

CLIENT COMMUNICATIONS:
A CRITICAL ASPECT OF SOUND LEGAL PRACTICE AND LAW
FIRM MANAGEMENT

The lawyer with insurance has been and will continue to be a “deep pocket” target. There are some simple yet effective ways to protect your firm, reputation, and future insurability.

One of the most effective methods ensuring you ameliorate your risk and place yourself in a position to successfully defend a claim of legal malpractice is by using the lawyers’ stock in trade – the written word. In fact, memorializing your attorney/client relationship in writing may be enough, in and of itself, to dissuade anyone from claiming legal malpractice against you in the first place.

Every interaction you have in the context of accepting, rejecting or terminating an attorney/client business relationship should be documented in writing and in clear and unambiguous language. In this regard, you should be aware that many claims of legal malpractice arise from a misunderstanding of the nature and extent of the duties and responsibilities of the attorney. The resolution of such issues usually gives rise to a question of fact and a jury will use the “objective man” test to determine the scope of the duties. I would hasten to add that lawyers accused of legal malpractice with little or no written documents offered in their own defense are not viewed with much (if any) sympathy by most people. Indeed, some states (such as New York) have mandated rules that the attorney must set forth the nature of the engagement and an estimate of the nature and extent of the fees/expenses at the outset of the representation.

Unfortunately, in most instances, without a comprehensive engagement, non-engagement or disengagement letter, this question of fact is usually resolved in favor of the client resulting in an adverse impact on your loss history. This is an undesirable and perhaps untenable position to be in especially in view of the increasing legal malpractice insurance premiums. In some instances, the availability of coverage for some firms is non-existent. In fact, several insurance companies (including Chicago Insurance Company) will not insure you if you do not warrant that you communicate with your client in this manner. The prospect of practicing law without malpractice coverage and/or paying avoidably high premiums is unpalatable and unacceptable to most practitioners.

For this reason, it is highly recommended that you utilize the following templates with all people who seek your professional guidance - 1) ENGAGE; 2) NON-ENGAGE; AND 3) DISENGAGE.

SAMPLE ENGAGEMENT TEMPLATE

RE: ENGAGEMENT FOR LEGAL SERVICES (SPECIFY NATURE OF REPRESENTATION)

Dear _____:

This correspondence will confirm our meeting/discussion (specify date) relative to legal services which our firm has agreed to provide to you. This letter will memorialize our duties and provide you with an estimate/nature of our fees. In this regard, the scope relative to our representation of you encompasses the following: (specify what your services will be with a brief recitation of the facts and circumstances).

Our fees are structured as follows: (specify if a contingent or per hour fee and hourly rate agreed upon). Of course, litigation expenses/costs are in addition to our legal fees and we will provide you with statements for these amounts on a monthly basis which we ask you to pay within ten days from receipt.

Of course, we have not guaranteed any result and in light of the nature of the legal system, we cannot provide you with a precise estimate of our total fees or the exact period of time that our representation of you will span. Notwithstanding the foregoing, we would anticipate the following legal fees/costs and time periods based on the information you have provided us to date and our professional judgment (provide estimates of time and cost of representation – if hourly fees, note the billing cycle). If there are significant changes to these estimates, we will notify you appropriately.

During the course of our representation, will report to you in writing and/or verbally to discuss strategy issues and you will be

responsible to make decisions relative to our recommendations and suggestions. (NOTE – PERIODIC REPORTING ON STATUS OF CASE AND HIGHLIGHTING CHANGES IN COSTS/FEEES/STRATEGY IS HIGHLY SUGGESTED WHICH WILL RESULT IN NO “SURPRISES” FOR CLIENT AND PROTECT YOU SHOULD A DISPUTE ARISE IN THE FUTURE)

In the event that there is any dispute relative to our fees or the nature of the services we have rendered, we mutually agree to resolve any/all such disputes through binding arbitration. Any change to this agreement can only be mutually agreed to and memorialized in writing.

We appreciate your business and look forward to representing your interests relative to this matter.

[NOTE – IN CASE REPRESENTING A CLIENT IN SEVERAL DIFFERENT MATTERS, IT IS ADVISABLE TO USE A SEPARATE LETTER FOR EACH UNDERTAKING – THIS WILL NOT ONLY AVOID CONFUSION SHOULD THERE BE ANY DISPUTES, BUT MAY ALSO AVOID TOLLING/EXTENDING OF THE STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE BASED ON THEORY OF CONTINUOUS REPRESENTATION.

ALSO – IF THERE WILL BE EXTRAORDINARY COSTS OR EXPERTS ARE REQUIRED, IT IS ADVISABLE TO NOTE THE FACT THAT THE CLIENT IS RESPONSIBLE TO PAY FOR THIS AND PROVIDE AN ESTIMATE FOR THESE AMOUNTS ALSO].

SAMPLE NON-ENGAGEMENT LETTER

RE: DECLINATION OF LEGAL SERVICES (SPECIFY NATURE OF REPRESENTATION SOUGHT)

Dear _____:

This correspondence will confirm our meeting/discussion of (specify date of meeting/discussion) wherein you sought representation for (specify nature of legal representation sought).

After a review of the facts and circumstances which you have described we have decided to decline to represent you (or your interests) relative to this matter. (At this juncture, you may enumerate reasons for declining representation especially if client came to you after or close to the time that the applicable statute of limitations will run to ensure you protect yourself. If you decline representation based on merits of case or conflict of interest, you should state this. In this regard, it is also suggested that you note the date that the statute of limitations “may” expire based on the information provided to you and urge the individual to seek the opinion and legal services of another attorney).

Although we will not provide legal services to you in relation to this matter, we thank you for contacting us and would ask you to consider us in the future should the need arise.

SAMPLE DISENGAGEMENT LETTER

RE: DISENGAGEMENT/FINAL REPORT (SPECIFY NATURE OF REPRESENTATION)

Dear _____:

This correspondence will confirm that we have concluded our representation of you and your interests relative to the captioned matter.

As you know, we have achieved the following results (specify outcome and include your final bill/check if successful plaintiff case, as appropriate).

We trust you concur that we have acted appropriately in all aspects of our legal representation on your behalf and we appreciate your business. Should you have need to for legal services in the future we would ask you to consider and recommend our firm.