

GUIDELINES FOR LAWYERS DRAFTING ENGAGEMENT LETTERS

We recommend that your engagement letters address the following issues:

- ❑ **Acceptance of Engagement** – Clearly state that the client has agreed to hire you and you have agreed to represent the client.
- ❑ **Identification of the Client** – Identify who the client is and who the client is **not**. Clarify whether the client is an individual, a corporation, a partnership, etc. If there are other parties closely affiliated with the client, explicitly disclaim representation of those parties.
- ❑ **Identification of the Matter** – Describe the work to be done (e.g., “You have engaged our firm to represent you in a matter involving X with the goal of recovering damages arising out of X”).
- ❑ **Scope of the Engagement** – Define the scope of representation by specifying what you will and **will not do** for the client (e.g., “We have agreed to do A, B, and C, but not X, Y, and Z”). If the client has additional or future legal needs not covered by this engagement letter, state whether that additional work will need a separate engagement letter or whether an addendum to this engagement letter is sufficient.
- ❑ **Fees and Billing** – Include the following fee and billing information in the engagement letter or use a separate fee agreement. Be aware that there are special requirements for contingency fee agreements and “prepaid fee” agreements. See ORPC 1.5(c)(1)-(2), ORS 20.340, ORPC 1.5(c)(3), and ORPC 1.5(c)(4), respectively.
 - *Payor* – Specify who is responsible for paying your attorney fees. If a third party is responsible, comply with ORPC 1.8(f) to make proper disclosure and get the client’s informed consent. Redact your billing statements if they are sent to the third party to protect client information. See OSB Formal Ethics Op. 2005-157. Specify who should get any prepaid but unearned fees when the representation concludes.
 - *Rates and basis* – Explain hourly rates for the lawyers and staff, types of tasks billed, and billing calculations.
 - *Prepaid fee* – If you use a prepaid fee, you must comply with ORPC 1.5(c)(3) and ORPC 1.5(c)(4). You must have a written fee agreement that clearly identifies the fee as a “prepaid fee.” The agreement must explain the nature of the fee arrangement, define the scope of the services provided, state the total amount of the fee, and describe the terms of payment. The agreement must also specify that the funds will not be deposited into your lawyer trust account. Additionally, it must inform the client that they may discharge you at any time, and if they do, they may be entitled to a refund of all or part of the fee for services not yet performed. ORPC 1.5(c)(4).
 - *Retainer (deposit) or advanced flat fee* – If you’re requesting a retainer or charging a flat fee paid in advance, specify the amount and explain that the money will be deposited in the lawyer trust account to be withdrawn only after work is completed and a statement is sent to the client.
 - *Expenses and costs* – Explain who is responsible for costs and expenses incurred in the matter. Specify which expenses may be advanced by you and which are paid directly by the client. If you plan to advance expenses, clearly state the client’s obligation to pay you back.
 - *Non-cash payment* – If you’re going to be paid by means other than cash or check, such as security or interest in property or cryptocurrency, you want a clear statement of the rights and obligations about those types of payments.

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- *Consequence of non-payment* – State what will happen if the client fails to make timely payment or keep current on the retainer balance.
- *Billing procedures* – State how often the client will be billed (e.g., monthly), when the client will be billed (e.g., end or beginning of the month), how the client will receive the billing statement (e.g., by mail or email), when payment is due or when funds are withdrawn from the trust account, and the procedures for withdrawing funds.
- **Client’s Obligations** – Describe the client’s responsibilities, which should include: (1) providing complete and accurate information to the best of the client’s knowledge (2) notifying the lawyer of changes to personal and residence information and (3) cooperating with the lawyer in the representation of the case. Outline other responsibilities or tasks that the client needs to fulfill, decisions to be made, or documents or information to produce.
- **Conflicts of Interest** – Disclose personal conflicts, imputed conflicts, and conflicts with current and past clients in the engagement letter or in a separate “disclosure and waiver of conflict” letter signed by the client.
 - **Joint representation** – Disclose issues related to the representation of two or more clients on the same matter, including, but not limited to:
 - *Confidences* – State whether you can or cannot keep confidences or secrets of one client from the others in the group. (The common law default position is that lawyers cannot keep secrets or confidences from other clients.)
 - *Diverging interests* – State what happens if the interests of any clients in the group diverge or if conflict arises during the course of representation.
 - *Disqualification* – If any client wants to hire a separate lawyer later for reasons other than a conflict, state whether the firm is free to continue representing the remaining clients. An agreement by the departing client not to disqualify you from the continued representation must be in writing and signed by that client.
 - *Aggregate settlement* – State what happens if there is an aggregate settlement offer. Follow ORPC 1.8(g) to make the proper disclosure and get all clients’ informed consent.
- **Communication Guidelines** – Specify the best date/time and method (email, text, phone, client portal, etc.) for the client to reach you. Explicitly state when you’re not available. Also specify how the client should contact you in an emergency and explain what an emergency means. Include the client’s preferred modes of contact, availability, and emergency contact. Provide guidance on whether the client can or should use a work computer or email to communicate with you.
- **File Storage/Retention/Destruction** – Specify whether it’s your practice to store the client’s file in digital format or on the cloud and what happens to the paper file. State how long you will retain a copy of the file and what will happen to it after the retention period. The PLF recommends that lawyers store a copy of the client file for 10 years from the date the matter is closed unless there is a legal requirement to maintain it longer, and then to securely destroy the files after that.

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- ❑ **Commencement of Legal Work** – State that work on the matter will not begin unless the client signs and returns the engagement letter and pays the agreed-upon advance deposit.
- ❑ **Client’s Understanding of and Agreement to the Terms** – Have a statement that the client will let you know promptly if the client disagrees with or doesn’t understand any of the terms of engagement, and by signing the engagement letter, the client understands and agrees to the terms.
- ❑ **Termination of Engagement** – Inform the client of the right to terminate the attorney-client relationship at any time. State that the client’s decision to terminate will not generally excuse the client’s obligation to pay for work already performed on behalf of the client. Also consider reserving your right to terminate the representation if the client fails to fulfill the obligations outlined in the engagement letter, falls unreasonably behind on payments, or other circumstances—to the extent permitted by the Oregon Rules of Professional Conduct.

IMPORTANT NOTICES

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