



ALPS

Practice Management Pointers

Documenting Non Engagement at Intake

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Ok. I get it. How many malpractice claims are there that have been the result of a failure to write a declination letter? You know the one that says thanks but no. Truth be told, not many; but there are a few. Some are conflict problems because the creation of this letter is what normally would trigger the entering of the names of declined clients into the conflict database. When the letter isn't written, the names can't be entered and a conflict problem sometimes arises down the road. Others are a bit more concerning and represent the real reason why these letters should be used. Sometimes a non-client who did speak with you eventually sues you for failing to do something. They allege that you were indeed their attorney, at least as they understood it. If you have no documentation that they weren't, you may have a problem because these kinds of word against word disputes don't always end well for the attorney.

Excuses vary. Declination letters are viewed as a waste of time, unnecessary in most matters, irrelevant, or too costly in terms of attorney and staff time. Sometimes they are just simply overlooked. Again, I get it. The good news is that declinations can be documented in another more efficient way. The letter approach isn't the only option.

Many attorneys use some version of a client intake form during an initial prospective client interview. If you do use this form, consider making a few modifications to it that will help document the engagement or declination. Once you finish the initial interview you will give the prospective client a copy of this modified client intake form and then you and your prospective client should sign both the copy and the original. If you and your prospective client decide to create an attorney/client relationship, you will then ask the client to also sign a fee agreement. This leaves the client with a copy of the client intake form and the written fee agreement. If you decide not to form an attorney/client relationship at the conclusion of the initial consultation, the prospective client will sign only the original and copy of the client intake form and receive just a copy of that document.

In order to use your client intake form as the method of documenting the engagement or declination, you might add to the beginning of this form language that reads something like this:

The purpose of our initial consultation meeting is for me to determine what legal services (if any) our firm might be able to provide to address your legal concerns, as well as to provide an indication as to what your cost might be if you decide to hire this firm.

Our initial consultation meeting does not give me enough time or information to provide you with a definite legal opinion. The short time allotted for this meeting makes it impossible for me to properly and fully assess any legal matter that you might have.

Regardless of whether you and I create an attorney/client relationship today, the attorney/client privilege protects all information that I gather during this meeting and record on this client intake form. Rest assured that I will hold that information in strict confidence.

At the end of the client intake form, you might add something similar to this:

Please Read Carefully and Sign Below

Now that we have concluded our initial consultation, if you agree to hire me as your attorney and I agree to represent you, we will both sign a Contract for Legal Services. That Contract will state the terms and conditions under which this firm will provide you with legal representation.

If I am willing to represent you and you decide not to sign a Contract for Legal Services today, I strongly urge you to do one of two things: (1) schedule a follow-up appointment with me at the earliest possible time; or (2) immediately consult with another attorney in order to ensure that you fully protect your legal rights. **Unless and until *both of us sign a Contract for Legal Services*, neither I nor this firm represent you on the matters described in this client intake form or discussed during this initial consultation. No action of any kind will be taken on your behalf until you authorize us to do so by our both signing a Contract for Legal Services.**

If I do not agree to represent you, then we have not formed an attorney/client relationship, even though we had this initial consultation. Neither this firm nor I will represent you on the matters set forth in this client intake form or discussed during this initial consultation. If your legal matter

involves a potential lawsuit, it is important that you realize that you must file your lawsuit within a certain period of time, known as a Statute of Limitations. Therefore, I strongly urge you to immediately consult with another attorney in order to protect your rights. My decision not to represent you is **not** a legal opinion regarding the merits of your case.

By signing below, you acknowledge that you have received a copy of this completed client intake form. Your signature also confirms that you understand that I have not been hired as your attorney and that this firm will take no further actions on your behalf.

Signature _____ Date _____

The expanded use of a client intake form with text substantively similar to what I have suggested above does effectively eliminate the need for a separate declination letter. The issue is addressed and documented while the client is in your office. Finally, if your practice covers several areas of the law, simply alter the sample language to meet the needs of each practice area. For example, a big reason that these letters aren't used with prospective divorce clients is out of a fear of notifying an innocent spouse. This approach is a win/win on that front. The innocent spouse will never see a letter from an attorney in the mail and documentation of the declination is hand delivered to the prospective client before they ever leave your office.



Risk Management Questions?

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