



Section 5

Engagement Letters



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Arizona ER 1.5 Fees

- Requires written fee agreements:
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred.



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Exceptions to the required fee agreement

- The requirements of this subsection shall not apply to:
 - (1) court-appointed lawyers who are paid by a court or other governmental entity, and
 - (2) lawyers who provide pro bono short-term limited legal services to a client pursuant to ER 6.5.

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Prohibited fee arrangements

- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
 - (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof
 - (2) a contingent fee for representing a defendant in a criminal case or
 - (3) a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).



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CNA's "Essential Elements" of an engagement letter

- ◆ Identity of the client
- ◆ Scope of the representation
- ◆ Fee structure and billing arrangements
- ◆ Termination and file retention policies
- ◆ Countersignature by the client

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◆ Identity of the client

- This may be as simple as naming the client in the letter / agreement, unless:
 - ❖ Someone else is paying your fees
 - ❖ There is more than one person involved
 - ❖ You are representing a business entity
 - ❖ An individual member of a business entity
 - ❖ Multiple people involved in a business “deal”
 - ❖ Beware of family businesses
 - ❖ Representing both spouses in a business deal
 - ❖ Spouses in estate planning
 - etc.

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◆ Scope of the representation

- Limit your liability to the work you agreed to do!
- State what you and the client agree you will do, and if appropriate, state what you will not be doing.
- If you want to invite additional legal work from the client, don't leave the scope open to any new matters. State that new matters will require a new agreement or an addendum.

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◆ Fee structure and billing arrangements

- The rule requires the basis or rate of the fee and expenses for which the client will be responsible.
- Be clear and specific.
- Consider an evergreen retainer if you take retainers.
- If you take a flat fee “earned upon receipt” or “nonrefundable,” include the required language to advise the client that they can discharge you at any time and in that event may be entitled to a refund of all or part of the fee based on the value of the representation.
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◆ Termination and file retention policies

- State in what circumstances the client or you may terminate the representation and what fees would remain payable.
- Advise up front the firm's file retention and destruction policies even if they are covered again in a closing letter. The closing letter will not be signed and if the representation ends badly or the client disappears, you have this covered.
- This is whatever, your policy is, but for your protection, be sure to keep a copy of the file (digital is fine and even preferred) as long as any potential statute for malpractice.

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◆ Countersignature by the client

- If the letter is not signed by the client, in any future fee or malpractice dispute, that client never saw it.
- Ensure that it happens early, if not prior to representation. Good intentions do not get the letter signed and in the file.
- Consider a policy of not billing till the signed letter is in the file.

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Additional considerations

- Client's responsibilities and keeping contact info current
- No advice re engagement
- No guarantee of results
- Fee discussion is not an estimate or guarantee
- Discussion of potential value of case is not a guarantee
- Nature of litigation
- Firm's use of email, cloud, or other outside vendors
- Client's use of social media
- Discussion of privilege and how to lose it
- Disclose any potential association with outside attorneys
- Binding arbitration, re fee disputes or any dispute

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