

SAMPLE REPORT · PRE-SIGNING RETAINER REVIEW

Smith v. Smith

Family Law Retainer Review

An independent, clause-by-clause analysis of a proposed attorney retainer agreement, every clause categorized, every flagged term explained in plain English, with negotiation talking points to use before signing.

JURISDICTION	REVIEW DATE	DOCUMENT
Texas · Tex. Disc. R. 1.04 + ABA Model Rule 1.5	May 8, 2026	Smith_Family_Law_Retainer_v3.pdf · 6 pages

RETAINER HEALTH SCORE

58 / 100

CAUTION BAND · 40–64

Multiple Red and Yellow flags. Material terms are ambiguous or unfavorable. Negotiate the flagged clauses or consult a second attorney before signing.

Clauses reviewed	18
Red flags	4
Yellow flags	5
Green (standard terms)	9
Not found (required)	0

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EXECUTIVE SUMMARY

What we found in this retainer

Smith Family Law PLLC's proposed retainer is structured in a way that is common among Texas family-law practices, but several clauses concentrate risk on the client side. The four Red flags below are not allegations of misconduct, they are terms that are either (a) unusually one-sided, (b) outside the typical range described in ABA Formal Opinions and Texas Disciplinary Rule commentary, or (c) likely to require clarification in any future fee dispute. We recommend raising each of them with the firm before signing.

The four Red flags

Clause 4, Fee Structure

0.3-hour minimum billing increment applied to every task. ABA Formal Op. 93-379 requires billing for actual time, not aggressively rounded time. Material when applied to short calls and emails over a multi-year dissolution.

Clause 7, Earned Retainer

\$5,000 retainer is described as 'earned upon receipt' and 'non-refundable.' ABA Formal Opinion 505 (2023) and Tex. Disc. R. 1.15 treat advance fees as client funds held in trust until earned; the label alone does not control.

Clause 11, Arbitration

All fee disputes routed to private JAMS arbitration. May waive access to State Bar of Texas fee arbitration, which is a low-cost client remedy. Worth confirming this is preserved.

Clause 14, Withdrawal

Firm may withdraw on 7 days notice for 'any reason'. Tex. R. Civ. P. and Tex. Disc. R. 1.15 require court approval to withdraw in pending litigation; 7 days is at the aggressive end of the customary range.

Five Yellow flags (review before signing)

- Clause 1, Scope: 'all related proceedings' is broad enough to be read as covering post-judgment enforcement and appeals.
- Clause 3, Billing increments: 0.3-hour minimums also apply to paralegal and staff time (see Clause 4 for the Red flag).
- Clause 5, Expense markups: silent on whether third-party costs are billed at cost or with a markup.
- Clause 12, Governing law: Texas law selected, which is consistent with the matter, but venue clause locks fee disputes to Travis County.
- Clause 15, Interest on unpaid fees: 18% annual rate stated; verify this is permitted under Texas usury law for fee balances.

The remaining nine clauses (Green) are within standard parameters for a Texas family-law engagement and do not require negotiation. They are listed in the appendix on page 7 for completeness.

FLAG-BY-FLAG BREAKDOWN · RED FLAGS

Four clauses to negotiate before signing

CLAUSE 4 · FEE STRUCTURE

RED

WHAT THE AGREEMENT SAYS

"Time will be billed in increments of 0.3 hours. The Firm's hourly rates are \$450 per hour for partners and \$325 per hour for associates. Rates may be increased at the Firm's discretion upon written notice."

WHY THIS IS FLAGGED

Two concerns. First, a 0.3-hour minimum increment means every call, email, and short task is billed as at least 18 minutes, over a long matter this compounds materially. ABA Formal Opinion 93-379 requires lawyers to bill for the actual time spent, not aggressively rounded time. Second, the unilateral rate-increase clause means the per-hour cost you agreed to is not the per-hour cost you will pay. Tex. Disc. R. 1.04(c) requires the basis or rate of the fee to be communicated to the client; a unilateral increase clause weakens that protection.

SUGGESTED QUESTION FOR YOUR ATTORNEY

Can we move to a 0.1-hour increment for calls and short tasks, and limit rate increases to once per year with 60 days notice and a client opt-out?

REFERENCE

ABA Formal Op. 93-379 (1993); Tex. Disc. R. 1.04(a) (fee reasonableness) and 1.04(c) (basis or rate of fee).

CLAUSE 7 · EARNED RETAINER / REFUNDABILITY

RED

WHAT THE AGREEMENT SAYS

"Client shall pay an initial retainer of \$5,000.00, which is earned by the Firm upon receipt, is not held in the Firm's trust account, and is non-refundable under any circumstances."

WHY THIS IS FLAGGED

Calling a fee 'earned on receipt' does not by itself control how the money is treated. ABA Formal Opinion 505 (2023) confirms that advance fees are generally client funds that must be held in trust until earned; non-refundable language can be unenforceable when applied to fees that have not actually been earned through services rendered. Under Tex. Disc. R. 1.15, unearned fees in the lawyer's possession are client property subject to safekeeping. If you terminate the engagement on day one, this clause says you forfeit the full \$5,000, which is the kind of provision that has been challenged in multiple jurisdictions.

SUGGESTED QUESTION FOR YOUR ATTORNEY

Can this be restructured as a security retainer, held in your IOLTA trust account, billed against at your hourly rate as work is performed, with any unused balance refunded if I terminate or you withdraw before the funds are earned?

REFERENCE

ABA Formal Opinion 505 (2023); ABA Model Rule 1.15; Tex. Disc. R. 1.15(a)–(c) (safekeeping of client property).

FLAG-BY-FLAG BREAKDOWN · RED FLAGS (CONTINUED)

Arbitration & withdrawal

CLAUSE 11 · ARBITRATION OF FEE DISPUTES

RED

WHAT THE AGREEMENT SAYS

"Any dispute concerning fees, costs, or the interpretation of this Agreement shall be resolved exclusively through binding arbitration administered under the JAMS Comprehensive Arbitration Rules. Client waives the right to a jury trial."

WHY THIS IS FLAGGED

Texas, like most states, runs a State Bar fee-arbitration program designed for client use, typically free or low-cost, with attorneys as panelists. A broad clause routing all fee disputes to private JAMS arbitration may waive your access to that program and shift you onto a private forum that charges meaningful filing and administrative fees. ABA Formal Opinion 02-425 cautions that mandatory arbitration provisions are permissible only when the client has been informed of the scope and consequences of the waiver. If malpractice claims are also routed here (check the precise wording), that is a separate concern under Op. 02-425's informed-consent requirement.

SUGGESTED QUESTION FOR YOUR ATTORNEY

Can fee disputes go to the State Bar of Texas fee-arbitration program instead of JAMS, and can we confirm in writing that this clause does not cover any malpractice or misconduct claim?

REFERENCE

ABA Formal Op. 02-425 (mandatory arbitration of malpractice); State Bar of Texas Client-Attorney Assistance Program, fee dispute resolution; Tex. Disc. R. 1.04(b).

CLAUSE 14 · WITHDRAWAL TERMS

RED

WHAT THE AGREEMENT SAYS

"The Firm may withdraw from representation at any time, for any reason, upon seven (7) days written notice to Client. Client agrees in advance not to oppose any motion to withdraw filed by the Firm."

WHY THIS IS FLAGGED

Two problems. First, seven days is short, the customary range is 20 to 30 days, particularly in family-law matters where replacement counsel takes time to find and onboard. Second, in any case already filed with a Texas court, withdrawal requires the court's permission regardless of what the retainer says (Tex. R. Civ. P. 10). An advance, blanket waiver of opposition to withdrawal does not relieve the firm of that obligation and may not be enforceable. ABA Model Rule 1.16(d) further requires the lawyer to take steps reasonably necessary to protect a client's interests upon termination, including giving reasonable notice.

SUGGESTED QUESTION FOR YOUR ATTORNEY

Can the notice period be extended to 30 days, and can we add language confirming the Firm will seek court permission before withdrawing in any pending matter and will not require me to consent to that motion in advance?

REFERENCE

ABA Model Rule 1.16(b)–(d); Tex. R. Civ. P. 10 (withdrawal requires court permission); Tex. Disc. R. 1.15.

RETAINER HEALTH SCORE · HOW WE CALCULATED 58 / 100

Your score, in the open

The Retainer Health Score is a transparent formula. It is not a subjective rating; it is a sum of deductions from a perfect 100 based on the flags we found in your agreement.

Component	Weight	This agreement	Points
Red flags (-10 each, capped at -50)	50%	4 Red flags → -40	-40
Yellow flags (-4 each, capped at -20)	20%	5 Yellow flags → -20 (capped)	-20
Required disclosures present	15%	Tex. Disc. R. 1.04 disclosures present, in writing	+15
Clarity of fee structure	15%	Fee structure clear, but unilateral rate-change clause	+3
Total			58 / 100

Score bands

85–100	Strong	Within standard parameters. Minor points to clarify.
65–84	Review	Several clauses merit questions before signing.
40–64	Caution ← your retainer	Material terms ambiguous or unfavorable. Negotiate the flags.
0–39	High Risk	Significant issues; terms waive material rights or are outside accepted standards.

A Caution score does not mean you should not hire this attorney. It means there are specific clauses you should raise, and ideally, negotiate, before you sign. The talking points on the next page are the practical version of that conversation.

NEGOTIATION TALKING POINTS

What to say before you sign

These are not legal arguments. They are practical, plain-English questions you can raise during a follow-up call or in a written reply to the firm. Most family-law firms expect at least some redlining; asking these questions is a normal part of the engagement process.

1. Restructure the \$5,000 retainer as a security retainer.

Ask that the \$5,000 be held in the Firm's IOLTA trust account, billed against at your hourly rate as work is performed, with any unused balance refunded if the engagement ends before the funds are earned. This aligns with how Tex. Disc. R. 1.15 treats unearned client funds.

2. Move from 0.3-hour to 0.1-hour billing increments.

Particularly for short calls and emails. ABA Formal Op. 93-379 supports billing for actual time. Many family-law firms are willing to use 0.1 for short tasks on request.

3. Cap unilateral rate increases.

Ask for at most one rate increase per year, with at least 60 days written notice, and an explicit client right to terminate the engagement at the old rate if the new rate is not acceptable.

4. Preserve State Bar fee-arbitration access.

Ask the firm to confirm in writing that the arbitration clause does not displace your right to use the State Bar of Texas fee-dispute program for fee disputes.

5. Carve malpractice claims out of arbitration.

If the arbitration language is broad, ask that any claim of professional negligence or breach of fiduciary duty be expressly excluded from the arbitration clause, consistent with ABA Formal Op. 02-425's informed-consent requirement.

6. Extend withdrawal notice to 30 days; remove advance consent.

Ask for a 30-day written notice period before any withdrawal, and strike the clause requiring you to consent in advance to a withdrawal motion. The court's permission under Tex. R. Civ. P. 10 is required regardless of what the retainer says.

7. Clarify expense markups.

Ask whether third-party expenses (filing fees, expert witnesses, depositions, courier costs) will be billed at cost or with a markup. If a markup is applied, ask what the percentage is and whether you will see the underlying invoice.

8. Add a written scope clarification.

Confirm in writing that the retainer covers the dissolution proceeding through entry of final judgment only, and that post-judgment enforcement, modification, or appellate work would require a separate engagement.

APPENDIX · STANDARD-PRACTICE CLAUSES + DISCLAIMER

The nine Green clauses

These clauses are within standard parameters for a Texas family-law engagement. They are listed here for completeness; no action required.

- Clause 2, Identification of parties, Names the Firm and the Client clearly; correct on its face.
- Clause 6, Paralegal billing rate, \$135 per hour for paralegals, at the lower end of the market range (Missouri v. Jenkins permits market-rate paralegal billing).
- Clause 8, File ownership, Confirms the client owns the file; provides a 30-day window to deliver the file upon termination, consistent with ABA Model Rule 1.16(d).
- Clause 9, Conflict of interest waiver, Limited to a specific, named conflict already disclosed in writing; no blanket future-conflicts waiver. Consistent with ABA Formal Op. 05-436.
- Clause 10, Communication & responsiveness, Commits to responding within two business days, with after-hours exceptions clearly carved out. Consistent with ABA Model Rule 1.4.
- Clause 13, Confidentiality, Standard Tex. Disc. R. 1.05 confidentiality acknowledgment by both parties.
- Clause 16, Fee-sharing disclosure, Discloses that co-counsel arrangements will be communicated in writing to the client in advance, consistent with ABA Model Rule 1.5(e).
- Clause 17, Required Texas disclosures, Tex. Disc. R. 1.04 disclosures (basis or rate of fee, scope, client/lawyer responsibilities) are present, in writing, and reasonably clear.
- Clause 18, Entire agreement / amendment, Standard merger clause; amendments must be in writing and signed by both parties.

Methodology

This report was generated by an automated AI analysis tool operated by LegalPrecision.ai LLC. The agreement was reviewed against 18 clause categories drawn from the ABA Model Rules of Professional Conduct, ABA Formal Opinions, the Texas Disciplinary Rules of Professional Conduct, and publicly available state-bar engagement-letter guidance. Citations are accurate to publicly available sources as of the review date. State rules and formal opinions are periodically updated; the report is a snapshot, not a continuously maintained legal database.

Sources cited

- ABA Model Rule 1.5, Fees: americanbar.org/.../rule_1_5_fees
- ABA Formal Opinion 505 (2023) on advance fees / retainers: americanbar.org/.../aba-formal-ethics-opinion-505
- ABA Formal Opinion 93-379, Billing for professional fees / disbursements / expenses (1993).
- ABA Formal Opinion 02-425, Retainer agreement requiring arbitration of fee disputes and malpractice claims (2002).
- Texas Disciplinary Rules of Professional Conduct, Rules 1.04 (fees) and 1.15 (safekeeping of client property): texasbar.com
- Texas Rules of Civil Procedure, Rule 10, Withdrawal of attorney.
- Rocket Lawyer pricing (for market context, not legal authority): rocketlawyer.com/pricing-plans

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