

## Reviewing Fee Agreements with Clients

How thoroughly do you review fee agreement with clients before they sign.

Personally, I go through mine paragraph by paragraph. I've heard tell other lawyers aren't so through.

So, what do you do?

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I go through the agreement with them paragraph by paragraph, highlighting the big points, then make them read it before signing it.

I still have to sometimes refer to it when they are curious about what is and what is not covered. (Remember that list on the top of page 1 ...)

Corrine Bielejeski, California

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I go over each paragraph (each paragraph is important). I also do all that I can to send it to them in advance of meeting them and will let them take it and return to me afterwards if at all possible and tell them they can fire me tomorrow if there is something in the agreement that is a problem. I do not want a client to come back and say that they were pressured to sign right away.

Phil A. Taylor, Massachusetts

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I think it really depends on who the client is. Most of my clients are fairly sophisticated parties, and I am often sending my engagement letter to in-house counsel, so I generally do not go over my engagement letter in any detail.

Kevin W. Grierson, Virginia

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I concentrate on explaining the retainer payment (held the same as a landlord's security deposit, to be refunded at end of engagement, with bill payments due as billed) during my initial conversation with clients who are retaining my services, since that is always the most misunderstood part.

Even after carefully explaining it, after my first invoice goes out, I often get calls about why I haven't applied the retainer and have to remind them about our conversation and the paragraph on page 1 of the fee agreement letter. I'm a transactional, not a litigation lawyer, so it's not a contingency situation. That may make a diff.

Miriam N. Jacobson, Pennsylvania

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I prepare engagement letters after the initial meeting when I have a better sense of what I'll be doing. I do discuss my fee system - a hybrid of flat fee and hourly - and tell them they will get it written in black and white in their mailbox in the next few days. The letter goes out same day.

I worked for a firm where the client was presented an engagement letter at the initial meeting and pushed hard to schedule the second meeting where the client would be expected to sign the documents they would have been just presented. I'm a big believer in giving clients sufficient time to review and marinate over their estate planning documents before signing.

Deb Matthews, Virginia

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I deal with sophisticated clients, for the most part. Generally, we have an exploratory call where we discuss their needs, and I hit the high points of representation - hourly rate, retainer requirement, how costs are handled, etc. If we both want to proceed, I email my Representation Agreement, which has a deadline of 10 days to be signed and returned (so that someone doesn't return it two years later expecting the same terms). I do not go over the Representation Agreement paragraph by paragraph. Obviously, they can call with any questions.

Caroline A. Edwards, Pennsylvania

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What do these attorneys say when they don't go over it paragraph by paragraph? Do they have a reason? If there was a paragraph that wasn't important enough to explain, I wouldn't have it in there!

I do have some clients who are lawyers, so I explain less. And some of the paragraphs are pretty easy for a lay person to understand. So those get less time. But, the paragraph about having a lien on a personal injury settlement gets explained, twice, and then initialed. I wouldn't want to skip something and then have to explain at a fee arbitration why the client wasn't told about paragraph 12!

Jonathan Stein, California

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I don't go over my engagement letters paragraph by paragraph because, given the level of sophistication of my clients, it would be insulting to their intelligence to do so. In any event, no general counsel is going to get away with arguing that she shouldn't be bound by a fee agreement she signed because she didn't read it. Even if the client is not represented by a GC, most business owners understand that they are bound by contracts they sign, whether or not they read them, unless the terms are unconscionable. And if your terms are unconscionable you could read them out loud, even set them to music, and have the client sign in the blood of her firstborn child, and she still wouldn't be bound by them.

Kevin W. Grierson

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I explain general terms, and allow client to review and read agreement before signing. People are bound by contracts every day when they sign them. I do not have anything unusual in my fee agreement. I do not fear outside review of the agreement, and most lawyers use something similar.

Darrell G. Stewart, Texas

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It makes sense to review your engagement and payment policies thoroughly with clients. Clients are stressed and may not hear every word so it helps to repeat and explain the consequences to the client and for you for non-payment or slow payment.

Clients still believe that lawyers are rich and will decide to pay someone else before you unless given reason to do otherwise.

Dina Eisenberg

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I definitely go over the engagement and payment policies in detail over the phone, and the scope of representation, and I agree that is important. I have a commercial real estate practice, so the emotional aspect is a little different than if I represented individuals who have recently suffered a personal injury, or are going through a divorce. Slow/no payment is rarely an issue for me, because I require an evergreen retainer.

Caroline A. Edwards

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I really don't think you can generalize across all possible types of clients how and to what extent you should discuss your engagement letter.

A personal injury client or a criminal defendant is going to need more explanation and detail than in-house counsel at a Fortune 500 company. An evergreen retainer may require more explanation than a straight billable arrangement or a contingency fee. If you work for an insurance company that deals with many outside counsel you may not even have an opportunity to use your own engagement letter.

Kevin W. Grierson

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One of my clients, whom I ended up suing, was a lawyer for whom I did contract work. I had a fee agreement letter with him and it spelled out all of the details of billing and payment etc. Because he was a fellow professional, I did not insist on a retainer payment from him. At first he paid me as billed but then he started dragging his feet. Finally, as the months passed without a payment, I called him and asked that he become current. He used the excuse that he had not yet been paid by his client. I pointed out that our fee agreement letter did not have a contingency for that and that his client was not a party to it. Then he started to say that his client was very unhappy with my work, which could not have been further from the truth, since I was communicating directly with his client and exchanging work product directly with it. They could not have been happier with my work and many months had already passed of the working relationship. My only alternative to collect was to sue. He paid

promptly because he was in the middle of another transaction and could not afford to have litigation on record.

Miriam Jacobson

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