

New Court Rule Requires Lawyers to Provide Letters of Engagement to Clients

Effective March 4, 2002, lawyers are required to provide many clients with a "letter of engagement." The purpose of the rule, as explained by the New York State Office of Court Administration, which initially proposed the rule in June 2001, is "to ensure that there is a memorialized meeting of the minds with regard to the basic terms of the engagement." There are three basic components to the letter: (1) explaining the scope of legal services to be performed; (2) explaining the fees and expenses to be charged, along with the lawyer's billing practices; and (3) noting that the client may have a right to arbitration of any fee dispute that may arise under Part 137 of the Rules of the Chief Administrator.

For purposes of this rule, "client" includes the entity that engages the attorney. As an example, if the lawyer has been retained by an insurance company to represent a third party, the letter should be provided to the insurance company.

There are exceptions to the rule. First, the rule does not apply to matters where the legal fee is expected to be less than \$3,000. Second, the rule does not apply if the services to be rendered are of the same general kind and on the same terms as services previously rendered to the client. Third, the rule does not apply to domestic relations matters, for which a written retainer agreement is already required under Part 1400 of the Joint Rules of the Appellate Division. Fourth, a letter of engagement is not required if the lawyer and the client enter into a written retainer agreement that includes the items required to be included in the letter of engagement. Finally, the rule does not apply to representations where the attorney is admitted to practice in another jurisdiction and maintains no office in New York, or where no material portion of the services are to be rendered in New York.

Reproduced below is the new part 1215 of the Joint Rules of the Appellate Division, setting forth the requirements for the letters of engagement. In addition, a sample letter of engagement is provided. The sample letter is just that: a sample. A lawyer should review each matter to determine the specific information that should be included in the letter of engagement for that matter, and may also wish to consider whether it would be more appropriate for the particular engagement to enter into a retainer agreement with the client, rather than providing the letter of engagement.

SAMPLE LETTER OF ENGAGEMENT

To: [Name of Client]

This Letter of Engagement is furnished to you in accordance with Part 1215 of the Joint Rules of the Appellate Division.

Having reviewed with you the Statement of Client's Rights and the Statement of Client's Responsibilities, we have undertaken your representation in connection with the matter[s] described below:

SCOPE OF REPRESENTATION

A claim, dispute or dealings with relating to _____

All of our services in this matter will end, unless otherwise agreed upon in a writing signed by us, when there is a final agreement, settlement, decision or judgment by the court. Not included within the scope of our representation are appeals from any judgments or orders of the court. Appeals are subject to separate discussion and negotiation between our firm and you. Also not included in the scope of this agreement are services you may request of us in connection with any other matter, action or proceeding.

FEES, EXPENSES AND BILLING PRACTICE

We intend to submit a bill to you no less frequently than every 60 days. Expenses will be separately stated on the bill and our fees will be charged as indicated below [check appropriate box]:

If on contingency, the fee will be charged in accordance with the following percent or scaled percentages _____. The stated percentage or percentages will be applied to the net sum recovered after the deduction of expenses. You will be liable for reimbursement of expenses whether or not there is a recovery.

On the basis of our time charges as follows:

\$ _____per hour for the services of [name];

\$ _____per hour for the services of [name];

.

A flat fee of \$ for all services within the scope of our representation as set forth above.

In consideration of our services, in matters in which the fee is based on time charges, we shall require a retainer of \$_____, of which the first \$ _____shall constitute our minimum fee for the services to be rendered. The retainer is to be applied to our time charges.

Our minimum fee is intended to operate as follows:

a. The time initially expended on your matter will be charged against the minimum fee. However, if your matter is concluded, whether by settlement or by judicial action, in less time

than would be required to expend the minimum fee on the basis of time alone, we shall retain the minimum fee and there would be no refund of any part of the minimum fee. An additional retainer may be required as time charges warrant.

b. If our relationship is terminated in less time than would be required to expend the minimum fee on the basis of time alone, without your matter having been concluded by settlement or judicial action, then we shall not retain the entire minimum fee. Rather, in that event a fair and reasonable fee will be determined in accordance with legally accepted standards and only such portion of the minimum fee as represents such fair and reasonable fee would be retained. The elements of a reasonable fee are set forth in DR 2-106 of the Lawyer's Code of Professional Responsibility, a copy of which provision will be furnished to you upon request.

ARBITRATION

In the event that a dispute arises between us relating to our fees, you may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon request.

[Name of Law Firm]

By:

Dated:

Order Adopted by the Appellate Divisions

December 20, 2001

Amended April 3, 2002

The Appellate Divisions of the Supreme Court, pursuant to the authority invested in them, do hereby add, effective March 4, 2002, Part 1215 to Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York, entitled "Written Letter of Engagement," as follows:

Part 1215 Written Letter of Engagement

§1215.1 Requirements

(a) Effective March 4, 2002, an attorney who undertakes to represent a client and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement before commencing the representation, or within a reasonable time thereafter (i) if otherwise impracticable or (ii) if the scope of services to be provided cannot be determined at the time of the commencement of representation. For purposes of this rule, where an entity (such as an insurance carrier) engages an attorney to represent a third party, the term "client" shall mean the entity that engages the attorney. Where there is a significant change in the scope of services or the fee to be charged, an updated letter of engagement shall be provided to the client.

(b) The letter of engagement shall address the following matters: (1) Explanation of the scope of the legal services to be provided; (2) Explanation of attorney's fees to be charged, expenses and billing practices; and (3) Where applicable, shall provide that the client may have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator.

(c) Instead of providing the client with a written letter of engagement, an attorney may comply with the provisions of subdivision (a) by entering into a signed written retainer agreement with the client, before or within a reasonable time after commencing the representation, provided that the agreement addresses the matters set forth in subdivision (b).

§1215.2 Exceptions

This section shall not apply to (1) representation of a client where the fee to be charged is expected to be less than \$3000, (2) representation where the attorney's services are of the same general kind as previously rendered to and paid for by the client, or (3) representation in domestic relations matters subject to Part 1400 of the Joint Rules of the Appellate Division (22 NYCRR) or (4) representation where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services are to be rendered in New York.