

Popular Threads on Solosez

The Lawyer's Letter

In my short time in practice, I've been asked on several occasions to write a letter on a client's behalf. I often find this task frustrating for the following reasons:

1. The client often doesn't really need a lawyer to intercede in the matter. A phone call from them to the intended recipient of the letter would probably accomplish a lot more. And wouldn't involve raising the stakes the way a letter from me would. But the client apparently finds such a task too unpleasant or daunting. Or they just like the idea of intimidating the other side. Part of me wants to tell them to man/woman up and just pick up the phone and communicate. (And maybe I should man up and do that.) Alternatively, maybe I should pick up the phone right there when the client's in the office and make the call myself (still might raise the stakes, but less time-consuming for me). I feel like I should be more than just a hired gun and don't like the idea of writing a letter when it's not the best course of action.
2. Along similar lines, I'm happy to be a pit bull when I have a client who's been wronged and when I think the letter will actually make a difference. But it's not as much fun when the client has been, at best, only mildly aggrieved or it doesn't seem like a letter will accomplish anything. I'm not a litigator, so maybe I don't have the right mindset when it comes to taking on work. And perhaps I need to be more focused on putting food on my family's table rather than judging the strength of my client's case or whether or not they could resolve it all with a phone call. Which leads me to...
3. I never charge enough for these letters. I always forget that the process takes more time than I think it will. A consultation (free), pondering what I should include in the letter, writing the letter, fielding a return letter or phone call, contacting the client to discuss the return letter or phone call. These things add up. I've been charging for an hour's worth of time, but really should charge for two. Unless I'm spending too much time on the letter. I do my best to write an effective letter, but I'm not a fast writer so it takes some energy. I wonder if most lawyers just dash something off in fifteen minutes. And if I do charge more, will I scare them off? Is that a bad thing? Or am I worrying too much over a relatively small difference in compensation? On the one hand, it's easier to do an unpleasant task when you're well-compensated; on the other, these letters could serve as an effective loss leader with a new client (though I haven't been a huge fan thus far of the type of client that comes to me for a letter).

Wondering how other's view the lawyer's letter, and if anyone has any thoughts about the concerns I've enumerated.

I have a guideline I follow. If they want me to send a letter, then they have to agree in advance that if they don't get the result they want, then the client must be ready to go to the next step, generally litigation. I tell them I can't have a reputation of barking unless I'm authorized to bite if the recipient doesn't respond appropriately. This often stops the potential client short. Sometimes asking for a retainer against hourly charges in the event recipient doesn't respond is worthwhile.

Bruce L. Dorner, New Hampshire

I agree with Bruce. You do not want the reputation that you do not follow up on your demands. It took a little while, but many of the attorneys here now understand that if I put the ink to the paper, I plan on doing it.

Robert Louque

Thanks, Bruce and Robert, for the input. I'm going to go with your approach. Will help to avoid writing letters for clients who have no intention on following through with the threats they're asking me to make. And will, I think, bolster my image. Clients should hopefully respect an attorney who takes his reputation seriously.

I'm troubled by this thread. I often meet with clients who have done everything they can do to resolve a situation and they're earnestly hoping the "Esq." at the end of a letter will pack a punch that will open the lines of communication. I explain to these clients that a letter is the first, often required, step toward litigation, but that letters don't always work and if they're prepared to see it through, litigation will often be a necessary and costly process. With that understanding, I have no problem writing *just* a letter.

Why is a client's unwillingness or inability to litigate after a letter fails to facilitate a resolution any reflection on the attorney? Isn't it understood and accepted that the clients are calling the shots? It's certainly not as if we could back up our "bark" with a "bite" without the client's permission.

Gina Madsen, Nevada

I follow a slightly different rule. I'll write a letter. If I think there may not be a suit thereafter, I'm careful about what I say will follow. Then, if the letter does not achieve the desired result, there's not a second letter. (Obviously, if the letter generates a response that may lead to a settlement, we proceed forward in that direction.) My reputation matters and I won't write multiple threatening letters. Clients can always change their minds, however, and I think they have a right to use a lawyer even if they're not certain they will file a lawsuit later.

Mark Rubin, Arizona

I don't think the implication is that "the lawyer is bad" - merely, it's that this lawyer's clients, historically, don't want to go through litigation so the opponent is going to severely discount the cost of litigation in deciding not to negotiate based on his demand letter

Your "reputation" is something that is a little less important in a big town (if it's harder to make a name for yourself, it's also harder to ruin that name), which is maybe why it's not perceived as a big deal to you, whereas to those in smaller locales, it is.

Alex Tsiavos, Illinois

This has only come up for me a few times, but I take Mark's approach:

follow a slightly different rule. I'll write a letter. If I think there may not be a suit thereafter, I'm careful about what I say will follow. Then, if the letter does not achieve the desired result, there's not a second letter.

If I had written the above, I might have used the word "vague" in place of "careful", but I think Mark and I mean exactly the same thing. In a small town, the "all bark no bite" reputation risk is probably worth factoring in more so than a metropolis.

Phillip J. Laurin, Illinois

I disagree. I will write a demand letter if the facts (and thus the legal arguments) I possess justify it, but if the opposing counsel comes back with documents or facts that I did not have, or a reasonable counter-argument, then I cannot say that hurts my reputation, because I have not made it my business to have a community image that I am omnipresent as to either facts or legal argument. We have all read the bluffing letters from those who claim to so possess such quality, which I believe is what REALLY hurts one's reputation, because any new fact can potentially destroy the threat aborning. I will discuss the new information with my client, and we will thereafter act accordingly.

Now, if that has happened, i.e., some type of call-and-response, and we remain ready to litigate, then fair warning has been provided and watch your port bow for the incoming Complaint, unless I fire it over the starboard, from above, or from the depths.

Best regards,
Arthur B. Macomber, Idaho

I meant that an attorney should not be in the business of exclusively writing letters threatening litigation when he has never filed a lawsuit in several months. Eventually, your threatening letters just get put in a stack and ignored.

In my practice when I tell an attorney I am filing a rule for contempt if they do A, if their client does A on Friday, there is a Rule for Contempt filed on Monday morning. Another attorney around here tried me on that one just a couple weeks ago and learned quickly, if it's writing, I intend to do it.

You should never put anything in writing you are not ready to follow up on. Plain and simple.

Robert Louque

I agree, but did not see that context before, probably due to merely grazing in Solosez these days, due to work volume. Sorry if I misunderstood you.

Best regards,
Arthur B. Macomber