorney-client privilege, if information gets in the wrong hands; therefore, it is our recommendation not to forward or use an old email.

Use and Purchase of Multifunction Machines

I also advise clients in similar situations to purchase a multifunction machine that prints, scans, copies, and faxes, as this will be a legitimate administrative expense. They cost as little as $200-$400. I also suggest that you use a laser printer rather than an ink jet. *We have also found that the use of such equipment more than pays for itself in decreased costs in the form of legal fees and other costs.*

If you want to use email, but do not have high-speed internet access, I recommend that you purchase it until we complete our work. *Again, the cost savings will justify the expense, assuming you are computer literate.*

Use and Risks of Technology in Representation

Our firm, as with most other law firms, uses various devices and cloud technologies in the representation of clients, including, but not limited to, desktop and laptop computers, networks connecting computers to each other either directly or through the Internet, cloud-based servers, local servers, smart phones, tablets, copy machines, fax machines, and flash drives. These

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devices use a number of different applications, including word-processing, email, text messaging and spreadsheets. The devices also contain memory in which information is stored.

These devices and their applications have dramatically increased the efficiency and quality of the services provided in the practice of law to the benefit of our clients. At the same time, the use of these devices, applications, and data storage systems, has increased the transmission and storage location of client information, thereby increasing the risk that such information may be compromised.

In the course of our representation, we will most likely communicate with you or others, not just by U.S. Mail and traditional telephones, but also via email, cellular telephones, text messaging, and fax transmissions, just to name a few. Many of the communications may not be encrypted, or are partially encrypted. Although the interception of such communications by a third party would constitute a violation of federal law, we can offer no assurance that such interception will not occur.

You are encouraged to use encrypted emails to send sensitive information related to the representation, including sensitive personal or financial information. We have instituted various policies and procedures designed to protect the confidentiality of client information, including use of passwords, and encrypted email messages when certain highly sensitive information related to the representation is being conveyed. Ironically, often old-fashioned faxes are considered more secure and are sometimes used to receive and send information. With that being said, please note our faxes go through a third-party server and are received in our AOL account as an email.

Although we have a website from which we can have our own email, we typically use commercial email services such as AOL and Gmail, among others. It is our belief that commercial email services are more capable of protecting the information in an email than our own website. Admittedly, there have been a number of breaches of commercial email services. However, they are constantly improving their services in order to protect their market shares.

For instance, services like Gmail have end to end encryption between two email accounts, both of which are Gmail accounts. AOL has some encryption, but it doesn't appear to be as much as Gmail. We keep emails both in client files and on AOL and Gmail servers. These make finding information on a particular case or client much easier and quicker than searching our own system, which we also do.

If you are concerned about security, we suggest that you open an email account with Gmail and then correspond with us through our alternate email account with Gmail, which is HowellLawFirm@gmail.com. Although we have email accounts with other commercial providers other than those discussed herein, you should not use them.

For most matters, you may certainly use our AOL account, which is only used for client matters. Although the security may not be as high as Gmail, we consider it adequate, based upon all factors.

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Please keep in mind that there is always the possibility that your own account can be hacked and even end to end encryption will not protect you. It only protects your email while it travels through the Internet.

We often receive emails from clients whose email accounts have been hacked. Their contacts are then contacted, including our office. The emails can contain anything from prank type messages to viruses that can lock or destroy the information on your computer.

If you wish, with respect to emails, we can use a special encrypted email service from Switzerland. However, we have found that this service, unlike others, can actually lose information in order to protect it. *It has no way of retrieving a lost password, for instance, without deleting all the emails in the account*. Also, they too have been hacked.

Due to the manner in which this service works, it will add somewhat to the time it takes to deliver emails to you. Keep in mind that our emails to you will be encrypted, but your email back to us is not likely to be encrypted. *If you want us to use this Swiss service, you need to send us an email specifically requesting it. We estimate that it will increase the cost of our services to a client by 1%-3%.*

We can also communicate with you by U.S. Mail, which some consider to be more secure from interception, but extraordinarily slow and costly when compared to electronic communications. We estimate that it will increase the cost of our services by no less than 5%. *If you want us to use U.S. Mail, you need to send us an email specifically requesting it.*

Otherwise, with the above being said, when using our services, you acknowledge and accept the risks of any adverse consequences, which could include the loss of attorney-client privilege and attorney work product confidentiality, other protections, and the disclosure of confidential information. Accordingly, you consent to our use of these technologies.

Your Compensation

You are entitled to a compensation for serving as a fiduciary in this matter. A *Personal Representative* can charge up to 5% of the gross value of the probate assets, other than real estate, plus 5% of all income received. If real estate is sold during the process of administration, then 5% can also be charged on its value. Probate assets do not include life insurance, IRAs, or annuities payable to named beneficiaries other than the estate, joint bank accounts, and certain assets held in trust. However, if there are no probate assets, then no such probate commission can be charged.

Selling real estate rather than distributing it to the devisees can arguably be considered a breach of your duty, unless you do not charge the extra fee, since the devises could save the 5% by selling it themselves. However, the more devisees there are, the less likely that they will be able to coordinate among themselves to sell the real estate. This is especially so if there is any animosity among them. You also need to have the power in the Will or Trust Agreement to sell the real estate; otherwise, Court approval may be necessary.

You may charge a fee or commission for acting as *Trustee*. You can charge a reasonable hourly fee, but will need to keep good time records. Most Corporate Trustees charge for out-of-pocket

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costs plus 1%-1½%-2% of the gross value of the assets, per year, or a fraction thereof. Normally, these percentages produce little resistance and can be higher, depending upon the amount of work and responsibility. Before charging more, you should consult with us.

It is also suggested that you compare the costs of 2-3 local corporate fiduciaries, which will give you a good idea of the range of charges. In most cases, an individual Trustee charges somewhat less than a corporate Trustee. However, there are many situations where corporate Trustees will not accept a trust or they will charge a very high minimum fee or commission. In such cases, the fee or commission schedule is not comparable and the charges can be higher than the 1% to 1½%-2% suggested above because you are comparing the minimum fee, not the percentage fee.

If you intend to take a fee or commission, you need to let us know, in writing, as soon as possible. Otherwise, if you do not take the fee, the IRS can try to tax you on it, even if you did not receive it. They like to see a waiver of the fee early in the process of administration. ***For this reason, by signing this letter, you waive your right to compensation, unless you specifically ask for it in writing or you otherwise provide some other indication of your intent to take a fee or commission within 90 days of your signing of this letter.***

Narrative Billing if Hourly Billing is Used

Please keep in mind that we use narrative billing with our hourly billing (but not our percentage fee basis). We use narrative billing as a communication tool. This means that you may say something to us, which ends up in your statement of services rendered. Occasionally, clients do not like to see in writing what they told us. We try to be tactful, but there have been a few occasions where the client objected.

Our hourly billing statements not only include billing information, but also include confidential information and sometimes information that is protected by the attorney-client privilege. For this reason, you should be careful with whom you share the information. Otherwise, you may waive confidentiality and privilege. *It is our recommendation not to give the information to anyone without first consulting with us. Otherwise, you may waive confidentiality and privilege.*

Your Investment Responsibilities

With all that has gone on with the real estate market and with respect to stocks, bonds, and other securities over the last decade or so, we recommend that if you have any hesitation about your ability to manage assets or investments for others, that you hire an investment advisor. One of the most serious issues facing fiduciaries is the possibility of being sued and/or surcharged for poor investment performance of the assets under their control. If substantial real estate or business assets are involved, these too will have to be properly managed.

Procrastination

You may also be surcharged or sued, if you do not timely do your work and/or provide information to us or to third parties, when required. For this reason, and to reduce our legal fees, if we are billing hourly, you should not procrastinate in the performance of your duties.

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Joint and Several Liability if Multiple Fiduciaries

If we represent more than one fiduciary, whether Personal Representatives or Trustees, the addendum below is incorporated into and a part of this representation letter. In which case, your duties, liabilities, and responsibilities to this firm are joint and several under this agreement. This means that one of you can be held liable or charged for the mistakes of your co-fiduciary; although, you may have a right to recover against your co-fiduciary.

Your Liability to Us and to Third Parties

Normally, legal fees and costs are paid from the assets of the probate estate and/or trust being administered by the Personal Representative or the Trustee. However, each fiduciary agrees to be personally responsible and liable for any legal fees and costs due to our firm. Under most circumstances, you have the right to pay our fees from the assets of the estate or trust. This obligation to pay our fees and out of pocket costs is in addition to your other responsibilities and liabilities as a fiduciary.

Otherwise, when dealing with assets of the estate and/or trust and third parties, you should make it clear that you are acting in your fiduciary capacity and are not personally responsible for any debts and expenses of the estate and/or trust. Otherwise, you could find yourself personally responsible when not required.

Conclusion

I hope that the above is a helpful explanation. Again, our staff will do all that we can to make matters go as smoothly as possible.

Please read carefully, sign, and return a copy of this letter to us, for our file, as your agreement to its terms. ALSO PLEASE INITIAL EACH PAGE. When a copy of this letter is signed by multiple parties, even if separately, and returned to our office, it constitutes our agreement, assuming it is also signed by us.

If you have any questions about our services, our fees, or this memorandum, please do not hesitate to ask.

Very truly yours,

Margaret H. Up De Graff
MHU/mkh

or

Michael J. Howell
MJH/mkh

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Letter read and contents and obligations approved and agreed to by:

_____
NAME

Date: _____, 20____

Letter read and contents and obligations approved and agreed to by:

_____
NAME
Date: _____, 20____

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Dual Representation Addendum
When We Represent More than One Personal Representative and/or Trustee

If we will be representing more than one person in their fiduciary capacity, you need to be aware of a couple of matters. First, we can only represent all of you if there are no conflicts of interest. I have no knowledge of any such conflicts, unless they are enumerated below. If you know of any reason why there may be or there are competing or conflicting interests between you, the reason(s) should be discussed with me as soon as possible.

If conflicts of interest arise and you cannot resolve them, our firm will have to resign and will not represent any of you. In such a case, my resignation could possibly result in higher costs by your having to hire another attorney or attorneys. Again, if there are any actual or potential conflicts of interest between any of you, then you need to let me know as soon as possible. If any develop during the representation, you should also let me know. If I discover any, I will bring them to your attention.

Please keep in mind that any information which one of you shares with us is not confidential as between other fiduciaries and our office. If you give us information and it creates a conflict of interest, we have two options. First, we are allowed to disclose the information to your co-fiduciary. Second, we are given the option of simply resigning, without the requirement of giving the reason, other than "ethical concerns." If you prefer to limit us to only one option, please let us know, below.

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