

Preview:

Lawyers Professional Liability Engagement Letter

A well-crafted engagement letter can be a very effective tool for avoiding and defending malpractice claims and ethical complaints. To assist insureds with drafting their own engagement letters as well as other types of communications and documentations with their client, Travelers has published Engagement Letter Topics and Samples for Lawyers. This publication provides sample language and letters that lawyers can use as a guide when drafting their own engagement letters and is available to insureds on the secured area of Travelers website.

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A RESOURCE FOR LEGAL PROFESSIONALS





Introduction

A well-crafted engagement letter can be a very effective tool for avoiding and defending malpractice claims and ethical complaints because it frames the expectations and responsibilities between lawyer and client so as to avoid ambiguity or misunderstanding. An effective engagement letter must identify the client, detail the specific scope of the representation, and establish the basis for fees charged and expenses incurred.

Engagement letters can also be used to explain how your firm will staff the representation, to enumerate specific client responsibilities, and to explain document retention policies and termination, or withdrawal, from the representation. Form engagement letters should be used as a starting point for specific modification and individualization on each new assignment. It is important to send out an engagement letter by method that verifies receipt (i.e., email and/or certified mail) on each file before beginning work on a matter. Even the best engagement letter is of no use, however, if it is not utilized. This resource further outlines considerations for the use of non-engagement and disengagement letters.

To help you prepare an effective engagement letter, Travelers has gathered the following information and model engagement letter provisions for your review. These letters are intended as reference material only. You will need to conform your engagement letters to state law and jurisdictional ethical requirements in order to effectively protect you. You should consult with an attorney in order to tailor the letters for your specific requirements.

When considering a new engagement, remember to:

- Limit your risk with a tailored, matter-specific engagement letter for every engagement
- Discuss the engagement with your clients
- Comply with the applicable standards

Consult as needed with your own attorney or another professional advisor.

Travelers Engagement Letter Topics and Samples for Lawyers and associated materials were prepared with substantial assistance and contribution from the law firm of Litchfield Cavo LLP.

General Topics to Consider for Most Engagement Letters

- 3** Client Identification
- 3** Related Party Identification
- 4** Scope of Representation
- 4** Staffing the Representation
- 4** Fees
- 5** Expenses
- 6** Statement of Client Rights
- 6** Scope of Authority
- 6** Client Responsibility
- 7** Describe Any Method for Alternative Dispute Resolution (ADR)
- 7** File/Document Retention
- 7** Withdrawal or Termination
- 8** Confirmation of Receipt
- 8** Closing Letters
- 8** Disengagement Letters
- 9** Non-Engagement Letters

Sample Letters

- 10** Plaintiff Case – Contingency Fee
- 12** Criminal Law Case – Flat Fee
- 14** Transaction/Estate Planning – Hourly Fee
- 16** General Litigation Case – Hourly Fee
- 18** Closing Letter
- 19** Non-Engagement Letter

General Topics to Consider for Most Engagement Letters

Client Identification

Specifically identify the client or clients by precise legal name. Do not list general, blanket inclusionary language such as “and all subsidiaries” or “and affiliates.” If such entities are actually clients, the best practice is to identify each of these additional entities by precise name. In some situations, such as where there is the potential for confusion, it is advisable to also specify any person or entity who is NOT a client. If an entity is identified as a “non-client,” that entity should be advised of such in a separate non-engagement letter, and asked to confirm such understanding in writing, if possible.

Sample Language

This letter confirms our engagement to represent _____ and _____ in the matter of _____.
We are not retained to represent _____.

Related Party Identification

Specifically note if the attorney and/or firm has represented (or is representing) another party or any of the lawyers/firms involved in the case, and follow the waiver rules applicable to the jurisdiction, as appropriate.

Sample Language for Conflicts of Interest and Our Professional Obligations

Because we are representing both _____ and _____, a potential conflict of interest exists. A conflict of interest is a real or potential incompatibility between the interests of two clients. When a lawyer represents more than one client in the same case, what is good for one client may not necessarily be good for the other client. A lawyer, however, still owes both clients duties of loyalty, confidentiality, and other professional duties. Rule ____ of the [State] Rules of Professional Conduct provides that a lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer’s own interests or the lawyer’s duties to another client will materially and adversely affect the representation of the client, except as permitted in [this rule]. In other words, we cannot necessarily represent the clients identified above if their interests diverge. Some general examples of conflicts of interest are a discrepancy in the parties’ testimonies, incompatible positions, and substantially different possibilities of settlement.

We also owe a duty of confidentiality to both of you. Rule ____ of the [State] Rules of Professional Conduct requires us to maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or is likely to be detrimental to the client. We still have to follow this rule when we represent two clients in the same case. If either of you asks us to not share information with the other, we would have to honor that request. We may then be required to withdraw from the joint representation.

Although clients can choose to waive a potential conflict of interest, they are not required to do so. Rule ____ provides that a lawyer can represent two clients with potentially conflicting interests if both clients consent after: (1) consultation with the lawyer; (2) having received in writing reasonable and adequate information about the material risks of the representation; and (3) having been given the opportunity to consult with independent counsel. This means you can allow us to represent both of you despite a potential conflict of interest. We cannot represent anyone if either of you decides to assert claims against the other in this case. Rule ____ of the [State] Rules of Professional Conduct.

Sample Language for Source of Potential Conflict

[Explain in detail why there is or may be a conflict of interest.]