



RISK MANAGEMENT INSIGHTS

by Rian Jorgensen, JD

PAY ATTENTION TO YOUR FEE AGREEMENT

A robust fee agreement can serve as a cornerstone for a successful attorney-client relationship and, if the relationship should turn sour, be a valuable source of protection against unfounded malpractice allegations.

The California statutory requirements regarding fee agreements are relatively straightforward. They can be found in the State Bar Act (Business and Professions Code section 6146-6149.5) and Rule of Professional Conduct 4-200 "Fees for Legal Services."

Beyond compliance with the statutory framework, there are scores of recommended best practices in connection with fee agreements that savvy firms implement, regardless of practice area or size of firm. Three in particular to highlight are:

1. Make sure the agreement gets signed.

In the rush and excitement of launching into a new matter, this step can be overlooked, with potentially severe consequences. In a typical scenario the agreement is sent to the client, the attorney plunges into a time sensitive matter (billing a significant amount of time), and the client has given no indication that there are any issues with the agreement - the counter-signed copy just doesn't arrive back to the firm.

Your firm needs to have a protocol in place to disengage unless the signed agreement is returned (unmodified) within a reasonable period after beginning the engagement (7-10 days is typical, though the sooner the better). There have been too many instances where lawyers have attempted to enforce a fee agreement, and the client responds "What fee agreement? I never received (or agreed to) a fee agreement." Without a signed copy in the file, this assertion can be very difficult to rebut.

2. Clearly explain what you're doing and not doing for the client.

Too often, disgruntled clients will accuse their lawyers of not helping them in connection with a legal issue far afield from the scope of the initial engagement. A classic example is a corporate lawyer hearing from a client who is in trouble with the tax authorities, complaining that "You're my lawyer, you should have advised me regarding this issue." Explicitly setting out the scope of your engagement in the fee agreement can help to nip such accusations in the bud.

3. Take the opportunity to remind the client of their responsibilities.

A smart practice is to set out (either directly in the agreement or as a supplement) your firm's office policies (contact information, office hours, etc.), and expectations of the client (such as full disclosure, prompt communication, etc.). Attorney-client fee agreements are, by their nature, heavily tilted toward what the attorney will be doing. It is fair and appropriate to remind clients that they too are responsible for a few action items that will help contribute to the success of the engagement.

The foregoing are only a few of the dozens of key points that need to be addressed in fee agreements. Law firm risk management experts recommend that a firm's template agreements be reviewed and updated every six months. While this can be done effectively in-house, your firm should periodically consider engaging outside professional responsibility counsel to review these critical documents as well.

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