



WARNING AND DISCLAIMER: The above information was prepared by The Bar Plan for general information purposes, and should not be construed as legal advice or legal opinion with regard to any specific circumstance or set of facts. This list is not inclusive of all the possible or required contents for such letters, and each attorney preparing such a letter must make an independent evaluation of the necessary and required contents, given the circumstances of the representation.

Non-Engagement Letter Basics

A non-engagement letter should identify the basis of the relationship with a non-client, whether that is a consultation for a proposed engagement, or a relationship arising out of a non-client's participation in a transaction with a client (i.e. buyer in a real-estate transaction).

The non-engagement letter should include reference to time deadlines or statutes of limitations. The letter should warn that the passage of time may bar pursuit of the matter. Generally speaking, reference to a specific time deadline is to be avoided, as it may be incorrect. However, if information is elicited during the initial meeting indicating when the deadline or statute of limitations runs, the date and circumstances of the receipt of the information should be referenced.

If it appears that a time deadline may be an immediate problem, a very strong admonition to seek immediate competent legal counsel should be included, including a strong warning about the immediate statute of limitations problem and the circumstances giving rise to that conclusion.

The attorney expresses an opinion upon the merits of the case in a non-engagement letter at his or her peril. Such an opinion may be construed as legal advice. If expressed, such an opinion must be carefully researched and should always state that other attorneys may reach a different opinion.

If the firm will be providing any service either to the non-client or for the non-client's benefit, in a related or different matter, this limited service should be set forth and distinguished in a separate engagement letter.

If any documents were provided to the attorney in the course of the consultation regarding a possible engagement, the non-engagement letter should state that these documents are being returned either with the non-engagement letter or under separate cover.

Consideration should be given to use of the non-engagement letter in situations where courts have granted third party standing even in the absence of a formal attorney-client relationship, (i.e. beneficiaries of a will or trust).

Finally, especially in situations where there is an immediate statute of limitations or other serious problem with a non-client's claim, consideration should be given to sending a non-engagement letter certified mail, return receipt requested, while also taking steps to establish a presumption of receipt by sending a non-engagement letter by regular mail.

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

Sample Form Non-Engagement Letter

Dear Mr./Ms.:

Thank you for expressing your interest in our firm regarding possible representation in the matter of:
_____. **[See User Note 1 Below]**

After [meeting with] [reviewing documents provided by you] [investigating your matter] the firm has decided not to represent you in this matter. **[See User Note 2 Below]**

In declining to represent you in this matter, please understand that we are not expressing any opinion concerning the merits of your case.

If you still wish to pursue this legal matter or make a claim against any other party, you should be aware that the passage of time may bar you from doing so. Since time is always important in legal matters and could be critically short in your case, if you decide to contact another law firm about this matter, I recommend that you do so immediately. **[See User Note 3 Below]**

We are not charging any fee for reviewing your case, since we have declined to represent you and are not expressing an opinion as to the merits of your case. If you need legal assistance for other matters in the future, I hope you will again consider our firm. Should you have any questions, please contact me.

Very truly yours,

User Note 1

Provide an accurate and unambiguous statement regarding the scope of the potential representation and the extent and nature to on which it was inquired. The letter should contain a clear, unequivocal description of the contemplated legal services, including, if applicable, the level of services--e.g. administrative review, trial, appeal, etc. While the description should fully describe the contemplated services, the attorney should take care in drafting the description to avoid a conclusion by the client that the client could have expected additional types of pre-engagement review.

User Note 2

If documents were provided by a prospective client, the documents should be indexed upon receipt and counter-indexed upon return, in all situations other than a declination contemporaneously with the conclusion of the initial interview.

User Note 3

The user might note this information has been repeated from the “Basics” information above. We have done so because the issue of how much or little an attorney should/must explain to a prospective client when declining a representation is extremely fact dependent and fraught with danger. The non-engagement letter should include reference to time deadlines or statutes of limitations. The letter should warn that the passage of time may bar pursuit of the matter. Generally speaking, reference to a specific time deadline is to be avoided, as it may be incorrect.

However, if information is elicited during the initial meeting indicating when the deadline or statute of limitations runs, that date and the circumstances of the receipt of the information should be referenced.