

## PREPARATION OF CLIENT ENGAGEMENT LETTERS<sup>1</sup>

This checklist is intended to assist attorneys in evaluating whether to accept representation and in preparing clear client engagement letters. It is not intended to be exhaustive and does not replace an attorney's obligation to comply with the Kentucky Rules of Professional Conduct (SCR 3.130). Suggestions or comments are welcomed, please address them to the Chair of the KBA Ethics Committee, Paul Isaacs [paulsadieville@aol.com](mailto:paulsadieville@aol.com). It is intended that this Checklist will be updated.

### 1. CLIENT INTAKE AND DECISION TO ACCEPT REPRESENTATION

#### 1.1 Initial Evaluation - Determine Willingness to Represent Client<sup>2</sup>

**1.1(a)** Determine whether you are willing and able to represent the prospective client.

**1.1(b)** Obtain sufficient background information about the prospective client and the matter during the initial consultation.

**1.1(c)** Conduct appropriate preliminary research, including an internet search on prospective client to have a better understanding of the prospective client and relevant the circumstances.

**1.1(d)** Consider whether the prospective client appears cooperative and capable of maintaining a productive professional relationship.

**1.1(e)** Determine whether the matter appears to have legal merit or whether additional investigation will be required before accepting representation.

**1.1(f)** Evaluate whether you have the competence and experience necessary to handle the matter or whether association with other counsel may be required.

**1.1(g)** Do you have sufficient time and resources to represent the client diligently.

#### 1.2 Identify Your Client

**1.2(a)** If the matter involves an entity, determine whether representation will be limited to the organization or will include owners, officers, directors, members, or employees.

**1.2(b)** In family or multiple-party matters, determine whether you will represent one person or multiple persons and whether joint representation is appropriate.

**1.2(c)** If others are present during initial meetings, consider steps necessary to preserve attorney-client privilege and confidentiality.

#### Capacity and Undue Influence Considerations

**1.3(a)** Does the prospective client appear to possess the capacity to make informed decisions.

**1.3(b)** Consider whether there are indications of diminished capacity, substance abuse, cognitive impairment, or undue influence by third parties.

#### 1.3 Conflicts of Interest<sup>3</sup>

**1.4(a)** Conduct a conflicts check within the firm before accepting representation.

**1.4(b)** Determine whether the representation may be directly adverse to a current client.

**1.4(c)** Determine whether the representation may be materially limited by responsibilities to another client, former client, third person, or the lawyer's personal interests.

**1.4(d)** Determine whether representation may involve duties to a former client.

**1.4(e)** Evaluate whether information received from a prospective client may create obligations if representation is declined.

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<sup>1</sup> This edition was prepared August 1, 2018, revised February 14, 2019 and March 2026.

<sup>2</sup> Rules I.1 - Competence; 1.3 - Diligence; 3.1 - Meritorious Claims; 1.13 - Organization as Client; I.14 - Client with Diminished Capacity.

<sup>3</sup> Rules 1.7 - Conflict: Current Clients; I.8 - Specific Conflict Rules; I.9 - Duties to Former Clients; I.18 - Duties to Prospective Client.

**1.4(f)** If a conflict exists but may be waivable, determine whether informed written consent can be obtained.

**1.4(g)** In matters involving multiple clients, evaluate whether joint representation is appropriate if a waiver of confidentiality is appropriate and whether each client can give informed consent.

### **1.5 Client Objectives**

**1.5(a)** Determine client's objectives.

**1.5(b)** Discuss potential legal strategies and the means by which the objectives may be pursued.

**1.5(c)** Explain limitations, uncertainties, risks and scope of the representation.

### **1.6 Contact Information and Communication Logistics**

**1.6(a)** Obtain complete contact information for the client.

**1.6(b)** Determine whether client authorizes communication through email, text messaging, or other electronic means and risks associated therewith.

**1.6(c)** Obtain the name and contact information of an alternate person who may assist in locating the client if necessary.

## **2. TERMS TO ADDRESS IN THE ENGAGEMENT LETTER**

### **2.1 Identification of the Client**

**2.1(a)** Clearly identify the client in the engagement letter.

**2.1(b)** If the client is an entity, state that the lawyer represents the entity and not individual constituents unless otherwise agreed.

**2.1(c)** If representation involves multiple clients, describe the nature of the joint representation and any limitations on confidentiality among the clients.

### **2.2 Scope of Representation**

**2.2(a)** Define the scope of the representation to objectives to be achieved.

**2.2(b)** Describe the specific matter for which the lawyer is being retained.

**2.2(c)** Identify matters that are excluded from the representation, such as appeals, tax consequences, post-judgment enforcement, or other related matters unless separately agreed.

**2.2(d)** If the representation is limited in scope, obtain the client's informed consent to the limitation.

### **2.3 Fees**

**2.3(a)** Describe the basis or rate of the legal fee.

**2.3(b)** Specify whether the fee is hourly, fixed, contingent, or some combination.

**2.3(c)** If the representation involves a contingent fee, include all required terms of the contingent fee arrangement.

**2.3(d)** Explain when invoices will be issued and when payment is expected.

**2.3(e)** Explain any consequences of late payment.

**2.3(f)** Describe whether a retainer, advance fee, or cost deposit is required. If charging a "flat fee" specify it is to be deposited in the firm's operating or in a trust account until earned.

### **2.4 Expenses**

**2.4(a)** Identify the types of expenses for which the client will be responsible.

**2.4(b)** Explain whether expenses will be billed periodically or deducted from funds recovered.

**2.4(c)** Obtain the client's consent for significant or extraordinary expenses when appropriate.

### **2.5 Trust Account and Handling of Funds**

**2.5(a)** Explain how advance fees or cost deposits will be handled.

**2.5(b)** Describe whether such funds will be deposited in a lawyer trust account.

**2.5(c)** Explain when fees become earned.

### **2.6 Communication with the Client**

**2.6(a)** Describe how the client will be reasonably informed about the status of the matter.

**2.6(b)** Explain the lawyer's policy regarding responding to client telephone calls, emails, and other communications.

**2.6(c)** Identify other firm personnel who may assist in communications or case management.

**2.6(d)** Address the use of electronic communications and potential confidentiality risks if client confers with others not in lawyer's office or use of artificial intelligence tools.

## **2.7 Client Responsibilities**

**2.7(a)** Pay legal fees and expenses as agreed.

**2.7(b)** Provide accurate and complete information.

**2.7(c)** Respond promptly to requests for information.

**2.7(d)** Cooperate in the representation.

**2.7(e)** Preserve relevant documents and evidence.

**2.7(f)** Keep counsel informed of changes in address, phone number, or other contact information.

**2.7(g)** Consider in good faith reasonable settlement proposals when applicable.

## **2.8 Termination of Representation**

**2.8(a)** Explain that the client has the right to terminate the representation at any time.

**2.8(b)** Describe client's responsibility to pay earned fees and expenses upon termination.

**2.8(c)** Describe circumstances under which the lawyer may withdraw from representation consistent with the Kentucky Rules of Professional Conduct. Provide examples that may justify withdrawal, such as failure to pay fees, cooperate, fraudulent behavior or other conduct that renders representation unreasonably difficult.

## **2.9 Conclusion of Representation**

**2.9(a)** Describe when representation will conclude.

**2.9(b)** Explain how settlement proceeds or other funds will be distributed.

**2.9(c)** Address lawyer's obligations with respect to liens, assignments, or statutory reimbursement claims.

**2.9(d)** In personal injury or similar matters, address potential third-party reimbursement claims such as medical liens or governmental reimbursement obligations.

**2.9(e)** File Retention and Return of Client Property - when and how client files may be returned or destroyed.

**2.9(f)** Explain the firm's file retention policy.

**2.9(g)** Explain the client's right to obtain copies of the file.

## **3. NON-ENGAGEMENT AND DECLINED MATTERS**

**3.1** When representation is declined after consultation, send a non-engagement letter to the prospective client.

**3.2** Clarify that no attorney-client relationship has been formed if representation is not accepted and not providing an opinion on any statute of limitations for the declined matter.