

LEGAL MANAGEMENT

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LI Feature

LEGAL INDUSTRY/BUSINESS MANAGEMENT

No Excuses, No Surprises

Law firms should use client engagement letters to define services

Aside from the fact that many states require it, having a client engagement letter is good common sense and a reasonable standard to maintain.



PAULA TSURUTANI

Marketing Communications Writer

“Firms need to make sure the letters are well formatted, with no typos, on standard letterhead.”

PEGGY GRUENKE

Cincinnati consultant
to solos and small
firms



Putting the terms of the engagement in writing helps avoid confusion, spells out responsibilities, expectations and clarifies — for all parties — what will and will not be done. It minimizes the risk of a law suit in case the client (mistakenly) thinks the firm has agreed to handle certain matters. It outlines payment terms and collection arrangements. The engagement letter has evolved to be a useful marketing wedge that can differentiate your firm.

IT'S A COMMUNICATIONS TOOL

Enforcing clear communications is the number one reason why all firms need to use client engagement letters routinely, according to Peggy Gruenke, a Cincinnati consultant to solos and small firms. The letter sets the tone for the engagement, ensures that everyone is on the same page, and that there is an understanding of what will transpire during the legal representation. It's one occasion when the lawyer can showcase client relations skills and make a good first impression.

Producing a letter often is the first piece of official client correspondence and it is a deliverable that generates other important benefits. “It gives the clients something tangible that they can hold in their hands,” says Gruenke. “It helps make them feel like they've actually acquired something of value.”

As with any other type of correspondence sent to clients, make sure to customize the engagement for the client. It's easy to fall into the bad habit of generating a form letter just to get it out of the way, but don't be perfunctory. “First impressions count,” says Gruenke. “Firms need to make sure the letters are well formatted, with no typos, on standard letterhead.” Having a client welcome packet as part of the initiation process also can be helpful (see sidebar “Items to Accompany Engagement Letters”).

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MEGAN ZAVIEH

*Ethics and State Bar
Defense Lawyer*



IT'S A RISK MANAGEMENT TOOL

“In addition to being a useful communications tool, a client engagement letter is important as a risk management tool,” says Marian Rice. Rice, Chair of the Attorney Liability Practice Group at the New York law firm of L’Abbate Balkan Colavita & Contini LLP, represents attorneys in professional liability matters and provides advice to attorneys on risk management and ethical issues. She also is a member of the ABA Standing Committee on Lawyer’s Professional Liability. From her perspective, the biggest mistake lawyers make is not having a letter. Even though lawyers say they have incorporated the client engagement letter into their process, it’s still an enormous issue. Rice says it is critical to be clear about what you’re going to be doing. “Don’t overpromise. If your work with a client starts to ‘creep’ into broader areas, revise your letter. Make sure to document what’s going on.”

Both [Rice](#) and [Thomas P. Sukowicz](#), Director of Lawyers’ Risk Management Services at Hinshaw & Culbertson have written articles on the key components of an engagement letter. Here are some of the basics:

Client engagement letter basics (*be sure to refer to your jurisdiction’s local requirements*):

- Identify the client clearly.
- Describe the scope of the engagement. While you may want to describe the engagement in broad and general terms, thinking it may help generate more business, you may be exposing yourself to liability. Be specific about what you will be doing, and what you won’t. As Rice notes, “A plainly worded provision setting forth the defined scope of the services to be performed is one of the most important risk management tools an attorney can adopt.”
- Clarify the payment terms. Misunderstandings about fees can cause the biggest headaches. Be clear about the frequency of billing, who’s responsible for paying, as well as probable expenses and who will paying for them. And delineate how you will deal with delinquent clients.
- Identify the engagement team. Indicate who will be working on the engagement (primary attorney, any other partners, associates, consultants, and paralegals).
- Client communications issues and policies. Spell out the frequency of your communications with the client, preferred form of communication (phone, email, letter), plus any firm policies about client communications (office hours, use of fax and electronic communication).
- Conflicts. Describe how the firm will handle potential conflicts of interest.

- Document and file retention policies. Reference firm document retention and destruction policies

Word of caution

Having a standard client engagement letter can be good — and bad. Megan Zavieh, Ethics and State Bar Defense Lawyer says that, sure, “working from a client engagement form letter can be a timesaver and can help reduce liability risks. But don’t just send it as a form letter.” Review it carefully to ensure that it reflects accurately the client, terms and issues. As a practical tip, if you use a form letter, highlight the section or information that needs to be personalized or updated. And at the beginning of each year, Zavieh says, examine all of your forms, along with your state’s rules, to make sure they are up-to-date.



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“Treat it as a process — a starting point where you can ask needs-based questions, get a better handle of the client’s concerns, and tailor your staffing, fee structure, and communications plan on the client’s issues.”

TIMOTHY B. CORCORAN

Owner, Corcoran Consulting Group



IT’S A PROFITABILITY TOOL

A client engagement letter also is critical to maintaining profitability, says Rhonda Amick, Chief Operating Officer at Turner Padgett Graham & Laney P.A., a South Carolina firm with five offices and 70 attorneys. Amick, who serves on the firm’s executive committee, says work cannot even start without a client engagement letter on file. The letter is the key to opening a new matter. It’s a strict policy and some lawyers do moan and complain to Amick saying they’re being “held hostage.” The firm maintains that starting the engagement with a formal process is one way to avoid or reduce the likelihood of future liability issues. It also makes managing client work more efficient.

Having top management support for the policy is essential, as is regular training, which is a standard part of the firm’s management retreat and new lateral attorney onboarding process. Amick’s firm has an active intranet site that includes a variety of client engagement templates. The templates make it easier to combine key content components, including the scope of the work, billing arrangements, retainer policies, and fee arrangements. The templates also spell out the firm’s collection process, and rights to terminate and withdraw from representation.

IT’S AN EVOLVING MARKETING ELEMENT

Timothy B. Corcoran, Owner of Corcoran Consulting Group and current President of the Legal Marketing Association says, “I often take firms to task for over-reliance on engagement letters that offer broad, or even no, parameters about how the matter will be handled, aside from the negotiated hourly rates.” He says that the client engagement letter has evolved in recent years as clients have demanded matter budgets and project plans.

The start of a great relationship

Use this moment to stand out in the crowd and show how your firm can be responsive, on-point and client service-oriented. Enlightened firms have taken this requirement as an opportunity to

differentiate their services. “Client engagement letter may be a misnomer,” says Corcoran. “The document could be a letter, plus a project plan. The point is that this first communication can demonstrate how the firm can better serve the client by showing an understanding about the client’s concerns and issues. Don’t treat it as a simple letter or a fill-in-a-template document. Treat it as a process — a starting point where you can ask needs-based questions, get a better handle of the client’s concerns, and tailor your staffing, fee structure, and communications plan on the client’s issues.”

Just say no

While many firms may be inclined to instantly say yes when asked for a proposal, Corcoran says no often is a smarter response. Instead of automatically responding to a request for proposal, start a richer conversation by saying “if you want us to help, that’s great. But we need more information. Then we can respond.” Those are the firms that are using the client engagement letter as just one element in initiating a relationship with the client — adding other information, including a discussion of project management, proposed project plan, touch points in the engagement, staffing and budget management — so the client is more informed, engaged and involved.

This mindset becomes part of their pitch process. Firms can use it as an opportunity to talk about the firm’s approach to engagement management, project management, how they will communicate changes to budget, how and when they will keep the client informed. “Even if you don’t have all the facts, if there are unknowns or imponderables, you can discuss how you will respond to those variables,” says Corcoran. It’s a clear way to show commitment, customized service and responsive solutions.



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IT’S FOR THE VIRTUAL LAWYER

The virtual lawyer faces other issues when writing a client engagement letter. Stephanie Kimbro, who has practiced as a virtual lawyer since 2006, says “the engagement letter from the virtual lawyer needs to address confidentiality and privacy issues, and provide assurance that you will protect confidential information.” The prospective client also needs to know the virtual lawyer’s policy on handling funds and payment online, the security of the firm’s site, web tracking and online information collection practices, along with a contact for online technical troubleshooting.

Like traditional brick-and-mortar lawyers, virtual lawyers need to be clear about how and how often they will be communicating with clients to establish reasonable expectations and sidestep the client frustration of hearing radio silence after sending a query. Kimbro says some virtual lawyers use the client engagement letter to let clients know that they will not communicate by phone; communication will be strictly limited to the firm’s secure portal. She also advises including the virtual firm’s policy about using social media for communication. “For example, Facebook, Twitter, and texting are not secure and, in the best interests of the client, will not be used to communicate. Or that the firm’s policy is not to ‘friend’ or ‘follow’ clients.”

IT'S ALSO A NON-ENGAGEMENT LETTER

Declining an engagement with a prospective or existing client, also is a good reason to send a client letter. A non-engagement letter is an important variation that firms often overlook. Although not as prevalent as the client engagement letter, "it's such a good idea, and simple to do," says Zavieh. It's especially important to send to a current client to avoid any misunderstanding about the scope of the work the firm is undertaking. And what about the unpopular situation where a prospective client never signs the engagement letter, but comes back repeatedly wanting "free" advice after an initial consult? Zavieh, who calls this the "ongoing, but never consummated relationship," advises sending a polite letter that thanks the prospect, but also instructs the advice seeker to please "come to the office to discuss further. My fee is xyz." That clear message is often enough to stop the queries.

ABOUT THE AUTHOR

Paula Tsurutani is a marketing communications writer, focusing on issues in professional service firms, association and arts organizations.

[Email](#)

[Website](#)

ADDITIONAL RESOURCES

MORE READING AND WEBSITES ON CLIENT ENGAGEMENT LETTERS

- *[Engagement Letters: Beginning a Beautiful Relationship](#)*, by Marian C. Rice. Published in the American Bar Association's *GP Solo* magazine, January/February 2014, Volume 31, No. 1.
- The ABA's Law Practice Division's online [LP Forms Bank](#) includes links to a range of customizable forms, including client intake forms and client engagement letters.
- Peggy Gruenke's blog post on "[A Cyclist's Perspective on Fee Agreements](#)," which includes aspects of the client engagement letter and fee agreement.
- Article on the [Use of Engagement Letters to Reduce Malpractice Claims](#), by Thomas P. Sukowicz, Director of Lawyers' Risk Management Services, Hinshaw & Culbertson
- [The New York State Bar Association](#) web page includes a number of practice management sample forms, including a client engagement letter.
- Lawyers Mutual has an [Attorney-Client Agreements Toolkit](#) with sample engagement, non-engagement, and disengagement letters.

