

Why attorneys get sued when they've done nothing wrong

Time and again we see attorneys get sued by their clients when the attorneys did not commit malpractice. It is not uncommon for allegations of malpractice to be brought against an attorney when the attorney does not believe (s)he was hired to complete the specific task at issue. All too often, unfortunately, the attorney either has no engagement letter at all or has one that lacks detail about the scope of the specific undertaking. To us as insurance professionals, these types of claims are heartbreaking (contrary to common belief, claims adjusters are human and do have hearts!) because they are so easily avoidable.

Under ABA Model Rule 1.5(b), the scope of representation shall be communicated to the client **preferably in writing** (emphasis added). See your specific state's Rules of Professional Conduct to ensure compliance with your ethical duties.

Few attorneys would challenge the fact that new clients require engagement letters. When it comes to existing clients, however, attorneys tend to have multiple excuses for not taking the same precaution.

Frequently attorneys will complain that they couldn't possibly send an engagement letter for each and every assignment they receive, as it would take up too much of their time. They believe that having a general representation agreement in place is sufficient. And they think it will be awkward to send a new engagement letter to an existing client for each matter assigned. Well, they are wrong on both counts.

In the case of an existing client, it is helpful not to think in terms of formal engagement letters but more client-appropriate "scope-of-work confirmations." An existing client doesn't need a 20-page tome that reiterates every term of your agreement. However, as a risk management best practice, any matter that has a billing number should have some documentation of the engagement and scope of work associated with it.

The engagement can be in the form of a template where you simply fill in the scope for each additional assignment. It can be sent as an informal letter or as an e-mail. It merely needs to outline the scope and request a confirmation of understanding. So, for instance, the email template might look like this:

Scope of Work Confirmation

This e-mail will confirm the scope of work for our new engagement. All the terms and conditions of our original engagement letter with you and/or your company will apply to this new matter. We thank you for choosing ABC Law Firm for your legal needs.

New Scope of Work:

[Description goes here.]

Please confirm that the scope of work as outlined above is accurate and consistent with your understanding of our engagement.

A short, templated communication such as this is effective and also efficient enough to discredit any "too busy" excuse an attorney may offer for not outlining the scope for each assignment. This e-mail should take just a few minutes to compose and send.

This abbreviated communication is essential even when a general representation agreement is in place.

Usually, a general representation agreement does not go into detail for specific tasks. That is where the scope-of-work confirmation comes in, allowing clarity to be established around each discrete job. We have even seen claims stemming from general representation agreements where the attorney was unaware that the client expected them to be addressing an issue. Therefore, we also recommend that as part of your general representation agreement you state that "No work will be performed without a written request to do so."

The scope-of-work confirmation also undermines the argument that a new engagement letter will feel awkward with existing clients. Because you likely have a more familiar relationship with an existing client, an e-mail is bound to feel more appropriate than a formal engagement letter. You are offering superior customer service by communicating to your client your understanding of what it is exactly that they want you to do. This allows any misunderstandings to be discovered and addressed before you perform and bill for work the client does not want. At the same time, the confirmation e-mail may help reveal tasks that are in fact expected but that you missed during your initial discussion with the client. In short, the e-mail allows this meeting of the minds which is essential to strong and lasting client relationships.

We see too many claims that could have been avoided or mitigated through simple documentation. By using a basic template for existing clients that outlines the scope of the assignment and requires a countersignature, attorneys can ensure a meeting of the minds without spending much time.