

Importance of the clear, unambiguous written letter of engagement [22 N.Y.C.R.R. §1215]

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Retainer letters can play a key role in avoiding or even defending legal malpractice claims. They should

- * Define the scope of representation
- * List the attorneys who will be representing the client with their respective rates
- * If agreed upon, it should state that fee disputes will be mediated or arbitrated
- * State all entities you represent and if possible, those you do not
- * It should specifically identify those matters the firm has agreed to handle, and if possible, those it was not retained to handle
- * Identify as broadly as possible all anticipated or reasonable foreseeable outcomes and consequences
- * Describe how expenses will be billed and how the retainer, if any, will be replenished
- * State that if retainer is not replenished timely, that consent is given to withdraw

Advantages of Proper Retainer Agreements:

- * Can limit scope of representation
- * Can help avoid conflicts
- * Can reduce the likelihood of a fee dispute
- * Can create an attorney-client relationship with one party and also eliminate it with others

Engagement letters are important because they play a significant role in reducing the frequency of billing disputes. A good engagement letter should go beyond the mere recitation of billing rates and billing cycles and should additionally provide conduct and management of the firm and client relationship. 1

Since March 4, 2002, a court rule entitled “Written Letter of Engagement” (22 N.Y.C.R.R. §1215) has required all New York lawyers to provide written letters of engagement to clients in every matter where fees are expected to be \$3,000 or more unless the client has previously paid the attorney for services “of the same general kind” or the matter is a domestic relations matter (in which case a written retainer agreement is required – see 22 N.Y.C.R.R. §1400.3).

Standardization of engagement, non-engagement & disengagement letters

Non-engagement and disengagement letters can also help reduce or defend claims. Transmission of a non-engagement letter can help eliminate any claim of an attorney-client relationship. Always send a non-engagement letter when you decline a case, and enter information into your database for future conflict searches. Also:

- * Send by certified mail, return receipt requested

- * Tailor letter specifically to matter being declined
 - * Statute of limitations dates and other deadlines should be contained
 - * Do not provide an opinion about the case, or the likely result
 - * Refer the non-client to other counsel or the name and number of the City,
County or State Bar Association
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1. *Matter of Feroletto*, 6 Misc.3d 680, 791 N.Y.S. 2nd 809 (N.Y. 2004) When an attorney fails to meet the responsibility of obtaining or furnishing the writing required by N.Y. Comp. Codes R. & Regs. Tit. 22 §1215.1 and there is a plausible misunderstanding as to whether counsel was to receive any compensation for the services, the issue should be decided against counsel and attorney should only recover a fee under quantum meruit principles.