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License  
PI 6477  
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Main Office

# **Robert A. Gardner, CPP**

## **Security & Crime Prevention Advisor**

*"Board Certified in Security Management"*

Email: [cpp@crimewise.com](mailto:cpp@crimewise.com)  
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Branch Office

## **Retention Agreement and Fee Schedule**

*(Applicable To California and Arizona State Court Cases)*

This Agreement is entered into between Robert A. Gardner, CPP ("Consultant") and the Retaining Attorney or Law Firm ("Attorney") identified below (hereinafter "the Parties") on the date specified below.

The engagement and responsibility for payment are the obligations of the retaining Attorney. While payment may be accepted directly from a litigant or insurance company as an accommodation to Attorney, employment of the Consultant and the responsibility for timely payment rests with the Attorney in all cases.

### **I. ADVANCE PAYMENT**

#### **Initial Retainer Payment**

1. **An Initial Retainer Payment of an amount not less than Two Thousand Dollars (\$2,000.00) as described below for Case Acceptance and Review plus a Rush Surcharge (if applicable) and any other identifiable initial fees and expenses shall be paid to Consultant prior to the commencement of any work. Until payment is made and signed Agreement is received, consultant is free to accept inquiries and/or engagement from any other parties.**

2. Any unencumbered portion of the Initial Retainer Payment in excess of Two Thousand Dollars (\$2,000.00) is refundable upon request following termination of Consultant's services.

#### **Case Acceptance & Review Fee:**

Attorney shall retain Consultant by payment of a non-refundable Case Acceptance and Review Fee in the amount of Two Thousand Dollars (\$2,000.00). Consultant will apply Attorney's non-refundable Case Acceptance and Review Fee as a deposit towards future work on Attorney's matter.

#### **Rush Surcharge:**

A non-refundable surcharge in the amount of One Thousand Five Hundred Dollars (\$1,500.00) shall be applied when a written report, deposition appearance, or trial appearance is required within thirty (30) days of the date of retention.

#### **Commencement of Work – Prior Clients**

If this Retention Agreement has been properly executed and a previous working relationship exists between Consultant and Attorney, Consultant may at his sole discretion begin work on Attorney's matter prior to receipt of Initial Retainer Payment. However, no opinions, appearances, reports or other deliverables will be provided until all required fees are received.

#### **Designation Policy**

1. **Designation Without Permission is explicitly prohibited.** Attorney shall not designate nor disclose Consultant as an Expert Witness in this matter, or use Consultant's name in conjunction with any legal proceeding, until the required Initial Retainer Payment has been paid and this Agreement has been signed by Consultant and Attorney. Verbal authorization to designate or disclose without a signed agreement and payment is never made.

2. Upon completion of this agreement and payment of all required fees Attorney is authorized to designate or disclose Consultant's name as an Expert Witness in this matter.

## **II. SERVICES**

1. Upon receipt of the Initial Retainer Payment and a copy of this agreement with Attorney's signature properly affixed, Consultant, an independent contractor who is a licensed Private Investigator, Private Patrol Operator and Security Consultant, agrees to perform consulting and/or expert witness services as requested by Attorney. In connection with such services, Consultant agrees to perform such investigation, document review, studies and research as to be able to consult with and/or advise Attorney as an expert witness with respect to Consultant's findings. Consultant agrees to orally report his findings and opinions to Attorney. If requested, Consultant will prepare a written report and cause it to be delivered to Attorney.

2. Consultant agrees to assist in Attorney's trial preparation and to testify as Attorney's expert witness in those areas in which Consultant is qualified. The full scope of Consultant's work will be determined as Attorney's matter proceeds, and will be subject to the needs and requests of Attorney. Attorney agrees to assist Consultant in formulating his opinions by providing Consultant with all available information regarding the facts and circumstances of the matter.

3. Consultant and Attorney agree that Consultant's role is as an expert advisor to educate the Court and assist Attorney in understanding both the strengths and weaknesses of Attorney's matter. Attorney recognizes that Consultant's findings and opinions may not always be consistent with, or favorable to, Attorney's theories and arguments. Attorney agrees that Consultant has a legal and ethical responsibility to both the Attorney and the Court to provide truthful information and unbiased opinions.

## **III. FEES AND REIMBURSEMENT OF EXPENSES**

1. Attorney's account shall maintain a positive balance at all times. Consultant will bill Attorney for services rendered and costs incurred at such other times as Consultant deems appropriate. If a zero balance exists or is anticipated, a supplemental payment of not less than Two Thousand Dollars (\$2,000.00) or the amount of the anticipated billing, whichever is greater, may be required prior to the continuation of work on Attorney's behalf. Opinions, appearances, reports and other deliverables will only be provided when Attorney's account is paid in full. Attorney agrees to pay Consultant's bill upon receipt, and payment will not be predicated upon settlement or adjudication of any third party's legal matter. The unencumbered portion of supplemental payments and prepaid expenses is refundable upon request following termination of Consultant's services.

2. Attorney's contractual obligation to pay for Consultant's services is a personal executory contract when services have been rendered, and does not depend upon the findings which Consultant renders, on the outcome of any legal action, mediation, arbitration, or the amount or terms of any settlement of third party matters, nor upon any contractual arrangement between Attorney and third parties.

3. Unless otherwise noted, Consultant's fees are calculated and billed to Attorney in quarter (.25) hour increments as follows:

- A. Consultation and other work, including but not limited to examination of evidence and documents, research, site inspection, meetings, document preparation (other than reports), deposition preparation, telephone calls, and local travel: Two Hundred Fifty Dollars (\$250.00) per hour (Hourly Rate). A two (2) hour minimum applies when travel away from Consultant's office is required.
- B. Written Report Preparation: Written reports will be provided on a fixed fee rather than hourly basis. Fee covers all activities directly associated with report production including: file review, incidental research, and report writing. When applicable, any unencumbered portion of the Initial Retainer Payment will be applied to the Written Report fee. Payment is due prior to the production of the report.

Written Report fees are as follows:

- a. Original Expert Witness Report: One Thousand Two Hundred Dollars (\$1,200.00)
  - b. Original Rebuttal to Opposing Expert's Report(s): One Thousand Two Hundred Dollars (\$1,200.00) per Expert.
  - c. Original Declarations and other Reports: One Thousand Two Hundred Dollars (\$1,200.00)
  - d. Supplemental Reports to all Original Reports and Declarations: Six Hundred Dollars (\$600.00) per report
- C. Deposition and other non-trial appearances, including preparation, on-call, wait and testimony time: Two Hundred Fifty Dollars (\$250.00) per hour billed in accordance with applicable statutes. A two (2) hour minimum applies. Deposition fee must be received from opposing counsel or Attorney prior to, or at the time of, deposition. Preparation and travel expenses are charged to Attorney. Prepayment of deposition preparation fee and estimated travel expenses plus the balance of any outstanding fees and expenses owed or anticipated to Consultant must be received by Consultant at least five (5) business days prior to the date of deposition.

Cancellation: If cancellation occurs at least seventy-two (72) hours prior to the appearance date, prepayment less actually incurred preparation time and all outstanding fees and expenses will be refunded upon termination of Consultant's services to Attorney. If cancellation occurs less than seventy-two (72) hours prior to appearance, a two (2) hour cancellation fee applies.

- D. Trial appearance (includes pre-trial preparation, day of trial travel, on-call, wait, and testimony time): Appearance day (all or part) – Three Thousand Five Hundred Dollars (\$3,500.00). Additional contiguous days – Two Thousand Dollars (\$2,000.00) per day prorated in half day (Morning: 7:00 a.m. to 12:00 p.m. – Afternoon: 12:00 p.m. to 5:00 p.m.) increments after the first day. Prepayment of the Appearance day and any anticipated additional contiguous days plus the balance of any outstanding fees and expenses owed or anticipated to Consultant (including outstanding fees owed by the opposing party) must be received by Consultant at least fourteen (14) business days prior to the date of trial. Consultant expects that Attorney will facilitate payment of outstanding fees owed by opposing party or will pay those fees.

Cancellation: If cancellation occurs at least seventy-two (72) hours prior to the appearance date, prepayment less actually incurred preparation time and all outstanding fees and expenses will be refunded upon termination of Consultant's services to Attorney. If cancellation occurs less than seventy-two (72) hours prior to the appearance date, a One Thousand Dollar (\$1,000.00) cancellation fee - plus incurred preparation fees to a maximum of five (5) hours at Two Hundred Fifty (\$250.00) per hour - and all other outstanding fees and expenses - will be charged. Cancellation after Consultant has arrived at the appearance location incurs the full appearance fee.

- E. Long Distance Travel Time: Long distance travel time is billed at a rate of One Hundred Fifty Dollars (\$150.00) per hour for all actual in-transit time and all time spent at the destination location unless that time is eligible to be billed at the Consultation, Deposition or Trial rate. Billable long distance travel time will not exceed twelve (12) hours per day.
- F. Designation Without Permission Fee: Any Attorney who designates or discloses Consultant as an Expert Witness in any matter, or use Consultant's name in conjunction with any legal proceeding without permission will be charged a fee of Two Thousand Five Hundred Dollars (\$2,500.00) per occurrence. This fee is exclusive and separate from any other fee or payment that may be payable to Consultant. This fee is solely compensation for the unauthorized designation or disclosure of Consultant as an Expert Witness or other prohibited use of Consultant's name. Payment in no way binds or otherwise obligates Consultant to provide any service or undertake any work on Attorney's behalf.

4. Meals, lodging, private and commercial air and ground transportation, and incidental expenses are billed at actual cost. Prepayment or direct payment by Attorney may be required for travel time and expenses. Attorney may be charged for mileage at the prevailing IRS rate, telephone tolls, and postage.

5. Travel time is calculated portal to portal from Consultant’s office (Camarillo, CA or Las Vegas, NV) nearest the destination, and based on the following:

<b><u>Travel Time Schedule</u></b>	<b>Local:</b> Ventura County, CA & Clark County, NV	Not to exceed two (2) hours round trip.
	<b>Local:</b> Los Angeles & Santa Barbara County, CA	Not to exceed three (3) hours round trip.
	<b>Local:</b> Orange and San Luis Obispo County, CA	Not to exceed four (4) hours round trip.
	<b>Long Distance:</b> All Other Locations	Time estimate based on travel method and distance
<b><u>Travel Time Estimator</u></b>	Ground Travel: 50 statute miles = one hour - Private Aircraft: 120 statute miles = one hour Commercial Aircraft: Publish schedule plus two hours	

6. Consultant reserves the right to select the method of travel. However, unless otherwise agreed upon, Attorney will be charged based on the least expensive travel method reasonably available regardless of the method chosen.

7. Assignments requiring travel to a destination in excess of one hundred fifty (150) statute highway miles one way from Consultant’s nearest office (Camarillo, CA, or Las Vegas, NV), which cannot be completed in ten (10) hours or less, will require overnight lodging and expenses.

8. Attorney’s payment shall be considered delinquent if not paid within thirty (30) days of the invoice date. Late charges at the legal rate may be added to invoices not paid within thirty (30) days.

9. Consultant may suspend all work on Attorney’s behalf should Attorney’s account become delinquent or should an invoiced supplemental retainer payment not be made within the specified time frame. Work will resume only upon full payment of all unpaid fees and expenses, delinquent and non-delinquent, plus any required prepayments for future anticipated work. This does not relieve Attorney in any way from payment for services rendered or expenses incurred.

**IV. CONFIDENTIAL INFORMATION**

Consultant regards all non-public information obtained from, or on behalf of, Attorney and third party’s legal matter as confidential and shall not disclose such information unless Consultant has obtained the expressed prior consent of Attorney or is otherwise forced, compelled, or required to disclose such information by operation of law or applicable government authority.

**V. TERMINATION OF SERVICES**

1. Either party may terminate this agreement and service at any time without cause and without penalty upon ten (10) days’ written notice to the other party, by first class mail.

2. This contract is a non-assignable personal services agreement and shall terminate upon the death of either party. The obligation to pay any party under this agreement shall be binding upon the obligor’s heirs, representatives, successors, and assigns. The right to collect any payment owing under this agreement shall inure to the benefit of the respective heirs, representatives, successors, and assigns of that party.

**VI. GENERAL**

1. All actions arising out of the performance of this Agreement shall be governed by the laws of the state having jurisdiction over the matter.

2. Attorney agrees to pay all costs incurred by Consultant, including his time and reasonable attorney's fees, in the collection of delinquent fees. Any legal proceedings will be litigated in Ventura County, California or Mojave County, Arizona as appropriate.

**VII. INTEGRATION AND SEVERABILITY**

1. This agreement constitutes the entire agreement between the Attorney and the Consultant, superseding all previous discussions and agreements between the parties respecting the services described herein. This agreement may not be modified in any respect unless the modification is contained in writing, signed by both the Attorney and Consultant.

2. If any term or provision of this agreement is deemed invalid, contrary to, or prohibited under applicable laws or regulation of the jurisdiction in which it is sought to be enforced, it shall not affect the validity of any other clauses or provisions of the agreement, which shall remain in full force and effect.

The parties do hereby execute and accept this agreement on the dates set forth below. The signators to this agreement represent that they are authorized to contractually bind themselves, their company, firm, and its partners.

BY: \_\_\_\_\_  
Robert A. Gardner, CPP

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Attorney Signature

DATED: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Law Firm

**CASE DESCRIPTION**

For:       Plaintiff       Defense

Case name: \_\_\_\_\_

Court name: \_\_\_\_\_

Case number: \_\_\_\_\_

**NOTICE TO ATTORNEY:** Please sign and date the Agreement and provide requested description information. Send Agreement and retainer fee to: Robert A. Gardner, CPP - 855 Aviation Drive, Camarillo, CA 93010. A copy of this Agreement with Consultant's signature affixed will be returned to Attorney. Effective Date: October 31, 2008 - (Revision: FCA-2008-1031-ca-az)