



Guidelines for Drafting Engagement Letters

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As an attorney, it's important to do everything you can to keep malpractice claims at bay. One very effective way to do so is by drafting a well-written engagement letter. According to the American Bar Association Standing Committee on Lawyers' Professional Liability, approximately 17 percent of all malpractice claims arise due to poor relationships between clients and their attorneys. Poor communication is to blame for approximately 75 percent of all grievances that are filed by clients against their attorneys. With these points in mind, it's critical to establish clear ground rules right from the start. The best way to do that is with a carefully drafted engagement letter. In this white paper, you will find 12 key guidelines for drafting engagement letters. Keep these points in mind to protect yourself and your clients as adequately as possible.

12 Guidelines for Drafting Engagement Letters

1. Discuss Everything First

Before putting pen to paper, or fingers to keyboard, you should sit down and have an in-depth discussion with your client. During this meeting, discuss all of the points that you will include in your engagement letter. Explain the scope of your services and the limitations of them as well. If you will be using a retainer agreement, make sure that the client is

completely clear about how it will work. Identify the people you will be representing and those you will not. The goal is to make everything as clear as possible to avoid misunderstandings later. Use the notes that you prepared before and during the meeting while writing your engagement letter. Your letter shouldn't include any surprises for the client.

2. Remember that Some Things aren't Negotiable

The point of an engagement letter is to limit the scope of your engagement as it pertains to your client. However, the limitations that are outlined in your letter have to be reasonable. Just because something is included in an engagement letter doesn't mean that it's automatically reasonable. For example, including unreasonable fees in your engagement letter doesn't make them okay. Your engagement letter should help you establish trust with your client, so make sure that the limitations that it imposes are reasonable.

3. Be Clear about Whom You are Representing

Nothing can throw a wrench in the works like inadvertently representing someone whom you didn't intend to represent. This can and does happen, but it can be avoided with a clear, concise engagement

letter. Be extremely explicit in your letter regarding this matter. If necessary, outline those whom you will not be representing as a part of your services. This is the easiest way to avoid conflicts of interest. As mentioned before, you should discuss these points with your client prior to drafting this letter. The letter should simply reinforce what was already discussed.

Be Mindful of Your Audience

Keep the recipient or recipients of your engagement letter in mind at all times. Your client needs to be able to read and understand it with ease, but it should also clearly convey what you want to say to judges and juries. Will your letter withstand the scrutiny that it will face in a court of law? This is why it's important not to oversimplify things while writing your engagement letter. There's a fine balance to strike, but it is doable. Discussing everything with your client first will also help simplify things. You will already have explained everything verbally, so putting it down on paper in an easy-to-understand way shouldn't prove to be too difficult.

Make Sure the Letter is Signed and Returned to You

It's one thing to ask a client to sign and return an engagement letter; it's another

to actually make sure that it happens. This is where it is vital to follow up regularly with your client. If you don't receive a signed copy back, you could be in for trouble later. While discussing the terms of the engagement letter with your client, make sure that he understands the importance of signing and returning it. Set a clear deadline for this to be done. If the deadline expires and you don't have a signed copy back, follow up until you receive it. Don't let this matter slip through the cracks.

Honesty is the Only Policy

To establish a strong attorney-client relationship, it's critical to be completely honest and transparent at all times. That's certainly true when it comes to drafting an engagement letter. Don't include any misleading or false statements in your letter. Everything that is written about you and your services should be completely true. You can't expect a client to trust you if you can't be honest in your engagement letter. Down the line, the letter could come back to haunt you if it includes blatant lies.

Be as Clear as Possible

Even if it feels somewhat redundant, you should be as clear as possible in your engagement letter. Use the full, legal names of all involved parties. Double and

triple check the letter for accuracy. Use clear, direct language to prevent confusion. With a well-written engagement letter, there will be no lingering questions. Any questions that your client may have should have been answered during earlier discussions. By the time the letter is written, there shouldn't be any confusion at all. As an added bonus, your client is more likely to sign and return the engagement letter quickly when it's written in a clear and direct way.

Avoid Form Letters

Sure, form letters are faster and easier to use. However, they are essentially worthless. They don't contain the kinds of details that are needed in effective engagement letters. Although it takes more time to draft a completely original engagement letter, it's well worth it to do so. That's not to say that you have to start entirely from scratch. It's fine to use a template to get the ball rolling. However, your engagement letter should include as many details as possible. If it's too generic, it's not going to do you or your client any good.

Be Clear About the Retainer Agreement

Confusion over retainer agreements is an all-too-common problem. Clients sometimes think they have retainer

agreements when their attorneys are actually just holding funds. Make sure that your client completely understands whether or not a retainer agreement exists. If so, provide as many details about it as possible in your engagement letter. There should be no lingering doubts about the parameters of the agreement or how the retainer will be used. Address concerns about the retainer agreement prior to drafting your engagement letter.

Send Updated Engagement Letters as Needed

Depending on the length of your engagement with a client, the terms of that engagement may change. Whenever they do, it's crucial to draft an updated engagement letter. It's easy to overlook this step, but doing so can have serious consequences. Even if the change is relatively minor, you should take the time to create an updated letter. As before, make sure that the client signs and returns the updated engagement letter too. This will ensure that the two of you are on the same page throughout the course of your relationship.

Know when to Use Non-Engagement Letters

In some cases, it may be necessary to explicitly let someone know that you are

not his lawyer. Simply stating this fact isn't enough. By putting it down on paper, you will protect yourself. For this reason, don't be afraid to draft non-engagement letters when the situation warrants it. With a written record of this fact, someone who isn't your client won't be able to turn the tables on you later. Non-engagement letters can be short and sweet, so there's no need to devote a lot of time to writing one.

Don't Forget Disengagement Letters

When your professional relationship with a client comes to an end, make sure to memorialize this fact with a disengagement letter. The letter will essentially state that you are no longer the client's attorney. This letter will eliminate the risk of your client assuming that you are still representing him. As with non-engagement letters, disengagement letters don't have to be very long or involved. Just make sure that the information you provide is completely accurate. For example, double check to ensure that you are using the former client's full legal name.

As you gain more experience as an attorney, writing engagement letters will become second nature. Even after you become adept at writing engagement letters, however, you should still keep all of these guidelines in mind. Each engagement letter is going to be different, and each one needs to be written in a way that protects you and your clients as adequately as possible. Although you're not technically obligated to write these letters, it's widely agreed that it's the smart thing to do. Make it an everyday part of running your practice.

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