

The Professional's Toolbox: An Engagement Letter

AUTHOR: KATRINA SMELTZER

One of the most important tools for a professional to protect himself or herself from a malpractice action is a well-drafted engagement letter. The engagement letter is often disregarded by professionals choosing a “hand-shake” method instead, but it can be critical to both preventing and defending a professional liability claim. Engagement letters are highly recommended, and, in some situations, may even be required. In fact, some malpractice insurance carriers provide a discount or other financial incentive to professionals they insure who use an engagement letter.

Importantly, the engagement letter ensures the professional and the client are on the same page regarding things such as:

- who is the client;
- where the work will take place;
- the period of engagement;
- the fee structure and policies; and
- the scope of services.

When a professional and the client communicate clearly and reach an understanding on these topics at the beginning of the relationship, disputes down the road may be bypassed. Engagement letters can also play a role in allowing professionals to cease representation when the client is not compliant with payments or commits other violations of the engagement letter.

The professional's scope of services is an issue often litigated. Clear definition of the scope of services at the start of the relationship may avoid some conflicts, but if it does not avoid every conflict, it should support the professional's position later when a conflict does arise. If the scope of services changes during the relationship, the engagement letter should be amended or done anew to reflect the changes. If the services end before expected, a disengagement letter should be sent to mark the end of services.

Engagement letters can also do things like limit liability (such as limiting recovery by the client to the amount of the professional's fees), require mediation of conflicts before litigation (in an attempt to save both parties money), or indemnify and hold harmless the professional for certain acts that cause harm relating to the services provided.

To be effective, engagement letters should be specific to the client and the services provided. However, professionals will often use a form letter that is modified for each situation. The Professional Liability Team at Sandberg Phoenix von Gontard, P.C. can help you draft a form engagement letter that you can modify as necessary for each client or we can assist with the necessary modifications. Contact us for assistance.