

# Reduce legal malpractice claims with **Engagement Agreements**



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## **One step can greatly reduce legal malpractice claims: incorporate engagement agreements into a firm's standard operating procedure.**

As the leading provider of insurance solutions to law firms of every size, CNA is committed to helping lawyers mitigate their risk. In recent years, there has been a 14 percent increase in malpractice lawsuits<sup>1</sup> filed, impelling lawyers and law firms to devote time and resources to sustain their firm's reputation. Including one simple step when agreeing to represent a new client or assume a new representation for a prior or existing client can significantly reduce the likelihood of a client filing a malpractice claim against them: the creation of an engagement agreement.

Engagement agreements help establish client expectations at the beginning of the attorney-client relationship. They serve as a written agreement to ensure that the attorney and his or her client have the same understanding of the scope and timing of the project before any work is undertaken. In the absence of such documentation, attorneys and clients may have a different understanding of the working relationship and its parameters, resulting in client dissatisfaction and even a lawsuit.

### **Real World Situations:**

#### **An engagement agreement may conserve attorneys' fees.**

In an Ohio case, a law firm sued its former client for fees that it was owed. The client attempted to evade payment by contending that the law firm had told him that it would seek its attorneys' fees from the opposing party. The court reviewed the engagement agreement between the attorney and client, which stated that it was the client's responsibility to pay the law firm's legal fees. It then ruled against the former client, citing the parol evidence rule.

#### **An engagement agreement may outline what falls outside the scope of work.**

In a New York case, a law firm represented a client in his administrative proceeding before the Internal Revenue Service (IRS). The client contended that the law firm committed legal malpractice by failing to pursue third parties for liability concerning the outstanding taxes. After reviewing the

engagement agreement, which stated that the law firm was only representing the client in the administrative proceeding with the IRS, the court ruled in favor of the law firm.

#### **No engagement agreement leaves verbal agreements open to interpretation.**

In Nevada, a family law attorney represented a client in her divorce proceeding. The client later sued the attorney for legal malpractice, asserting that the attorney failed to bring a personal injury lawsuit against the client's ex-spouse. The attorney conceded that she and her client discussed the possibility of bringing a personal injury lawsuit, but ultimately made a joint decision not to do so. Unfortunately, the attorney neither drafted an engagement agreement nor memorialized the decision. Accordingly, the court denied the attorney's motion for summary judgment in the legal malpractice action.

1. CNA Lawyers Professional Liability Claims data from 2010-2012.



As part of CNA's commitment to helping lawyers mitigate their exposure to professional liability claims, we have created a number of sample engagement agreement templates for use in the practice of law. These agreements include illustrative language that attorneys may wish to consider using in their own engagement agreements. The CNA Risk Control team utilized the American Bar Association Model Rules of Professional Conduct as a guide in creating these sample documents. However, attorneys must consult their applicable state rules of professional conduct, as well as the case law and ethics opinions of the relevant jurisdiction, when drafting their own agreements, letters and waivers. You can find sample engagement letters at [www.cna.com/lawyerstoolkit](http://www.cna.com/lawyerstoolkit). For more information to help mitigate risk by avoiding problematic clients, [click here](#).

CNA insures more lawyers than any other insurance carrier. For more than 50 years, CNA has been serving law firms with risk management solutions that help reduce the risks of practice management, offering a broad range of insurance products tailored to the unique needs of a law firm and its attorneys. With products and services designed for lawyers by lawyers, CNA's broad portfolio includes professional liability, general liability, cyber liability, property, employment practices liability, and our industry-leading property & casualty package for law firms of all sizes.



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