

Engagement Agreements

It is a good practice to prepare an engagement letter to properly define the attorney-client relationship and scope of the engagement. An engagement letter is a useful tool to lay the baseline for client expectations, to reduce the risk of misunderstandings between the attorney and the client, and to begin effective client communications.

Key components of an engagement letter include the following:

- 1. Identity of the client.** It is of critical importance to identify the client at the outset of the engagement and to include that information in an engagement agreement. This requires a careful consideration of who the attorney represents and, of equal importance, who the attorney does not represent. For example, an attorney may represent a corporation but not the officers and directors, or an attorney may represent an individual but not his or her spouse. This analysis should be performed immediately at the time of retention and the decision adhered to throughout the representation.
- 2. Scope of the representation.** Likewise, the attorney should evaluate and communicate the scope of the representation, and any limitation(s) in that scope, at the outset. The engagement letter is an opportunity to specifically identify the matter(s) in which the attorney represents the client and, likewise, any matter(s) in which the attorney does not represent the client. The attorney should refer back to this scope throughout the representation, and any changes in scope should be updated in writing.
- 3. Details of the fee arrangement.** The engagement letter should include fee information including the type and amount of fee, if the fee is contingent, and payment terms.
- 4. Disclosure of any conflicts of interest.** Known conflicts of interest must be disclosed and informed waivers must be obtained. In order to obtain an informed waiver, the attorney must disclose “the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any[.]”¹ If a conflict is known at the outset of the representation, the engagement agreement is an appropriate place to disclose and obtain a written waiver. Of course, if the conflict is not able to be waived, the client should not be engaged.
- 5. File retention and destruction procedures.** The engagement letter can include the attorney’s file retention and destruction procedure(s) in order to properly advise the client as to what will happen to the file when the matter concludes and put the client on notice of the steps necessary to take to preserve materials from the file.
- 6. Client’s signature.** It is essential to follow up with the client to obtain the client’s signature on the engagement agreement.

¹ See Texas Disciplinary Rules of Professional Conduct, Rule 1.06(c)(2).