

How to Deal with Client's Request for "Form Agreement"

Friends and colleagues:

How do you deal with clients who ask if you can "just send over a (independent contractor/non-compete agreement/real estate purchase/will) form agreement that I can fill out?"

I do not have such a document as I believe that they are very dangerous. They have a tendency to leave people high and dry and cost way too much in legal fees if they do not work out.

Good luck,

Frank J. Kautz, II, Massachusetts

Forms are like race cars only safe when driven by experienced person. I can't take risk of providing you a way to get in a wreck.

John Page, Florida

Thank you for your inquiry. I don't sell forms for a living. I do see people who buy forms without understanding them and face the consequences. If you want to take your chances with forms, I cannot assist you and I wish you well. I do provide legal services, and would be pleased to assist you in that area. Generally, I charge

Darrell G. Stewart, Texas

I am going to disagree with some of my colleagues and state that form agreements can be worthwhile and appropriate in many contexts, particularly if you are familiar with the client, the client's business, and the nature of the industry involved. Some areas can be inappropriate, such as wills and partnership agreements, but in many commercial contexts it does not make economic sense for a client to consult with an attorney to draft an agreement on every transaction. For example, for many photographers the typical license fee for a stock photo will be a few hundred dollars and it makes no sense for either party to work with their attorneys to hammer out an agreement. Nonetheless, the photographer will want to make it clear that the customer cannot sublicense the photo, use it outside the scope of the license, and may want to specify the forum and the remedies if the license agreement is breached.

A form agreement can be tailored to a client's particular business practices and skills. For example, I have some clients who frequently enter into transactions worth a few thousand dollars each in industries where a breach is much more likely to be committed by the customer than the client. For such clients, particularly when they are articulate and comport themselves well, a dispute resolution clause requiring that disputes be resolved in small claims court gives them a lower cost form than would be available without an agreement.

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Also, when you prepare a form agreement, you can always advise the client regarding the circumstances where it may be prudent to consult with an attorney as opposed to rely on the form.

So if a client wants a form, and a form is appropriate under the circumstances, I gather the information I need to tailor the agreement to the client's business and help him or her out.

Bert Krages, Oregon

Because this is an existing client who knows your manner, I'd be as blunt as the other posters' replies to the request. I'd also remind the client how much time we spent getting the Petition for Dissolution of Marriage just right, tailored precisely to the client's needs and requests. And I'd remind client of how much time we spent on my "form" Parenting Schedule . . . how I brought it up on my screen and talked you through it step by step according to what you said was in the children's best interest and what you wanted. You remember that I didn't hand you a form to fill out, but we crafted it precisely to fit your desired outcome. Well, that's what we have now. You can hire me to help you draft the real estate purchase agreement so that it protects you, or you can hire me later to try to untangle it. If you decide to do it yourself, I will need to withdraw as counsel of record. It's not that I would be angry and not want you as a client anymore. It's that I would not people to think I drafted a document that didn't protect you, that I let you down and did a bad job. So, just for that document, I would withdraw. Alternatively, we would draft your notice to me that you were proceeding on this voluntarily and without counsel."

Or something like that.

CJ Stevens, Montana

I think it depends on the form. Business transactions? Yes it may be appropriate. A form trust? No.

Andrew Kornoff, California

My short feel on this is same as Darrell Stewart's.

Also, I read Bert Krages' long remarks and then in his last breath he mentions 'gather the information,' which is a large part of the ball of wax I mention below.

I do not say this to clients but I think it. "The fee will be \$1.00 for each document but the TTTT going into drafting of the documents will consume hours of collecting and evaluating information, client conferences, redlining sessions via conference or email or both, and possible legal research, all that preceding calculation of your fee at my rate of \$XXX per hour and the finished product going out the door. There is no flat fee/one-size-fits-all approach to any person or venture."

In short I say the above to the client absent the joke about the \$1.00.

There is the story of the huge factory that suddenly shut down. The general manager remembered a recently retired worker and he called him in to see what the problem was. The retiree disappeared into the

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plant. A while later the plant 'woke up' as he had gotten the plant back online. The general manager told him to 'send us a bill.'

Some weeks later at the annual company picnic of employees and retirees and families the general manager went up to the rescuing retiree and asked him what the \$1.00 was for on the statement for \$10,001.00 he had sent in for getting plant back up and running. The retiree said that the \$1.00 was for flipping a certain switch; the \$10,000 was for knowing what switch to flip.

Rob V. Robertson, Texas

As a practical matter, I have found that it typically takes 3 to four hours of billable time to develop a form for a client, including the telephone calls, clarifications, revisions, etc, etc. However, some forms, such as model releases, can be done in very little time. In the absence of forms tailored to the client, I have seen clients use awful forms obtained over the Internet and Frankenstein forms cobbled from bits and pieces of other forms, which sometimes have contradictory provisions. I know of one client who put a set of onerous terms and conditions written for a seller on its purchase orders. By being aware that the business realities of most clients require that they use forms, I can help them develop the best forms for their business at a cost that reflects the value of my time.

I have never had a client pass on having a form done when I provided an estimate on the cost to prepare it. I have also been complimented by clients on preparing forms they understood and that reflected their ethics (in my experience, most clients want to be more fair to their customers and employees than what is provided in canned forms). In addition, some clients have reported that their customer relationships improved after using forms tailored to their businesses.

Bert Krages

I think people are talking about 2 different things.

I think it's perfectly OK to draft a form for a client to use in transactions. A form purchase order with UCC boilerplate. A form release. A form promissory note. A form contract with blanks to fill in for a particular customer. If the customer does the same transaction over and over again, then a form makes perfect sense.

But I got the impression that the original question was about a client who had a one-off transaction (sale of house, say), and asked the lawyer to send a form that the client could then tailor for the particular deal.

The first is asking for legal services in drafting the appropriate form. The second is asking the lawyer to be LegalZoom

Patrick W. Begos, Connecticut

To my view, a distinction may be drawn between the "just send me a form" crowd and a business client that wants assistance in customizing an agreement to his work. Taking some time to create forms for repetitive items encountered in a business is much different than the typical inquiry. Using the photographer or model as an example, I have customized agreements with blanks for use, just as I have for other businesses. Similarly, one can develop non-compete, non-solicitation agreements for use for employees or develop an independent contractor agreement (if someone is truly independent) for a business that will be re-used. Where done, explaining limitations on use is part of the work as well (not that client compliance is always good). The examples given in the initial inquiry are what triggered my first post.

Darrell G. Stewart

I've had so many answers to this over the years. I keep changing it because I get bored. So, here's my current response...

"Well, Bob, suppose you called a master chef and asked him if he could send you over a frozen dinner so you could throw it in the microwave. How do you expect that would turn out?"

"I call this the 'What would Chef Ramsey do?' question."

"See, there's a common misconception that lawyers use 'forms.' But, we don't. At least not the good ones. Instead, we have thousands of sample phrases and paragraphs that we select from based on the client's situation and goals. Those phrases are like the ingredients that a chef uses to make a meal. The ingredients have to be put together by someone with the expertise to understand how everything works together, what to include and what to leave out. I can't give you a form because I don't have one. I can't give you the ingredients because that would be malpractice. I'd be glad to prepare something for you at a reasonable price. Because that's how I feed my family."

Cheers,

David Allen Hiersekorn, California

People who ask for just a form do not value your education and experience. They want to buy that for the price of one sheet of paper. I don't sell forms. I sell my time and experience to prepare the form correctly.

gilbert valdes alba, Florida

I do both individualized and form agreements.

When you get a specific agreement, you get my expertise with respect to that individual transaction. You also get my firm standing behind that agreement--to give an example which has never happened, if my firm were to draft a specific agreement which was illegal then the firm would bear the fallout to a large degree.

I also provide form agreements, available for specific uses by specific clients in certain situations. (For example, I have written a "service contract" for a service provider.) These are only economical for large numbers of transactions.

Form agreements are MUCH more expensive because they require me to draft an agreement which can be used in multiple situations. More specifically, they require me to (a) spend a lot of time with the client explaining how to use the agreement; (b) to spend a lot of time providing written documentation; and (c) to spend a lot of time on a representation letter, to ensure that the client is fully aware of the limitations and risks of a form agreement. Also form agreements have limited or no "guarantees" because we are unable to supervise their execution: it is not possible to address every possible exception to every possible situation in a form agreement. Finally, they can produce ongoing and potentially expensive malpractice risk, for which I must be compensated in the initial bill.

Generally speaking, form agreements are only appropriate for larger institutional clients who maintain an ongoing relationship with the firm. But they certainly have their uses.

To be even more specific:

independent contractor/non-compete agreements

These are a pretty decent fit for a good form agreements, so long as the job is essentially the same. A hair salon in a mall could reasonably use the same "don't work at any other salon in this mall" non-compete for every current and future employee, until the law changes.

real estate purchase

These are commonly form agreements. In my area they are published as forms by local real estate boards. I would not try to write your own unless real estate is all you do.

will

Hell, no.

Erik Hammarlund, Massachusetts

Won't hand over my own templates for wills, trusts, etc. or pretty much anything for an individual. Real estate agents are supposedly trained on how to fill out real estate contracts, yet how many of them leave large portions blank or mess them up?

However, I have and will draft for my small business clients multi-use agreements, such as NDAs, contractor agreements, etc. I talk to the client about what the intention to use them is, what certain possibilities are, and counsel them on when they need to come back to me to draft an agreement more tailored to the transaction and considerations. They are always accompanied by a more detailed letter or email explaining this.

I've been in-house counsel, and this is how business gets done. There are a lot of pretty repetitive transactions in many businesses. Frankly, if you don't provide them with something, many folks will just pull something off the internet that may be wholly inappropriate for the situations they are contemplating. I'd rather most of my clients have an agreement template that considers their typical transactions rather than one drafted by an unknown entity not in contemplation of any of their actual transactions.

Cynthia V. Hall, Florida
