



Connecting with Clients: Fee Agreements and Engagement Letters

by Timothy Toller

Attorneys have an ethical obligations to keep clients informed about the progress of their matter throughout the course of the employment.¹ The start of an attorney client relationship is the time to initiate a pattern of open communication with the client. The fee agreement and the engagement letter present excellent opportunities to clarify how and what the attorney will communicate to her client, establish reasonable expectations about the relationship and address problems that routinely arise during an attorney-client employment.

The Business and Professions Code sets forth the provisions that must be contained in the fee agreements.² However, other information should be contained in the fee agreement. Ultimately the contract terms should reflect the employment expectations of both the attorney and client. Where the terms are not clear, language might be interpreted in favor of the client.³ In addition to the required provisions, consider including information about the following:

- whether the client will be charged for the time the attorney spends communicating with the client;
- who pays for the cost of copying files if the client discharges her attorney and hires a new attorney;
- who gets the sanction money-attorney or client-when the court orders sanctions against the adverse party;
- the scope of the employment; (in litigation, for example, is the attorney responsible for any appeal);
- whether the attorney provides (or declines to provide) any tax advice on the settlement award of judgment;
- whether the attorney will retain any legal documents which she drafts for the client (ie. wills, trusts, etc.);

¹ California Rule of Professional Conduct 3-500; Business and Professions Code Section 6068(m); *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.

² Business and Professions Code Sections 6146 et. seq.; *Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033 [252 Cal.Rptr. 845]; *Franklin v. Appel* (1992) 8 Cal.App.4th 875 [10 Cal.Rptr.2d 759].

³ *Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033 [252 Cal.Rptr. 845]; *Severson & Werson v. Bollinger* (1991) 235 Cal.App.3d 1569, opn. mod. at 1 Cal.App.4th 417 [1 Cal.Rptr.2d 531].

- whether the attorney and client will resolve any malpractice liability claims through binding arbitration.⁴

Clarifying how the attorney will communicate avoids creating a frustrated client and allows the attorney to set the schedule for communicating. The most skilled attorney does herself a disservice if the client perceives her as inattentive and uncaring. Communication during the relationship can be enhanced and simplified by addressing these practical issues in an engagement letter:

- how often the attorney will communicate with the client;
- whether the communication will be by telephone or letter;
- when the attorney responds to phone calls from the client;
- the name of an employee assisting the attorney when the attorney is unavailable.

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⁴ See California State Bar Formal Opinion 1989-116.

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