

# COURT OF QUEEN'S BENCH COSTS MANUAL

## REVIEW OF A LAWYER'S CHARGES with Sample Forms

2010  
New Rules

**Updated November 29<sup>th</sup>, 2010**

### DISCLAIMER

*The advice and opinions herein are those of the writers, James Christensen & Joe Morin, Review Officers for the Province of Alberta, and are not necessarily representative of how they or other review officers of any Judicial Centre of Alberta might exercise their discretion.*

*This document has been prepared primarily to assist clients who are desirous of knowing more about the review process. Its presentation is purposefully basic and non-comprehensive. It does not constitute legal advice. It does not represent policy of Alberta Justice or any other Government Department.*

**Changes Since Original of September 1<sup>st</sup>, 2010**

<b>Date</b>	<b>Change</b>	<b>Page</b>
29 Nov 2010	Corrected phone number for Calgary Courts Review office	33

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## REVIEW OF A LAWYER'S ACCOUNT(S)

This booklet has been prepared in an attempt to answer frequently asked questions about the process of reviewing a lawyer's fees/charges/retainer (fee) agreements.

### “ACCOUNT”/ “INVOICE”/ “STATEMENT OF ACCOUNT”

All the above terms are used interchangeably to refer to the written statement prepared by a lawyer to describe to his/her client the legal services rendered, the lawyer's charges or fees for providing those services, and the disbursements or out-of-pocket expenses incurred by the lawyer on the client's behalf. The *Alberta Rules of Court* (“ARC”), in referring to such a statement, almost invariably describe it as an “account”, hence the use of that term throughout this booklet.

### WHAT IS A REVIEW?

Unique to the legal profession, the *Alberta Rules of Court* provide any eligible party the right and the mechanism to have a lawyer's account(s) reviewed by a review officer, who has the authority to allow, reduce or disallow the fees/charges if he or she sees fit.

### WHO MAY REQUEST THE REVIEW OF A LAWYER'S ACCOUNTS? WHERE? WHEN?

There are four (4) stages to answering these questions:

(1) Is the applicant a “client”?

The **Appendix: Definitions** defines a “client” (includes a former client) as,

- (a) any person to whom a lawyer has rendered an account for lawyer's charges;
- (b) a person who is or may be liable to pay or who has paid lawyer's charges or part of them.

(2) May the lawyer's charges / accounts be reviewed in Alberta?

**Rule 10.11** provides that the charges of a lawyer may be reviewed in Alberta

- (a) at the request of a client if
  - (i) the lawyer resides in Alberta,
  - (ii) the lawyer's principal office is in Alberta,
  - (iii) the lawyer's account(s) specifies an Alberta address for the lawyer or the law firm of the lawyer,
  - (iv) most of the services were performed in Alberta,
  - (v) the services were performed in connection with legal proceedings commenced in Alberta in which the lawyer was a lawyer of record, or
  - (vi) the retainer agreement between the lawyer and the client so provides.
- (b) at the request of the lawyer if
  - (i) the client resides in Alberta,
  - (ii) the principal office or place of business of the client is in Alberta,
  - (iii) most of the services were performed in Alberta and the lawyer has no office in the jurisdiction where the client resides or carries on business, or
  - (iv) the retainer agreement between the lawyer and the client so provides.

(3) If subject to review in Alberta, who reviews the lawyer's charges and in which Judicial Centre?

**Rule 10.12** responds:

- (1) Where a lawyer carries on business in Alberta, the lawyer's charges may be reviewed by a review officer<sup>1</sup> at the judicial centre<sup>2</sup> nearest to where the lawyer carries on business.
- (2) Where a lawyer does not carry on business in Alberta but the client resides in Alberta, the lawyer's charges may be reviewed by a review officer at the judicial centre nearest to where the client resides.
- (3) Notwithstanding subrules (1) or (2), and in any other case, the Court may designate a location for the review of the lawyer's charges.

(4) Are there time restrictions for initiating a review of a lawyer's charges?

**Rule 10.10(2)** provides that a lawyer's charges may not be reviewed if 6 months has passed after the date on which the account was sent to the client.

There are 11 "judicial centres" in Alberta. To determine the boundaries of any given 'centre' you may inquire at any Queen's Bench courthouse in Alberta (addresses and phone numbers are listed below at p. 33 of this document).

There are two notable exceptions to the entitlement to review a lawyer's charges:

1. The beneficiary of an estate who desires to review the estate lawyer's charges. The Court of Queen's Bench has ruled that a beneficiary has no standing to either initiate or participate in the review of an estate lawyer's charges, that only the executor or administrator of the estate has standing to review their lawyer's legal accounts.<sup>3</sup> A beneficiary's right is to have the executor's accounts and charges reviewed, not the charges of the executor's legal counsel.<sup>4</sup> A beneficiary's rights relative to an estate lawyer's charges may be fully explained by a competent legal advisor.
2. Legal Aid accounts are not subject to review by a Queen's Bench review officer.<sup>5</sup> If your lawyer acted for you under a Legal Aid Certificate and you take exception to the amount charged to you under the terms of that Certificate, your only recourse is to have the Legal Aid Society review the bill of costs (they have a process somewhat like the Court of Queen's Bench review process).

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<sup>1</sup> **Appendix: Definitions: Review Officer** means an assessment officer who, in the opinion of the court clerk,

- (a) has an acceptable degree in law, and
- (b) sufficient experience in the practice of law, and who is designated by the court clerk as a review officer.

<sup>2</sup> **Appendix: Definitions: Judicial Centre** means the office of the Court in

- (a) Calgary; (b) Drumheller; (c) Edmonton; (d) Fort McMurray; (e) Grande Prairie; (f) Lethbridge; (g) Medicine Hat; (h) Peace River; (i) Red Deer; (j) St. Paul; (k) Wetaskiwin.

<sup>3</sup> See *Re Bibby Estate* 2009 ABQB 111.

See too: *Cruickshank Phillips v. Taras Ilkiw, Beneficiary of the Estate of John Ilkiw, Deceased* unreported, April 26<sup>th</sup>, 1988, J.D. of Edmonton, Q.B. 8703 26964, then Mr. Justice A.H. Wachowich, on a reference from review asked the following:

1. "Does the beneficiary of an estate have standing to require the review of solicitor's account when that solicitor is retained by the executor(trix)/administrator(trix) to act on behalf of the estate?" Court ruled: "Negative."
2. "Would it make a difference if the services performed and billed for were of a litigious nature?" Court ruled: "Negative."

Also see: *Steers v. Szameitat* (B.C. 1915) 8 W.W.R. 1081; *Re Hague, Traders Bank v. Murray* (1887) 12 P.R. 119; *Re Gilray Estates* [1954] O.W.N. 305; D.W.M. Waters, *Law of Trusts in Canada*, 2<sup>nd</sup> ed. (1984) pps. 983-985.

<sup>4</sup> See *Re Bibby Estate* 2009 ABQB 111.

<sup>5</sup> See *P., Barristers & Solicitors v. Legal Aid Society (Alberta)* (1994) 26 Alta. L.R. (3d) 107 at paras. 38-43.

Any individual, corporation or other entity who meets the criteria to review a legal account may be represented by an agent or proxy, and need not appear or participate in person. But, proof of authorization may be required of the proxy. And, before having someone appear on your behalf you might want to consider the section entitled "What kind of evidence?", at p. 11.

For more information on the time limitations please refer to the section entitled "Is there any time limit to review a bill of costs?", at p. 5.

## WHO CONDUCTS THE REVIEW OF THE LAWYER'S CHARGES?

A review officer<sup>6</sup> of the appropriate judicial centre<sup>7</sup> (refer to "Who may request the review of a lawyer's accounts", at p. 1).

## WHAT LIMITS ARE THERE TO A REVIEW OFFICER'S AUTHORITY?

A review officer has the authority to:

1. review the reasonableness of a retainer agreement and the reasonableness of a lawyer's charges (bills, invoices, accounts, . . . ) (**Rule 10.9**),
2. certify, by means of a certificate of review, the amount payable for (to) and against (by) each party to the review (**Rule 10.19(3 & 4)**),
3. determine the amount of a lawyer's charges payable by a client when (**Rule 10.24**)
  - a. the lawyer dies;
  - b. the lawyer is suspended, disbarred or incapacitated;
  - c. the lawyer ceases to be the client's lawyer or the client ceases to be the lawyer's client;
  - d. a dispute arises about the apportionment of contingency fees under a contingency fee agreement under which 2 or more lawyers are engaged, whether or not the contingency has occurred – in other words, resolve a dispute between two or more lawyers who have acted on a contingency fee file and need help apportioning the fee between themselves;
  - e. the client retains a new lawyer in the action;
  - f. the client unreasonably discontinues or abandons any matter to which a contingency fee agreement applies – (it is likely that only the Court may rule on the "unreasonableness" of the client's discontinuance or abandonment);
  - g. any other event creates uncertainty about a lawyer's charges or who is to pay them or to whom they are to be paid.

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<sup>6</sup> **Appendix: Definitions: Review Officer** means an assessment officer who, in the opinion of the court clerk,  
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(b) sufficient experience in the practice of law,  
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(h) Peace River; (l) Red Deer; (j) St. Paul; (k) Wetaskiwin

4. take evidence in writing (Affidavit) or orally (**Rule 10.17(1)(a)**),
5. require any or all who are party to the review to provide details (**Rule 10.17(1)(f)**):
  - a. of a retainer agreement;
  - b. of the services provided;
  - c. of money collected and expended;
  - d. of disbursements or other charges claimed;
  - e. of any other matter necessary to understand the agreement or charges and to decide whether the agreement or charges, or both, are reasonable,

- however, note number "16" below,
6. require notice of the review to be given to interested parties (**Rule 10.17(1)(c)**),
7. give directions about how notice of the appointment for the review is to be served (**Rule 10.17(1)(d)**),
8. allow a party to be represented by a lawyer (**Rule 10.17(1)(e)**),
9. validate service of the notice of appointment or, if service is impractical or impossible, dispense with service (**Rule 10.17(1)(g)**),
10. allow or disallow costs of the review proceedings (**Rule 10.23**),
11. direct that a lawyer has forfeited his/her right to fees and expenses on account of having failed to bring in his/her bill for review (**Rule 10.14(3)**).

*A review officer does not have the authority (unless otherwise directed by the court) to:*

12. review a retainer agreement or a lawyer's charges which have already been reviewed (**Rule 10.17(2)**),
13. review a retainer agreement or a lawyer's charges after judgment has been obtained in respect of same (see p. 6),
14. review a retainer agreement or a lawyer's charges which exceeds the time limit prescribed in **Rule 10.10** (see p. 5),
15. award costs against a client in a review initiated by the lawyer whose charges are being reviewed, unless the costs award is approved by the court (**Rule 10.23(b)**),
16. order any lawyer to deliver up to a client any record of the client under the lawyer's control (**Rule 10.25**),
17. order any lawyer to repay any monies paid to or retained by the lawyer on account of his charges - the Court must make such an order (**Rule 10.21**, see "What happens if the account is reduced?," at p. 18),
18. increase the charges of a lawyer whose account is the subject of a review,
19. resolve disputes between lawyer and client as to

- the terms of a retainer agreement (an agreement as to fees or compensation) (**Rule 10.18(1)(a)**),<sup>1</sup>

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<sup>1</sup> See: *In re E., a Solicitor* [1922] 2 W.W.R. 1324 (Alta. S.C. A.D. / Scott, Stuart, Beck, Hyndman & Clarke, J.J.A.); *In re a Solicitor and Taxation of Costs* [1924] 2 W.W.R. 1135 (Alta. S.C. A.D. / Scott, Stuart, Beck, Hyndman & Clarke, J.J.A.); *Peterson, Ross v. Kirwood* (1984) 52 A.R. 284 (Q.B. / Funduk, M.); *Rusnak v. Commodity Investors et al.* (1982) 48 A.R. 311, at 315 (Q.B. / Cormack, J.); *Lennie, DeBow and Martin v. Richter* (1984) 55 A.R. 26 (Q.B. / Funduk, M.); *Gibson v. Bassie, Kantor & Plupek* [1985] J.D. of Edmonton, 18846, A.U.D. 923 (C.A. / Kerans, Irving & Hetherington, J.J.A.); *Field and Field v. Hys and Ostolosky* (1989) 101 A.R. 31 (Q.B. / Quinn, M.); *Beresh Professional Corp. v. Schneider and Schneider* (1990) 106 A.R. 251 (Q.B. / Funduk, M.); *Anderson v. Ben Vanden Brink Professional Corp.* [1990] 107 A.R. 143 (C.A. / Haddad, Hetherington and Irving J.J.A.); *Bhojani v. Ruff* [1997] A.J. 240 (C.A. / McClung, O'Leary and Hunt J.J.A.); *Linton v. Prusak* [1999] A.J. No. 347 (Q.B. / Wilson, J.); *Cerra v. Penonzek* (2001) 287 A.R. 57 (Alta. Q.B. / Bielby J.); *509703 Alberta Ltd. v. Witten Binder* 2000 ABQB 729 (Alta. Q.B.); *Panther Petroleum Ltd. v. Code Hunter* 2002 CarswellAlta 231, 2002 ABQB 158 (Alta. A.B. / Rooke, J.); *Dai v. Field* [2004] A.J. No. 1361, 2004 ABQB 862, 136 A.C.W.S. (3d) 154 (Q.B. / Moen, J.).

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- the client's obligation to pay interest on overdue legal bills of costs.<sup>2</sup>

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<sup>2</sup> See: *Urichuk v. Code Hunter* [1986] A.J. No. 111, 68 A.R. 128 (C.A.) - review officer has no jurisdiction to rule on the entitlement to, nor the quantum of, interest a lawyer might claim on his/her charges.

## CAN I GET AN OPINION WHETHER TO REVIEW OR NOT?

Not from the review officer nor his/her staff. The Rules of Court clearly specify the procedure to be followed for reviewing an account of lawyer's charges. Opinions offered by a reviewing officer or staff prior to the review hearing would compromise the reviewing officer's obligation to remain unbiased and impartial.

If an opinion is desired one might seek the counsel of an independent lawyer.

## IS THERE A TIME LIMIT FOR THE REVIEW OF A RETAINER AGREEMENT OR OF A LAWYER'S CHARGES?

Yes. **Rule 10.10(1)** provides:

A retainer agreement may not be reviewed if 6 months has passed after the date on which the retainer agreement terminated.

What constitutes termination of the agreement may be open to debate, but termination by the client of the lawyer's services, termination by the lawyer of his/her services to the client, completion of the services contemplated by the agreement, and receipt of the final billing from the lawyer for the services rendered would seem to be obvious examples of termination of the agreement.

**Rule 10.10(2)** provides:

A lawyer's charges may not be reviewed if 6 months has passed after the date on which the account was sent to the client.

An application may be made, on notice to the opposing party, to the Court for an extension of the time limit - Rules 13.5, 1.4 & 1.5 - (see "Sample Forms" at p. 19).

For rules which explain how to calculate time limits (such as "6 months") see Part 13, Division 2 of the

ARC.

A lawyer's charges may not be reviewed after a judgment has been obtained relative to any invoices issued to a client. For example: if law firm "A" has obtained judgment against client "B" for the sums claimed in accounts "C" thru "F" (whether in Provincial Court or the Court of Queen's Bench makes no difference) the principle of *res judicata* (that a matter has already been ruled on and cannot be raised again) holds that invoices "C" thru "F" have, by virtue of the judgment granted, been deemed "reasonable," thereby precluding a review officer from conducting any further review of the invoices.

## HOW DO I BEGIN THE REVIEW PROCESS?

### Taking Out the Appointment

The **Alberta Rules of Court** require the party wishing to have a retainer agreement or a lawyer's charges reviewed to book an appointment date for a review hearing, and to prepare, file and serve a document entitled "Notice of Appointment for Review" (**Rule 10.13**) (see "Sample Forms" at p. 19).

### Filing the Notice of Appointment

Once you have prepared the Notice of Appointment for Review (**Rule 10.13(1)**), and have attached to it each account to be reviewed and a copy of any retainer/fee agreement between the lawyer and the client (if they are available - **Rule 10.13 (2) & (3)**), the Notice of Appointment must be filed with the Clerk of the Court. There will be a **\$100.00** filing fee (**Schedule B, Division 1, Item 6**) payable in cash, certified cheque, or money order made payable to the "Minister of Finance and Enterprise of Alberta". Most locations are also equipped to accept payment by bank or credit card.

Orderlies, located at the entrances to all Court Houses, will be able to give you directions to the proper counter for filing your Notice of Appointment. You will need to file the original Notice of Appointment, plus three copies. The Clerk will keep one copy and return three to you. One copy should be saved for use in the Affidavit of Service you will prepare (see "Sample Forms" at p. 19). A copy must be served on the law firm or lawyer. You will likely want one copy for your reference at the review hearing.

### Serving the Notice of Appointment

**Rule 10.13(4)** requires that a copy of the Notice of Appointment, together with a copy of each account to be reviewed and a copy of the retainer/fee agreement, if any, is to be served on the lawyer / law firm. However, if you have lost your accounts or agreement, or if you never received them, this obligation is remedied by **Rule 10.14** which obliges the lawyer, once served, to file a copy of the account(s) to be reviewed and any retainer agreement five (5) or more days before the appointment date.

**Rule 10.13(4)** requires you to serve notice of the appointment date on the lawyer at least **10 days** prior to the review hearing date.

**Information Note:** *Though a Notice of Appointment for Review is not specifically identified in the Definitions Appendix as a "Commencement Document," we recommend, for the purposes of complying with the service requirements for a Notice of Appointment, that it be treated as "an originating application" (which is a commencement document), for the following reasons:*

1. *A Notice of Appointment for Review, like an originating application, results in,*
  - a. *the opening of a new court file,*
  - b. *the assignment of a new court file number,*
  - c. *the issuance of a certificate (**Rule 10.19(4)**) which is enforceable by the Court at the behest of either the lawyer (**Rule 10.20**) or the client (**Rule 10.21**) in the form of either a judgment or order for the*

*payment of money, or the alteration of the terms of a retainer agreement governing the payment of legal charges.*

2. *A Notice of Appointment for Review is an originating document in that prior to its filing the parties to the proceeding, their addresses for service or other contact information are not known to the court.*
3. *The sums of money in issue are often very significant, most often in the tens of thousands and not infrequently in excess of a hundred thousand dollars.*
4. *It just seems prudent.*

*This implies effecting service in accordance with the provisions of Part 11: Service of Documents, Division 2: Service of Commencement Documents in Alberta and the provisions of Division 5: Service of Documents Outside Alberta as they relate to the service of commencement documents.*

It is a good idea to serve the Notice of Appointment as soon as possible in order to minimize the chance of the lawyer already being otherwise engaged in Court or elsewhere. Service of the Notice of Appointment for Review on the lawyer or law firm may be accomplished in one of four ways:

- 1/ **Deliver Personally & Obtain An Admission of Service** – Leave a copy of the Notice of Appointment, in the following order of priority,

- 1<sup>st</sup> with your lawyer, *or*, if your lawyer is not available or willing,
- 2<sup>nd</sup> with a partner of the law firm, *or*, if no partner is available or willing,
- 3<sup>rd</sup> with your lawyer's or the partner's assistant/secretary, *or*, if neither of them is available or willing,
- 4<sup>th</sup> with the law firm's receptionist,

and request that individual to admit service on one of your copies;

eg. March 1, 2010  
Service hereby admitted  
"Jane Doe"  
per Smith & James, Barristers & Solicitors

- 2/ **Deliver Personally & File An Affidavit of Service** – Leave a copy of the Notice of Appointment, in the following order of priority,

- 1<sup>st</sup> with your lawyer, *or*, if your lawyer is not available or willing,
- 2<sup>nd</sup> with a partner of the law firm, *or*, if no partner is available or willing,
- 3<sup>rd</sup> with your lawyer's or the partner's assistant/secretary, *or*, if neither of them is available or willing,
- 4<sup>th</sup> with the law firm's receptionist,

and, if they will not admit service, prepare and file your own Affidavit of Service (see "Sample Forms" at p. 19).

- 3/ **Recorded Mail** (Canada Post) – Serve by mail whereby receipt of the document is acknowledged in writing, and prepare and file an Affidavit of Service (see "Sample Forms" at p. 19); *or*,
- 4/ **Recorded Mail** (Courier / Process Server) – Have a courier or process server serve the lawyer or firm and provide you with an Affidavit of Service, which you can then file with the Clerk of the Court – keep your receipt.

An Affidavit of Service will not be required if (a) the lawyer or his/her agent has admitted service on the Notice of Appointment, or (b) the lawyer or his/her agent appears at the review hearing and acknowledges

that s/he was served on time.

### **MAY A REVIEW HEARING BE ADJOURNED?**

Both clients and lawyers are subject to illness, previously scheduled engagements, or scheduling for unrelated events by the Courts. Sometimes, even when a lawyer has pre-approved his/her availability for a particular date and time, the lawyer's schedule may render his/her ability to appear at that time unworkable or impossible: eg. when a trial scheduled for two weeks is extended to three weeks, when an application before the Court is directed by the Court to be put over to and heard at the same time as the appointment for review. As an officer of the Court, the lawyer is subject to the direction of the Court and will have no choice but to adjourn the review. In such circumstances it is suggested:

- 1/ **Contact & Agree** – The party seeking the adjournment tries to contact the other party (a) to advise of the need for the adjournment, and (b) to attempt to work out a mutually agreeable alternate date.
- 2/ **Telephone Conference Call** – Arrange a telephone conference call with the review officer who may,
  - (i) decide whether an adjournment will or will not be granted; and,
  - (ii) settle upon a mutually acceptable or binding alternate date for the review hearing.
- 3/ **Apply in Person** – Failing either (1) or (2) the party seeking the adjournment must have a representative/agent appear at the review hearing and apply for an adjournment.

It is **not** enough to simply write the review office to demand an adjournment. The party seeking the adjournment must comply with either (1), (2), or (3) above. The review office **will not** act as a go-between for parties who refuse to speak to each other or through their own agents. The review hearing **will proceed** in the absence of either (1) consent of opposing party to an adjournment, (2) a pre-hearing ruling by the review officer by way of conference call, or (3) the attendance at the review hearing of the individual or his/her agent to speak to an adjournment.

Note that an unreasonable refusal to consent to an adjournment may result in an **award of costs** against the unreasonable party.

### **IS IT PROPER TO DISCUSS THE BILL OF COSTS WITH YOUR LAWYER?**

Most concerns regarding the billing process or the amount charged can be and *are* resolved by way of an open discussion between lawyer and client. Initiation of and participation in an open dialogue about legal charges and billings is strongly encouraged.

If you settle the matter with your lawyer at any time before your scheduled appointment for review, please phone the review office and cancel your hearing.

### **WHAT WILL A REVIEW COST?**

There is a **\$100.00** fee<sup>8</sup> for filing the Notice of Appointment for Review with the Clerk of the Court payable in cash, certified cheque, or money order made payable to the "Minister of Finance and Enterprise of Alberta". Most locations are equipped to also accept payment by bank or credit card. There is no additional charge by the review officer for conducting the review hearing.

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<sup>8</sup> Schedule B: Division 1: Court Clerk Fees: #6

**Rule 10.23** permits a review officer to allow **costs** against a client (payable to the lawyer / law firm) who has requested a review if “the client’s request was unreasonable or the client acts improperly or unreasonably at the review.”

Also, if the lawyer or client should pursue any one of the following procedures, the *Court* will usually but not necessarily award **costs** to whichever is the successful party:

- 1/ An application to the Court for *leave to review* a retainer agreement or a lawyer’s charges which are outside the time limits – **Rule 10.10** (see “Is there any time limit to taxing a bill of costs?”, at p. 5 and also see **Rules 13.5, 1.4 & 1.5**);
- 2/ An *appeal of the decision of the review officer* to a Judge pursuant to **Rule 10.26** (see “Is there the right to appeal?”, at p. 16); and,
- 3/ An application to the Court for an *order to enforce* the decision of a review officer, as contemplated by **Rules 10.20** or **10.21** (see “What happens if the bill of costs is reduced?”, at p. 18).

Also, an appeal requires that the appealing party obtain a transcript of the review hearing for the Court’s reference: **Rule 10.26(3)(c)**. The **cost** of the transcript will vary depending upon the length of the hearing (see “Is there the right to appeal?”, at p. 16).

## PREPARING FOR THE REVIEW HEARING

### Request Information in Advance

If you require information (such as time records) from the lawyer, request it from the lawyer **well in advance of the review hearing**. It is helpful to the review officer’s preparation for the hearing to receive a copy of such material prior to the scheduled review. **Note:** With the exception of *time records*, copies of *invoices and receipts*, and statements of monies received and disbursed on the client’s file, the lawyer may not cooperate in this exercise if he/she is of the opinion that the requested material is subject to a lawyer’s lien, in which case it is beneficial to the lawyer to at least know in advance what documents or materials you would like to have present at the review hearing for the review officer to review.

### Be on time.

Most people are not familiar with the parking at courthouses, the delays associated with passing through security at courthouse entrances, nor with the location of hearing rooms. Arrive early to ensure timeliness. The review officer will usually only wait a couple of minutes past the appointed time before proceeding.

### Know what you are going to say.

Familiarize yourself with the factors to be considered by the review officer (see “How does the review officer reach his/her decision”, at p. 12). Determine what submissions you wish to make with respect to those factors which are relevant to your concerns. Write down how you will present your submissions. If you *do* commit your submission to paper it would be helpful and expeditious if you would provide the Review Office and the lawyer with a copy in advance of the hearing, but there is no obligation to do so.

It is acceptable to read your submissions to the review officer.

### Keep it simple.

The review officer conducts a number of hearings per day and, on account of his/her experience, does not require lengthy explanations. Be concise. Be brief. If the review officer requires more information or detail s/he will ask for it.

### **Avoid argument, name calling or emotional outbursts.**

Such behaviour is unacceptable, is counterproductive, and may result in an award of costs or a party's expulsion from the hearing.

### **Stick to the topics or issues over which the review officer has jurisdiction.**

As noted under the heading "What limits are there to a review officer's authority?" (at p. 3), there are matters concerning the account(s) being reviewed over which the review officer has no jurisdiction. Raising them only confuses and unnecessarily lengthens the proceedings.

## **WHAT HAPPENS AT THE REVIEW HEARING?**

### **Who is there?**

Neither the lawyer nor the client is obliged to be in attendance at the hearing. Either may send a representative or agent to speak on their behalf. However, this is not recommended since rules of evidence may make the absence of the parties very counterproductive. (See "What kind of evidence?", at p. 11).

Of course, the review officer will be in attendance. The review officer is a Clerk or Deputy Clerk of the Court of Queen's Bench, employed by the Department of Justice of Alberta.

### **What if a party does not appear?**

**Rule 10.16** of the *Alberta Rules of Court* provides:

A review officer may, on proof of service of the notice of appointment for review, proceed with the review of a retainer agreement or a lawyer's charges despite the absence of the person served.

Therefore, if the client does not appear but the lawyer does appear, or vice versa, the review officer has the authority to proceed to review the lawyer's charges or the retainer agreement, notwithstanding the absence of one of the parties.

### **What type of room?**

This will vary from courthouse to courthouse. In most instances it will be a modest-sized office with both parties sitting at a table opposite each other. The setting is quite informal.

Note that in Judicial Centres other than Edmonton or Calgary the review officer will almost always participate by means of audio or video-conferencing. The parties should find that the hearing proceeds quite naturally.

### **Is the hearing recorded?**

All *contested* review hearings are recorded.

If you require a transcript of your review hearing, you will be responsible for the cost of the transcript. To obtain a transcript see "Is there the right to appeal?", at page 16.

### **Who speaks and when?**

The review officer will begin the proceeding by identifying the parties and the charges to be reviewed and by responding to any preliminary objections (eg. inadequacy of service or a time limitation problem) or applications for adjournment.

When the Notice of Appointment for Review has been filed by the client, the review officer will usually ask the client to present a statement of his/her/its concerns with either the retainer agreement or the lawyer's charges or both. Then the review officer will usually ask the lawyer to give some background to the file and to justify his/her charges. The order of presentation reverses if the Notice of Appointment for Review has been filed by the lawyer.

It is quite appropriate for either party to read a written statement – some people are more comfortable with this mode of presentation – but it is strongly recommended to keep it brief and to the point.

During either party's presentation the opposing party is advised to keep notes of any objections or observations he/she might have to the other's submissions of fact and opinion. Each party will then be afforded the opportunity, in turn, to respond to the other's submissions.

The review officer may, occasionally, interrupt to ask questions or to make observations.

### **How does one object?**

Media courtroom dramas notwithstanding, in review hearings objections are reserved until one is "given the floor." Interruptions are usually not tolerated. Keep notes and raise your objections when your turn to present or respond arises.

### **What kind of evidence?**

Review hearings are kept quite informal in hopes of encouraging frank and open discussion, and of creating an atmosphere of conciliation. Most parties simply state their positions. However, **Rule 10.17** allows evidence to be presented by Affidavit (a sworn/affirmed written statement) or orally under oath or affirmation. Witnesses may be called at the hearing.

Even expert witnesses may be called, who may testify (among other things) to the complexity of the matters, the conduct of the file and the significance of the results. An expert witness may not testify as to the reasonableness of the fee. It is to be remembered that a review officer is not intimately familiar with every area of legal practice and may need to be enlightened as to

- (a) the complexity of the law in some of the more obscure areas,
- (b) the amount of time normally expended for certain legal procedures or steps, and
- (c) the significance of the results achieved.

To this end expert witnesses may be very helpful.

While the rules of evidence are relaxed in review hearings, a witness is usually only permitted to give direct evidence of what he/she actually saw, said or heard. Assertions that "three other lawyers have told me that this should not have been done this way" are not permitted: if you want to have the benefit of another lawyer's opinion about the work done, that lawyer must be produced at the review hearing for the purpose of giving opinion evidence and of then being cross-examined by the opposing party. Likewise, comparing the charges being reviewed to those of another lawyer is not permitted unless that other lawyer is present to answer questions about why he/she billed a given amount, what work it was billed for . . . and so on.

For many good reasons it is unwise for the lawyer who had control of the file or the client who hired and instructed the lawyer to not attend in person.

Since the onus is on a lawyer / law firm to justify his, her or its legal charges, it is incumbent upon her, him or its representative to provide the following to the review officer:

1. The contents of the client's file - usually produced at the hearing.
2. The time records or "pre-bill" (if any) utilized by the lawyer / law firm in the formulation of the bill - to be provided several days before the hearing.

3. Any written retainer (fee) agreement(s) - To be provided 5 days before the hearing per **Rule 10.14(2)**.
4. Any evidence supporting the terms of any oral fee agreements, estimates, discounting, et cetera - usually addressed at the hearing.

### **How is the decision given?**

Usually the review officer will render a decision at the close of the parties' submissions. The decision will be given orally and a brief certificate stamped on each account.

Sometimes the review officer will reserve a decision. This may be done to allow time to review the law on a point of procedure. Or, to take time to review a lawyer's file: the steps taken, the difficulties encountered, the personalities involved. Or, the review officer may simply need time to contemplate a decision. In such circumstances the review officer may either adjourn to another day to deliver the decision, adjourn to deliver the decision by way of conference call or undertake to provide a decision in writing.

### **HOW DOES THE REVIEW OFFICER REACH A DECISION?**

There are no tariffs or officially established fees for performing legal services. Instead, a review officer takes into consideration a number of factors as outlined in the **Rules of Court** and the *Law Society of Alberta's Code of Professional Conduct*, and as discussed in decisions of the courts of Alberta, other Provinces and Territories.

In the absence of a retainer agreement, **Rule 10.1** provides a lawyer the right to charge a "reasonable amount" for her/his services. The rule states:

Except to the extent that a retainer agreement otherwise provides, a lawyer is entitled to be paid a reasonable amount for the services the lawyer performs for a client considering

- (a) the nature, importance and urgency of the matter,
- (b) the client's circumstances,
- (c) the trust, estate or fund, if any, out of which the lawyer's charges are to be paid,
- (d) the manner in which the services are performed,
- (e) the skill, work and responsibility involved, and
- (f) any other factor that is appropriate to consider in the circumstances.

### **OF WHAT RELEVANCE IS A RETAINER AGREEMENT OR AGREEMENT AS TO FEES?**

A retainer agreement is a contract between a lawyer and client which, if properly drafted, identifies the services to be performed by the lawyer and details what, how and when the client will pay him or her for performing those services.

Retainer (fee) agreements are permitted by **Rule 10.5** of the *Alberta Rules of Court*:

- (1) A lawyer may make an agreement with a client about the amount and manner of payment of the whole or any part of past or future lawyer's charges for services performed by the lawyer.

(2) The amount a lawyer is to be paid may be determined in any appropriate way,<sup>9</sup> including by

- (a) a gross sum,<sup>10</sup>
- (b) commission,<sup>11</sup>
- (c) percentage,<sup>12</sup>
- (d) salary,<sup>13</sup> or
- (e) an hourly rate.

(3) The amount payable may be at the same or at a greater or lesser rate than the rate to which the lawyer would be entitled under rule 10.1 [*Payment for lawyer's services*] if no retainer agreement were entered into.

Note that **Rule 10.6(1)** does not permit a retainer agreement to include any provision which would:

- (a) . . . relieve a lawyer from liability for negligence or any other liability to which the lawyer might be subject as a lawyer, or
- (b) . . . provide that an action, application or proceeding cannot be abandoned, discontinued or settled without a lawyer's consent.

Furthermore, **Rule 10.6(2)** does not permit a retainer agreement to preclude a client from changing lawyers or choosing to act for him/herself before "a retainer agreement ends."

**Rule 10.9** clearly stipulates that the charges of lawyers for services performed by them are subject to review by a review officer, despite any agreement to the contrary.

### Copy of Retainer Agreement to Be Provided to the Review Officer

Prior to any review of a retainer agreement or of a lawyer's charges, if a lawyer and client have entered into a written retainer agreement, **Rule 10.14(2)** requires that a copy of the retainer agreement "must be filed 5 or more days before the appointment date." The review officer may vary the time for filing of the document.

### A Retainer Agreement Must Be "Reasonable"

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<sup>9</sup> The fee agreement may, for instance, include a combination of any or all of "a" to "e". Ensuring clarity of the terms of the agreement would be a primary consideration in the drafting of it, together with complying with the requirements of **Rule 10.7** if it includes payment which is premised upon the successful completion of some contingency.

<sup>10</sup> A flat fee such as "\$900.00 to conduct a specific application" or "\$1,500 per day of trial, exclusive of preparation", et cetera.

<sup>11</sup> Normally a fee for services rendered based on a percentage of an amount received or collected or agreed to be paid (as opposed to a salary). Eg: "25% of any money's recovered, after allowing for expenses." Note, "commission" fees will almost always be payable based upon the successful accomplishment of some contingency thereby requiring the retainer agreement to comply with the strict provisions of **Rule 10.7**.

<sup>12</sup> See "commission." See too **Rule 10.7**.

<sup>13</sup> "A fixed amount of money paid to a worker, usually measured on a monthly or annual basis, not hourly, as wages. Implies a degree of professionalism and/or autonomy; To pay on the basis of a period of a week or longer, especially to convert from another form of compensation" – en.wiktionary.org/wiki/salary. Eg: "Law firm 'A' to provide corporate legal services (exclusive of litigious matters) on a retainer of \$1,500.00 per month."

**Rule 10.9** states that “the reasonableness of a retainer agreement . . . [is] subject to review by a review officer in accordance with these rules, despite any agreement to the contrary.” **Rule 10.19(2)** provides that the “review of a retainer agreement must be based on the circumstances that existed when the retainer agreement was entered into.”

## **Types of Retainer Agreements**

There are two basic types of retainer agreement: contingent and non-contingent.

### ***Contingency Agreements***

A contingency retainer agreement is one in which the lawyer's fee is dependent or contingent upon the successful achievement of a specified result. The most common form of contingency agreement stipulates that a lawyer will receive as his/her fee for services a certain percentage of whatever he/she recovers from the opposing party (debt collection, personal injury suits, wrongful dismissal actions, etc.). Usually they are drafted such that if nothing is collected the client will only be responsible for the lawyer's out-of-pocket expenses. Many variations exist.

Such agreements are legal and enforceable in Alberta if they comply with the ***Alberta Rules of Court***. These requirements are:

- R. 10.7(1)** A contingency fee agreement must
- (a) be in writing, and
  - (b) be signed by the lawyer and the lawyer's client or by their authorized agents.
- R. 10.7(2)** To be enforceable, a contingency fee agreement must contain the following particulars in precise and understandable terms:
- (a) name and address of each client;
  - (b) name and address of the lawyer;
  - (c) a statement of the nature of the claim;
  - (d) a statement of the event or contingency upon which the lawyer's fees are to be paid to the lawyer;
  - (e) a statement about
    - (i) the manner in which the contingency fee is to be calculated;
    - (ii) the maximum fee payable, or the maximum rate calculated, after deducting disbursements and other charges, and;
    - (iii) whether the client is responsible to pay disbursements and other charges, and if so, a general description of types of disbursements and other charges likely to be incurred, other than relatively minor disbursements;
  - (f) if the lawyer is to receive any amount from a costs award, a statement that
    - (i) the cost award is intended to be a complete or partial

reimbursement of the lawyer's charges to the client,

- (ii) the cost award is owned by the client and that by signing the contingency fee agreement the client is waiving the right to any amount from the costs award that is payable to the lawyer in accordance with subclause (iv),
  - (iii) the amount from the costs award retained by the lawyer will be in addition to the lawyer's percentage, fixed fees or other form of legal fees, and
  - (iv) the percentage of the costs award that the lawyer may receive may not exceed the percentage of the judgment or settlement that the lawyer is entitled to;
- (g) a statement that, if the client gives notice in writing to the lawyer within 5 days after the client's copy of the contingency fee agreement is served on the client, the client may terminate the contingency fee agreement without incurring any liability for the lawyer's fees, but that the client is liable to reimburse the lawyer for reasonable disbursements;
- (h) a statement that
- (i) at the request of the client, a review officer may review either or both of the contingency fee agreement and any lawyer's charges in an account rendered under the agreement, and
  - (ii) either or both of the contingency fee agreement or any lawyer's charges may be further reviewed by way of an appeal from a review officer's decision to a judge.

- R. 10.7(3)** The contingency fee agreement must be witnessed by a person who sees the client sign the agreement, and that person must then swear an affidavit of execution.
- R. 10.7(4)** The client must be served with a copy of the signed contingency fee agreement within 10 days after the date on which the agreement is signed, and an affidavit of service to that effect must be executed by the person who served the agreement.
- R. 10.7(5)** A client may terminate a contingency fee agreement without incurring any liability for the lawyer's fees under the agreement if the client, within 5 days after service on the client of the copy of the contingency fee agreement, gives written notice of the termination to the lawyer, but the client is liable to reimburse the lawyer for reasonable disbursements incurred by the lawyer.
- R. 10.7(6)** If a contingency fee agreement provides that a lawyer is entitled to an amount from a costs award, the lawyer is not entitled to receive from the costs award any higher percentage of the judgment or settlement than the lawyer is entitled to receive under the contingency fee agreement.
- R. 10.7(7)** Every account rendered under a contingency fee agreement must contain a statement that at the client's request a review officer may determine both the reasonableness of the account and the reasonableness of the contingency fee agreement.

**R. 10.7(8)** An account that does not contain the statement required by subrule (7) is of no effect unless the Court is satisfied that the omission of the statement was inadvertent, the client has not been misled or prejudiced, and the Court waives the requirement for the statement.

**R. 10.8** If a lawyer does not comply with rule 10.7(1) to(6), the lawyer is, on successful accomplishment or disposition of the subject-matter of the contingency fee agreement, entitled only to lawyer's charges determined in accordance with rule 10.1 as if no contingency fee agreement had been entered into.

Due to the introduction of a new set of Rules of Court effective **November 1<sup>st</sup>, 2010**, the following "transition provisions" apply to contingency fee agreements:

**R. 15.5(1)** Rule 10.7(2) does not apply to a contingency fee agreement entered into before this rule comes into effect if the agreement complied with the former rules.<sup>14</sup>

**R. 15.5(2)** Rule 10.7(2)(e), (f), (g) and (h) and (3), (4), (5) and (6) do not apply to a contingency fee agreement entered into before May 1, 2000, if

(a) the agreement complied with rule 617 of the former rules as it existed before May 1, 2000, and

(b) a copy of the agreement was filed with the Court in accordance with rule 617 of the former rules as that rule existed before May, 2000.

### ***Non-Contingent Agreements***

All other retainer agreements are, under **Rule 10.9**, subject to review to determine their "reasonableness."

### **Right to Review of Retainer Agreement and to Review of Associated Lawyer's Charges**

A client who has entered into a retainer agreement (contingent or non-contingent) has the right to have the agreement reviewed to determine whether it is fair and reasonable, *and* always has the right to have the account(s) rendered by the lawyer reviewed to ensure that it complies with the terms of the agreement.<sup>1</sup>

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<sup>1</sup> See **Rule 10.9**.

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### **IS THERE THE RIGHT TO APPEAL?**

Yes. Any party to a review officer's decision may appeal (**Rule 10.26(1)**).

#### **Time limit.**

**Rule 10.26(4)** requires that

- a Notice of Appeal (Form 43),

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<sup>14</sup> This applies to any contingency fee agreement entered into between **May 1<sup>st</sup>, 2000** and **November 1<sup>st</sup>, 2010**. The requirements of such agreements are virtually identical to those of the current Rules of Court.

- a “record of proceedings” (consisting of the Appointment for Review, the materials filed in support or opposition of the review, the transcript of the proceedings, and the review officer’s certificate - **Rule 10.26(3)**), and
- any further written argument

be filed and served on the respondent to the appeal within **one month** after the date of the review officer’s decision.

**Rule 10.26(5)** requires the respondent to the appeal to, within **10 days** after being served with the notice of appeal, file and serve on the appellant any written argument.<sup>15</sup>

**Transcript Required**

As noted, **Rule 10.26(3)(c)** requires a transcript of the review hearing to be produced to the Justice hearing the appeal, unless the judge waives the requirement.

*Obtaining a Transcript:* Contact the Transcript Management office in the following locations:

<b>If the Hearing Occurred . . .</b>	<b>Contact</b>	<b>Address &amp; Phone</b>
In Calgary	Transcript Management Services, Calgary	Address: 19 <sup>th</sup> floor of the Calgary Courts Centre, 601 - 5 <sup>th</sup> St. S.W., Calgary, AB T2P 5P7 Phone: 403-297-7392 Fax: 403-297-7034 Email: tms.calgary@gov.ab.ca
In Edmonton	Transcript Management Services, Edmonton	Address: #1000 Sunlife Place 10123 - 99 Street Edmonton, Alberta T5J 3H1 Phone: 780-427-6181 Fax: 780-422-2826 Email: tms.edmonton@gov.ab.ca
Anywhere Else in the Province	Transcript Management Services, Regional	Address: Court House, 4909 – 48 Avenue, Red Deer, AB T4N 3T5 Phone: 403-340-5235 Fax: 403-340-7986 E-mail: tms.regional@gov.ab.ca

You will need the date of the review hearing and the names of the parties to the review (found on the front page of your Notice of Appointment for Review). You will be asked to pay the estimated cost of producing the transcript before any transcription will begin. As with most court proceedings, what you are required to produce to the court should also be provided to the opposing side (the Respondent law firm); that is, you will need at least two (2) copies, one for the court and one for the law firm – preferably one for yourself too.

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You can find online information regarding order forms, transcript prices, et cetera at [www.albertacourts.ab.ca](http://www.albertacourts.ab.ca). See the “Court Services” section and click on “Transcript Management Services.”

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<sup>15</sup> **Part 13** of the **ARC** provides details as to how to calculate time periods prescribed by the *Alberta Rules of Court*.

## Before a Justice in Chambers

An appeal from the decision of a review officer is heard by a Justice of the Court of Queen's Bench sitting in open chambers. It is *not* heard by the Court of Appeal of Alberta.

Chambers is held daily starting at 10:00 a.m.. The appeal will be one of many different types of applications being made before the Justice and will be situated on his or her chambers list in the same order that it was filed with the chambers clerk. Even though your appeal may be far down the list, many applications cancel or adjourn, so be in chambers at 10:00 sharp.

## What happens in the meantime?

**Rule 10.20(2)** prevents the Court from issuing an order permitting a Certificate of Review to be entered as a judgment or order until after the decision of the appeal court judge has been made. In other words, if the review officer's certificate results in monies being owed by a lawyer to a client or by a client to a lawyer, an appeal *effectively stays* (suspends) any proceedings to enforce the certificate until completion of the appeal.<sup>16</sup>

## WHAT HAPPENS IF THE BILL OF COSTS IS REDUCED?

If an account(s) is reduced and if there has been no appeal, or if the reviewed account is upheld on appeal, one would anticipate that any monies owing to the client would be paid in due course. If such is not the case, the onus remains with the client to commence proceedings to enforce the review officer's certificate as against the lawyer (**Rule 10.20 & 10.21**). Likewise, a lawyer must commence proceedings to enforce the certificate as against a defaulting client (**Rule 10.20**). This is done by applying for a Court Order. Such an application is commenced by filing an Application and an Affidavit. (see "Sample Forms" below at page 19).

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<sup>16</sup> **Rule 1.4(2)(h)** also authorizes the Court to "adjourn or stay all or any part of an action, application or proceeding, extend the time for doing anything in the proceeding, or stay the effect of a judgment or order."

## SAMPLE FORMS

The following samples are appended to aid in your preparation of documents used in review and related proceedings. "Page" refers to the page number in this document where the Sample Form is located.

<b>Page</b>	<b>Sample Form</b>	<b>Comment</b>
20	<b>Appointment for Review of a Lawyer's Charges</b>	To be filed with the Court and served on the law firm.
22	<b>Affidavit of Personal Service</b>	Of the Notice of Appointment for Review.
23	<b>Affidavit of Service by Registered (Recorded) Mail</b>	Of the Notice Appointment for Review.
24	<b>Rule 10.10 Application</b>	To use in an application to extend the time limits in <b>Rule 10.10</b> .
26	<b>Rule 10.10 Affidavit</b>	To present evidence in an application to the Court.
27	<b>Rule 10.10 Order</b>	Resulting from a <b>Rule 10.10</b> application.
28	<b>Rule 10.21 Application</b>	To use in an application to enforce a taxed account.
30	<b>Rule 10.21 Affidavit</b>	To present evidence in an application to enforce a taxed account.
32	<b>Rule 10.21 Order</b>	Resulting from a <b>Rule 10.21</b> application.

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT

**APPOINTMENT FOR REVIEW OF LAWYER'S CHARGES / RETAINER AGREEMENT**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_

City/Town \_\_\_\_\_

Province, Postal Code \_\_\_\_\_

Phone (area code & # / fax # (if any)) \_\_\_\_\_

Email (if any) \_\_\_\_\_

**NOTICE TO RESPONDENT(S)**

You have the right to state your side of this matter before the review officer. To do so, you must be present when this matter is heard by the review officer as shown below:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Where: \_\_\_\_\_

Go to the end of this document to see what else you can do and when you must do it.

**Purpose of this appointment**

The purpose of this appointment is to determine the reasonableness of the retainer agreement/lawyer's charges reflected in: *(mark the appropriate box or boxes)*

- the retainer agreement(s) that is/are attached;
- all retainer agreement(s) between this client(s) and the lawyer/law firm, which are to be provided by the lawyer/law firm to the review officer under rule 10.14 (1) & (2);
- the lawyer's account(s) that is/are attached;
- all lawyer's account(s) between the client(s) and the lawyer/law firm, which are to be provided by the lawyer/law firm to the review officer under rule 10.14 (1) & (2).

**WARNING**

If you do not attend this appointment either in person or by your lawyer (if any), the review officer may give the party who requested this appointment what they want in your absence. You will be bound by the review officer's decision. If you want to take part in this appointment, you or your lawyer (if any) must attend before the review officer on the date and time as shown above.

If you are a lawyer responding to this appointment pertaining to your charges or retainer agreement, you must file a copy of the signed account(s), whether or not you intend to rely on them at the appointment. This must be done five (5) or more days before the date of the appointment for review or any other period specified by the review officer, and if you do not comply with this rule, you forfeit your right to payment of the charges in the account that are the subject of review, unless the review officer otherwise directs.

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT

**AFFIDAVIT OF PERSONAL SERVICE**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_

City/Town \_\_\_\_\_

Province, Postal Code \_\_\_\_\_

Phone (area code & # / fax # (if any)) \_\_\_\_\_

Email (if any) \_\_\_\_\_

**AFFIDAVIT OF** \_\_\_\_\_ (my name)

Sworn/Affirmed on \_\_\_\_\_, 20\_\_\_\_.

I, \_\_\_\_\_, of \_\_\_\_\_,  
*(Name)* *(Municipality, Province)*

MAKE OATH/AFFIRM AND SAY THAT:

- I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, serve \_\_\_\_\_ (name of law firm or lawyer) with a copy of the Notice of Appointment for Review filed in this proceeding, the original of which is attached and marked as Exhibit 1.
- I served the Notice by delivering it personally to and leaving it with \_\_\_\_\_ (name of individual served), a \_\_\_\_\_ (individual's position with the law firm - such as partner, manager, associate, legal assistant, secretary, receptionist] with \_\_\_\_\_ (law firm's or lawyer's name), at \_\_\_\_\_ (law firm's address).

SWORN / AFFIRMED BEFORE ME THIS \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_, at

\_\_\_\_\_, Alberta.

\_\_\_\_\_  
(My Signature)

\_\_\_\_\_  
(Commissioner for Oaths in and for the Province of Alberta)

PRINT NAME & EXPIRY DATE/LAWYER/STUDENT-AT-LAW

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT **AFFIDAVIT OF SERVICE BY REGISTERED (RECORDED) MAIL**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_

City/Town \_\_\_\_\_

Province, Postal Code \_\_\_\_\_

Phone (area code & # / fax # (if any)) \_\_\_\_\_

Email (if any) \_\_\_\_\_

**AFFIDAVIT OF** \_\_\_\_\_ (my name)

Sworn on \_\_\_\_\_, 20\_\_\_\_\_.

I, \_\_\_\_\_, of \_\_\_\_\_,  
*(Name)* *(Municipality, Province)*

MAKE OATH/AFFIRM AND SAY THAT:

1. I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, serve \_\_\_\_\_ (name of law firm or lawyer) with a copy of the Notice of Appointment for Review filed in this proceeding, the original of which is attached and marked as Exhibit 1.

2. I served the Notice by enclosing it in an envelope addressed to \_\_\_\_\_ (name of law firm / lawyer) at \_\_\_\_\_ (address of lawyer / law firm) and having it delivered by Registered Mail in the Post Office at \_\_\_\_\_ (city or town and province where posted) and attached and marked as Exhibit 2 is the receipt from the Postmaster at \_\_\_\_\_ (city or town where signed for) acknowledging in writing receipt of Exhibit 1 by the lawyer / law firm.

SWORN / AFFIRMED BEFORE ME THIS \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at

\_\_\_\_\_, Alberta.

\_\_\_\_\_  
(My Signature)

\_\_\_\_\_  
(Commissioner for Oaths in and for the Province of Alberta)

PRINT NAME & EXPIRY DATE/LAWYER/STUDENT-AT-LAW

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT

**APPLICATION BY**  
**TO PERMIT THE REVIEW OF A RETAINER AGREEMENT & THE REVIEW OF**  
**THE CHARGES/ACCOUNTS OF THE RESPONDENT LAWYER/LAW FIRM**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_  
City/Town \_\_\_\_\_  
Province, Postal Code \_\_\_\_\_  
Phone (area code & # / fax # (if any)) \_\_\_\_\_  
Email (if any) \_\_\_\_\_

**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the presiding master/judge.

To do so, you must be in court when the application is heard as shown below:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Where: \_\_\_\_\_

Before whom: \_\_\_\_\_

Go to the end of the document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

- 1. An order directing that the account(s) / retainer agreement(s) listed below be reviewed notwithstanding the provisions of **Rule 10.10** (*Time limitation on reviewing retainer agreements and legal accounts*) - (insert dates & invoices numbers):

Date of Invoice	Invoice #

**Grounds for making this application:**

1. (Examples: interim accounts / dispute re: the terms of the retainer agreement / illness / lawyer's refusal to discuss the bills & my concerns / misled as to my rights to review / . . . )

**Material or evidence to be relied on:**

1. Affidavit of \_\_\_\_\_, dated \_\_\_\_\_ and filed.

**Applicable rules:**

1. 10.10(1) for review of retainer agreement.
2. 10.10(2) for review of lawyer's charges (accounts).
3. 13.5(2) & (3) for variation of time period in which to conduct the above-noted reviews. Alternatively, Rule 1.4(2)(h) and Rule 1.5(1).

**Applicable acts and regulations:**

1. See Rules (above).

**Any irregularity complained of or objection relied on:**

- 1.. Details (if any).

**How the application is proposed to be heard or considered:**

1. Before a Master in chambers using affidavit evidence (unless otherwise directed).

**WARNING**  
 If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT

**AFFIDAVIT**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_

City/Town \_\_\_\_\_

Province, Postal Code \_\_\_\_\_

Phone (area code & # / fax # (if any)) \_\_\_\_\_

Email (if any) \_\_\_\_\_

**AFFIDAVIT OF** \_\_\_\_\_ *(my name)*

Sworn/Affirmed on \_\_\_\_\_, 20\_\_\_\_\_.

I, \_\_\_\_\_, of \_\_\_\_\_,  
*(Name)* *(Municipality, Province)*

MAKE OATH/AFFIRM AND SAY THAT:

1. I am *[Explain who you are, what your relationship is to the applicant and the respondent in these proceedings]*, and as such have personal knowledge of the facts and matters herein attested to except where stated to be based upon information and belief.
2. *[Set out the facts and beliefs upon which your application is based]*
3. *[Et Cetera]*

SWORN / AFFIRMED BEFORE ME THIS \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at

\_\_\_\_\_, Alberta.

\_\_\_\_\_  
*(My Signature)*

\_\_\_\_\_  
*(Commissioner for Oaths in and for the Province of Alberta)*

\_\_\_\_\_  
PRINT NAME & EXPIRY DATE/LAWYER/STUDENT-AT-LAW

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) (*Applicant(s)*) \_\_\_\_\_

LAWYER(S) (*Respondent(s)*) \_\_\_\_\_

DOCUMENT

**ORDER DIRECTING A REVIEW OF  
LAWYER'S / LAW FIRM'S CHARGES**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_  
 City/Town \_\_\_\_\_  
 Province, Postal Code \_\_\_\_\_  
 Phone (area code & # / fax # (if any)) \_\_\_\_\_  
 Email (if any) \_\_\_\_\_

DATE ON WHICH ORDER WAS PRONOUNCED: \_\_\_\_\_

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: \_\_\_\_\_

[Repeat whatever the Master actually ordered; the following is an *example*.]

- The following accounts/invoices rendered by the Lawyer / Law Firm (Respondent) are to be subject to review:

Date of Account	Account No.	Account Amount
November 15, 2009	271339	\$4,966.36
December 12, 2009	273741	\$298.72
October 31, 2010	355945-1	\$1,946.58
Total		\$7,211.66

notwithstanding that each account, on its face, exceeds the time limitation set by Rule 10.10 of the *Alberta Rules of Court*.

- The Applicant is permitted to take out an appointment with the Office of the Review Officer, \_\_\_\_\_ (Judicial Centre), and to file and serve on the Respondent(s) a Notice of Appointment for the Review of the aforementioned accounts.
- The Applicant is entitled to its costs associated with this application, in the amount of \$\_\_\_\_\_ (inclusive of disbursements).

\_\_\_\_\_  
 Master/Justice of the Court of Queen's Bench

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) (*Applicant(s)*) \_\_\_\_\_

LAWYER(S) (*Respondent(s)*) \_\_\_\_\_

DOCUMENT

**APPLICATION BY**  
**TO DIRECT THE RESPONDENT LAWYER(S) / LAW FIRM TO REPAY**  
**LAWYER'S CHARGES PAID AND TO AWARD COSTS**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_

City/Town \_\_\_\_\_

Province, Postal Code \_\_\_\_\_

Phone (area code & # / fax # (if any)) \_\_\_\_\_

Email (if any) \_\_\_\_\_

**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the presiding master/judge.

To do so, you must be in court when the application is heard as shown below:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Where: \_\_\_\_\_

Before whom: \_\_\_\_\_

Go to the end of the document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. An order directing the repayment of \$ \_\_\_\_\_ paid by the Applicant client to the Respondent(s) as lawyer's charges and disallowed/reduced/varied/forfeited by the Review Officer, \_\_\_\_\_ [name], on \_\_\_\_\_ [date of certificate].
2. Costs of the review hearing and of this application.

**Grounds for making this application:**

1. The Applicant obtained a Certificate of Review whereby the Respondent lawyer / law firm's charges were reduced to less than the amounts already paid to the Respondent.
2. The Certificate of Review also awarded the Applicant costs of the hearing of \$\_\_\_\_\_.
3. The Respondent has not appealed the Certificate of Review within the required one (1) month after the date of the Review Officer's decision of \_\_\_\_\_.
4. The applicant has made a demand for repayment by letter dated \_\_\_\_\_.
5. No repayment has been received.

**Material or evidence to be relied on:**

1. Affidavit of \_\_\_\_\_, dated \_\_\_\_\_ and filed.
2. Certificate of Review, dated \_\_\_\_\_.

**Applicable rules:**

1. 10.19(5): Certificate is conclusive proof of amount party must pay.
2. 10.21: Court may order repayment to client of charges paid by the client.
3. 10.30 & 10.31: Court may order costs.
4. 10.31(5): Court may order costs equivalent to all or part of the fees specified in Schedule C to be paid to a self-represented litigant.
5. 10.26(4): One month to file and serve appeal from review.

**Applicable acts and regulations:**

1. See Rules (above).

**Any irregularity complained of or objection relied on:**

- 1.. Details (if any).

**How the application is proposed to be heard or considered:**

1. Before a Master in chambers using affidavit evidence (unless otherwise directed).

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT

**AFFIDAVIT**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_  
 City/Town \_\_\_\_\_  
 Province, Postal Code \_\_\_\_\_  
 Phone (area code & # / fax # (if any)) \_\_\_\_\_  
 Email (if any) \_\_\_\_\_

**AFFIDAVIT OF** \_\_\_\_\_ *(my name)*

Sworn/Affirmed on \_\_\_\_\_, 20\_\_\_\_.

I, \_\_\_\_\_, of \_\_\_\_\_,  
*(Name)* *(Municipality, Province)*

MAKE OATH/AFFIRM AND SAY THAT:

1. I am *[Explain who you are, what your relationship is to the applicant and the respondent in these proceedings]*, and as such have personal knowledge of the facts and matters herein attested to except where stated to be based upon information and belief.
2. *[Set out the facts and beliefs upon which your application is based. Items that may need to be included:*
  - *Details and proof of payment(s) made to the law firm,*
  - *Details of accounts rendered by the law firm to you as client (attach copies as exhibits if necessary),*
  - *Details of Certificate of Review of Review Officer (attach copy as exhibit if necessary) noting the accounts reviewed, the amount by which the accounts were reduced, details of review officer's findings as to how much the law firm owes to you as client, details (if any) of any costs award to you by the review officer, anything else you feel is relevant in the Certificate of Review,*
  - *Details of dates to establish that the appeal period has elapsed and no appeal has been filed or served on you (as required by **Rule 10.26(4)**),*
  - *Details of written demand served on lawyer / law firm for repayment of monies due and owing (exhibits in support),*
  - *Details of non-payment or of specific refusal to pay.]*
3. *[Anything else you feel may be of relevance to the master/judge.]*

SWORN / AFFIRMED BEFORE ME THIS \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at

\_\_\_\_\_, Alberta.

\_\_\_\_\_  
(My Signature)

\_\_\_\_\_  
(Commissioner for Oaths in and for the Province of Alberta)

\_\_\_\_\_  
PRINT NAME & EXPIRY DATE/LAWYER/STUDENT-AT-LAW

COURT FILE NUMBER \_\_\_\_\_

Clerk's Stamp:

COURT OF QUEENS BENCH OF ALBERTA

JUDICIAL CENTRE OF \_\_\_\_\_

CLIENT(S) *(Applicant(s))* \_\_\_\_\_

LAWYER(S) *(Respondent(s))* \_\_\_\_\_

DOCUMENT

**ORDER DIRECTING REPAYMENT TO CLIENT**

ADDRESS FOR SERVICE & CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Street \_\_\_\_\_

City/Town \_\_\_\_\_

Province, Postal Code \_\_\_\_\_

Phone (area code & # / fax # (if any)) \_\_\_\_\_

Email (if any) \_\_\_\_\_

DATE ON WHICH ORDER WAS PRONOUNCED: \_\_\_\_\_

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: \_\_\_\_\_

[Repeat whatever the Master/Judge actually ordered; the following is an *example*.]

1. The Respondent \_\_\_\_\_ is hereby ordered to repay the Applicant \_\_\_\_\_ the sum of \$\_\_\_\_\_.
2. The Respondent is ordered to pay the Applicant interest on the above sum **[the court's direction as to the type and amount of interest, if any]**.
3. The Applicant is entitled to its costs associated with this application in the amount of \$\_\_\_\_\_ (inclusive of disbursements).
4. The total of the amounts awarded to be paid by the Respondent to the Applicant are enforceable as a judgment of this Court.

\_\_\_\_\_  
Master/Justice of the Court of Queen's Bench

## HOW DO I GET MORE INFORMATION?

If you have need of more details please call your local Court of Queen's Bench Clerk's office.

District	Address	Phone
Calgary	Calgary Courts Centre, Suite 705-N, 601 - 5 <sup>th</sup> St. S.W., Calgary, AB T2P 5P7	403-297-3862
Drumheller/Hanna	Court of Queen's Bench, 511 - 3rd Ave., West, P.O. Box 759 Drumheller, AB T0J 0Y0	403-820-7300
Edmonton	Court of Queen's Bench, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2	780-422-1520
Fort McMurray	Court of Queen's Bench, 9700 Franklin Ave., Fort McMurray, AB T9H 4W3	780-743-7136
Grande Prairie	Court of Queen's Bench, 10260 - 99 St., Grande Prairie, AB T8V 2H4	780-538-8961
Lethbridge/Macleod	Court of Queen's Bench, 320 - 4 St. South, Lethbridge, AB T1J 1Z8	403-381-5196
Medicine Hat	Court of Queen's Bench, 460 - 1st St., S.E., Medicine Hat, AB T1A 0A8	403-529-8710
Peace River	Court of Queen's Bench, 9905 - 97 Ave., Bag 900 - 34, Peace River, AB T8S 1T4	780-624-6256
Red Deer	Court of Queen's Bench, 4909 - 48 Ave., Red Deer, AB T4N 3T5	403-340-5220
St. Paul	Court House, 4704 - 50 St., PO Box 1900, St. Paul, AB T0A 3A0	780-645-6324
Wetaskiwin	Court of Queen's Bench, 4605 - 51 St., Wetaskiwin, AB T9A 1K7	780-361-1258

MAP OF JUDICIAL CENTRES OF ALBERTA

