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Engagement Letter Basics

The client, scope, subject matter and goals of the representation should be clearly defined. Consideration must also be given to specifying what you will not do for the client, especially in situations where the same facts give rise to recoveries on multiple theories. In addition, consideration should be given to setting forth any weaknesses, difficulties, or complications that have already been identified, and any special agreements regarding the representation.

Never guarantee a particular result (either in terms of dollars or what you can do for the client) in the engagement letter.

If you don't want to represent the client in an appeal from the underlying representation, state specifically in your letter that you won't be doing so. If your letter and/or fee agreement is silent on this point, you may find that you have to handle the appeal.

When representing multiple clients or if you perceive a potential conflict(s) of interest, the potential conflict(s) must be disclosed, and the client's right to independent counsel should be set forth, together with the client's knowing waiver and decision to nevertheless proceed. The possible consequences of the conflict arising should also be set forth, including your possible withdrawal and resulting increase in expenses and delay. Recognize that there are some conflicts which require you to decline representation altogether. Also recognize that if certain conflicts actualize, you may be required to withdraw from the representation. At the very least, you will need to obtain another waiver.

When representing multiple clients, the party whose directions will be followed should be clearly identified, and the necessity of withdrawal in the event of an actual conflict should be disclosed. In this vein, the letter should also state that any information obtained by or from any source during the joint representation will be shared with the other clients.

When accepting fees from a third party, ALWAYS determine ownership of any unused fees upon receipt of the funds and state to whom any unused fee will be returned.

The letter should set forth agreed areas of responsibility and non-responsibility. If the client agrees to do legwork or obtain documents, include these in the letter. Additionally discuss any potential use of outside counsel, associates, paralegals or other office personnel. The client should also be obligated to keep you informed (for example, change

of address), cooperate and be truthful. Let them know that if they don't fulfill their obligations, you will seek to withdraw.

With the above thoughts in mind, below is a basic starting template for a form Engagement Letter.

Sample Engagement Letter

Dear Client:

This letter will confirm our conference on ____ (date) ____ and the fact that our office is now representing you in the following matter(s): **____ (See User Note 1 Below) ____**.

We are glad to have you as a client in regard to this matter. If you wish for us to represent you in any matter other than that stated above, we will be happy to review that matter with you and determine if we can be of service to you. **[See User Note 2 Below]**

Our fees are outlined in our fee agreement, which we have already discussed and a copy of which is enclosed. (Note: If agreement has not yet been signed, send two signed copies of fee agreement and request that the client sign one and return it to you.) Our file retention policy is outlined in our fee agreement. Please note we will maintain your file for the period of time set forth in the fee agreement, after which time your file may be destroyed without further notice to you. You may request your file at anytime during, upon the conclusion of, or, within the time period set forth in the fee agreement, after the conclusion of, this matter.

We will keep you informed as this matter progresses. In the meantime, if you have any questions, please call. Thank you for choosing our firm to represent you in this matter.

Very truly yours,

Enclosure

User Note 1 –

From a risk management perspective, the most important goal of an Engagement Letter is to craft an accurate and unambiguous statement regarding the Scope of the Representation. Insert a clear, unequivocal description of the legal services to be provided, including, if applicable, the level of services--e.g. administrative review, trial, appeal, etc. While the description should fully describe the anticipated services, the attorney should take care in drafting the description to avoid a conclusion by the client that the client can expect to receive more representation or services than the attorney intends to provide.

Further, if an attorney knows, or reasonably should know, of alternative or additional recoveries or causes of action the client has, the attorney should so inform the client, as well as inform the client whether the attorney will represent the client in that/those matters, and if not, to advise the client that independent representation is appropriate if the client wishes to pursue them, to inform the client about potential statute of limitations issues and admonish the client to take action timely. See, for example, *Keef v. Widuch*, 747 N.E.2d 992 (Ill.App. 2001) (Although a representation agreement may limit the scope of representation to a particular legal course of action, the client must be made to understand that the course of action is not the sole potential remedy and that there exist other courses of action that are not being pursued. Workers' compensation attorneys have a duty of care to advise clients about the possibility of third-party actions involving a defective product, that the third-party action could be barred if not brought within the statute of limitations, and either to investigate such claims or to advise the clients to consult other counsel.)

An attorney may not be aware, at the time of the inception of the representation, of other recoveries or causes of action. Ordinarily, they do not become apparent until after the attorney has further investigated the client's matter, or by way of traditional discovery. However, at whatever stage of the representation the attorney knows or should know of the other recovery or cause or action, the duty to so inform the client arises at that time.

User Note 2-

Although a representation agreement may limit the scope of representation to a particular legal course of action, if other remedies or even separate causes of action are available to the client the attorney must inform the client of the alternatives and whether the attorney is or will pursue them. Failing to properly inform the client of the alternatives and the lawyer's role in them exposes the attorney to potential malpractice for injuries suffered by the client resulting from missed opportunities in pursuing the alternatives. If the lawyer declines to represent the client in the alternative matters, the lawyer must inform the client of that and that the client should timely seek other counsel to represent them if they wish to pursue them.