MALPRACTICE ALERT!

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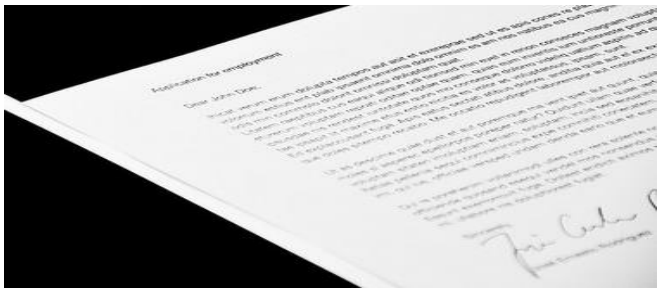
After a long, cold winter, it looks like Spring is finally flowering in Ohio! There are changes popping up on the legal landscape, too.

This issue of **MALPRACTICE ALERT!** will discuss three recent appellate decisions that highlight the importance of having good written fee agreements and (dis)engagement letters. Additionally, we note the Ohio Rules of Professional Conduct were amended effective April 1, 2015. This will be the focus of an upcoming **MALPRACTICE ALERT!**

As always, we hope you find this issue of **MALPRACTICE ALERT!** useful and informative. Please let me know if you have ideas for future articles. OBLIC is here for YOU!

Gretchen Mote, Editor
MALPRACTICE ALERT!



WHY ARE WRITTEN FEE AGREEMENTS AND (DIS)ENGAGEMENT LETTERS IMPORTANT?

Recent decisions from several appellate courts highlight the reasons why well-written fee agreements, engagement letters and dis-engagement letters are important. In each of these decisions a concise statement of the representation was lacking.

In *Nature's Grove Development, LLC v. Thomas Law Offices, LLC,* 2015-Ohio-835, decided March 2, 2015, the Seventh District Court of Appeals addressed whether the trial court erred in finding that the attorney-client relationship ended when the attorney informed clients he could not represent them in a suit filed against them, due to a perceived conflict.

The appellate court observed that the timing of termination of the attorney-client relationship is usually a question of fact, noting that "if the actions terminating the attorney-client relationship are clear and unambiguous, so that reasonable minds can come to but one conclusion from the evidence," the court may decide the issue as a matter of law.

In its decision overturning summary judgment granted by the trial court for the attorney, the appellate court found that a question of fact remained whether the defendant attorney continued to represent his clients in matters relating to a condominium development after the attorney refused to represent the clients in a 2007 lawsuit filed by the condo owners. The Court focused on the alleged actions/inactions of the attorney after his refusal to represent the clients in the 2007 lawsuit in finding a genuine issue of material fact existed as to whether or not the attorney-client relationship had terminated in 2007 or continued for some time thereafter.

If the attorney had sent a disengagement letter to the clients when he determined he could not represent them in the lawsuit, clearly advising the clients he would no longer be their attorney, and had taken no further action which could have been perceived contrary to that intention, there likely would have been the "clear and unambiguous" action to support the trial court's granting of summary judgment.

A similar result was reached by the Second District Court of Appeals in its decision *Lorna B. Ratonel, et al. v. Roetzel & Andress, LPA, et al. 2015-Ohio-1166, decided* on March 27, 2015. In this decision also overturning a summary judgment, the appellate court considered whether there was a genuine issue of material fact concerning the defendant law firm's alleged representation of the client in legal malpractice litigation involving an unrelated, second set of claims against an opposing party.

The court noted that an engagement letter executed by the parties had described the scope of representation relating to the first set of claims,

however, the letter also stated that other services could be agreed upon. No written agreement was executed with regard to the second set of claims the client wished to pursue.

Although the defendant law firm investigated the second set of claims and even included reference to them in a demand letter, it asserted it did not represent the client in the second claim, citing an email communication it sent the client during the course of the representation regarding the second claim. The appellate court reversed the trial court's grant of summary judgment to the defendant law firm, concluding that the email sent by the law firm did not unequivocally communicate an intent not to represent the client in the second claim, but rather invited a discussion of same with the client.

This opinion demonstrates the need for a concise engagement letter, clearly limiting the scope of representation as well as a succinct disengagement letter leaving no ambiguity as to the law firm's intent to not represent client regarding the second claim.

In *Sal G. Scrofano vs Richard Bedford*, 2015-Ohio-1465, decided April 17, 2015, the First District Court of Appeals found the trial court erred in granting summary judgment for the attorney where there was a genuine issue of material fact with respect to the parties' agreement on an hourly rate.

In this case, the attorney failed to produce an engagement letter or other writing signed by client indicating his agreement to a higher hourly rate.

These decisions emphasize the importance of clear, concise engagement letters and written fee agreements, signed by the client. OBLIC urges attorneys to make absolutely sure they obtain a copy of said letter, ***signed by the client***, to keep in the law firm file. It is not unusual to encounter unsigned engagement letters, if one is found at all, in defending legal malpractice claims. This leaves open an argument by the client that one was never executed.

The use of well-written fee agreements, engagement letters and disengagement letters can go a long way to communicate with the client what the attorney will do, will NOT do, and what the client will be expected to pay for the representation. OBLC recommends that attorneys use engagement letters and written fee agreements for **all** clients and for **all** matters. The regular use of these letters not only assists attorneys in clearly defining the representation and client expectations, but may also help deflect or defend a potential malpractice claim by an unhappy client.

For samples of these documents, please see the OBLIC website at www.oblic.com.