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**GUIDEBOOK TO PRACTICE FORMS AND LETTERS**

# Terminating Representation

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## Table Contents

INTRODUCTION	1
IMPORTANCE OF TERMINATING REPRESENTATION PROPERLY	2
TERMINATE CLIENT RELATIONSHIPS IN WRITING	2
CHECKLIST FOR DISENGAGEMENT/TERMINATION LETTER	2
WITHDRAWAL	3
CLOSING THE CLIENT FILE	4
CONCLUSION	4
SAMPLE FORMS & LETTERS	
FILE CLOSING FORM - INTERNAL PROCESS (FORM ER01)	6
FILE CLOSING PROCEDURES CHECKLIST - INTERNAL DOCUMENT (FORM ER02)	7
FILE CLOSING LETTER (FORM ER03)	8
TERMINATION OF REPRESENTATION LETTER - CASE CLOSED (FORM ER04)	9
TERMINATION OF REPRESENTATION LETTER - PERMISSIVE WITHDRAWAL (FORM ER05)	10
TERMINATION OF REPRESENTATION LETTER - EXIGENT CIRCUMSTANCES (FORM ER06)	11
FILE DESTRUCTION AUTHORIZATION FORM (FORM ER07)	12

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## INTRODUCTION

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It is a proven fact that attorneys who correspond with their clients regularly, and make sure their services and fees are reduced to writing have fewer complaints filed against them, fewer problems with their clients, and provide better legal services. Letters set the stage for the relationship and responsibilities between the parties. They protect both the lawyer and the client by providing a clear written description of the client's relationship with counsel. Many legal malpractice claims are successfully defended because the lawyer can produce a letter which establishes that he or she did not have responsibilities to the client. As such, it is wise to delineate these relationships in writing.

Using practice letters and letters does not have to be time consuming, difficult or offensive to the client. On the contrary, most clients welcome (and expect) a clear written description of their association with their lawyer. Providing these letters to potential clients will clarify and formalize your own relationship to the client, or potential client. This practice will also increase the likelihood that the legal matter is entered into your conflict of interest and calendaring systems.

This guidebook is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and practices. Individual cases require individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

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## **IMPORTANCE OF TERMINATING REPRESENTATION PROPERLY**

Communication, or lack thereof, is in some way involved with every ethics complaint and legal malpractice action brought against attorneys. To avoid malpractice claims arising out of poor client communications, practitioners should adhere to basic principles in good client communication and terminate/withdraw the client relationship in writing.

At some point, the relationship will come to an end because either your work has been completed or the relationship is in some way undermined, requiring early termination. At each stage, careful thought and planning will be required. The importance of being able to listen and impart information to clients promptly, regularly, and effectively must be kept in mind through every stage of legal representation.

## **TERMINATE CLIENT RELATIONSHIPS IN WRITING**

Confirm the end of the representation through a file-closing letter. Explicitly state that your representation of the client is ending. If all matters in the case have been resolved, say so in the letter. In many jurisdictions, the file belongs to the client. Do not withhold it for any reason other than to make copies of materials that you will need for your own protection. If copies are made, the client should not be charged unless there is an explicit provision to that effect in your engagement letter or retainer agreement with that client. You absolutely cannot withhold the file for payment of legal fees or copying costs, and to do so is an unequivocal ethics violation.

The easiest way to manage client files is electronically. Then, at the conclusion of the case, the attorney can provide an electronic copy of the full file quickly and with minimal expense. It makes storage of a closed file far cheaper and easier for the attorney, too.

The following Checklist for Disengagement/Termination Letter outlines the matters to be addressed in such a letter.

## **CHECKLIST FOR DISENGAGEMENT/TERMINATION LETTER**

### **The Engagement Has Been Completed**

- Confirm that the particular matter has been completed.
- Specify steps taken to complete the matter (e.g., executed mutual releases, orders dismissing action or for non-litigation, closing book, share transfers).

- Specify what, if any, additional steps are to be taken by the client in the future to protect interests (e.g., renewal of execution); provide copies of documents to third parties such as a bank or insurance company.
- Enquire whether client desires further services if any new developments arise.
- Return client documents and identify destruction policy regarding your file records.
- Include the final account and a trust statement reconciling funds received and dispersed if appropriate.
- Thank the client for the opportunity of working on the matter.

### **Before the Engagement Has Been Completed**

- Confirm why the relationship is ending.
- Address any final account or outstanding account.
- Explain the conditions under which you and your staff will consult with successor counsel and provide access to work product although payment not yet received.
- Outline important deadlines and uncompleted activities so as to bring to the attention of the client the status of the matter and avoid prejudicing their interests.
- Confirm receipt of the disengagement letter by the client (e.g., registered mail or process server).

## **WITHDRAWAL**

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Sometimes, an attorney must withdraw from representation. This must be done in a way that does not prejudice the client. It is prudent to advise the client to seek other representation and inform them that their action may be affected by statutes of limitations. If the file is being taken over by another attorney, cooperate with your successor. Promptly turn over the file. Whatever you do, do not obstruct efforts by successor counsel to represent your former client effectively. You may feel abused by your former client, and you may feel that the successor counsel stole the case from you. But the worst thing you can do is give your former client and successor counsel some basis for arguing that improper conduct on your part justifies either forfeiting your fee or holding you responsible for a less-than-satisfactory outcome that really is their fault. If the client's matters are not fully resolved, set guidelines on when you are allowed to withdraw.

### **Considerations When Withdrawing**

- When withdrawing, lawyers should advise the client of the:
- Facts or circumstances which may result in termination of withdrawal of services by the lawyer, including:

- Client's failure to pay retainers or accounts in accordance with retainer agreement;
- Existence of a conflict of interest which cannot be resolved;
- Other facts or circumstances contemplated by of the Rules of Professional Conduct (i.e., optional withdrawal, mandatory withdrawal).
- Ownership of file contents:
  - File documents or contents that must be returned or provided to the client or other counsel at termination of the representation.
- Charges for file transfer in the event of the file is transferred to the client or other counsel:

The client may be charged for time and effort in preparing the file for transfer, additional photocopies of file documents, only if allowed in the retainer agreement.

You may also be limited in your ability to withdraw by the rules of the tribunal. Determine first if you may withdraw and whether you will have to request permission to withdraw. In such instances, you cannot withdraw "without permission" from the tribunal. If allowed to withdraw, you are ethically obligated to protect the client's interests.

## **CLOSING THE CLIENT FILE**

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A client file is closed when the representation ends or the lawyer withdraws, either because a client terminates the relationship or because the work has reached its natural conclusion.

Generally, an attorney should send a closing letter to confirm that the representation has terminated and to thank the client for their business. It is a good practice to again include the office's file retention guidelines in this closing letter and to notify the client that their file is available to them at any time, but may be destroyed after a minimum number of years.

## **CONCLUSION**

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Since even the best and brightest of the legal profession are not immune from malpractice exposure, it is important to utilize every resource available to create an environment in which client satisfaction is promoted. MLM's Law Practice Management Booklet, "Ethical Considerations in Client Relations," is a great reference resource and available electronically.

## **SAMPLE LETTERS AND FORMS**

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Following are samples of:

- File Closing Form - Internal Process (Form ER01)
- File Closing Procedures Checklist - Internal Document (Form ER02)
- File Closing Letter (Form ER03)
- Termination of Representation Letter - Case Closed (Form ER04)
- Termination of Representation Letter - Permissive Withdrawal (Form ER05)
- Termination of Representation Letter - Exigent Circumstances (Form ER06)
- File Destruction Authorization Form (Form ER07)

**File Closing Form - Internal Process**  
**(Form ER01)**

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Client Name: \_\_\_\_\_ File No.: \_\_\_\_\_  
File Title: \_\_\_\_\_ Matter Code: \_\_\_\_\_  
Responsible Attorney(s): \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ Closing Date: \_\_\_\_\_  
Attorney Responsible for Final File Closing Review: \_\_\_\_\_

<u>Materials Returned to Client</u>	<u>Date</u>	<u>/</u>	<u>Means of Return</u>
_____	_____	/	_____
_____	_____	/	_____

Materials to be Retained

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Materials to be Destroyed

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date File Closing Letter Sent to Client: \_\_\_\_\_

Date Signed Acknowledgement Letter Re Returned Materials Received from Client: \_\_\_\_\_

Comments/Notes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**File Closing Procedures Checklist - Internal Document**  
**(Form ER02)**

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- \_\_\_\_\_ Complete original documents concluding matter (Release executed, Dismissal Entry filed, etc.)
- \_\_\_\_\_ Confirm final invoice if paid in full. Be sure to check on all court costs and other expenses.
- \_\_\_\_\_ Return original documents and papers to the client. Note: You may not charge the client for copying any documents you wish to retain for your files.
- \_\_\_\_\_ Copy useful forms for office form file. Do not charge client for copies of file.
- \_\_\_\_\_ Remove duplicates and “clean out” file for storage.
- \_\_\_\_\_ Copy all stored electronic data – including all e-mails – related to client matter to DVD disk to be included with file.
- \_\_\_\_\_ Send closing letter to client.
- \_\_\_\_\_ Calendar future docket dates such as Uniform Commercial Code and judgment renewals.
- \_\_\_\_\_ Send client survey to client.
- \_\_\_\_\_ Enter case into closed file database for future conflicts checks.
- \_\_\_\_\_ Assign date for review/destruction of file. Ask client if s/he prefers to have the file returned or destroyed after the assigned date.

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**File Closing Letter  
(Form ER03)**

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[Date]

[Client Name]

[Address]

[City, State, Zip]

Dear [Client Name]:

This letter will serve to confirm our recent conversation of [Date] regarding the conclusion of our representation in the matter of [name of matter], as settlement was reached on [Date] and the matter has thus reached its natural conclusion. I want to again express my gratitude for the opportunity to represent you in this matter and my appreciation for your business and your confidence in this firm's work.

As a reminder, our firm will retain the complete file for this matter for a minimum of 10 years, but may destroy the file after 10 years have passed without further notice to you. All original documents you provided to me were returned to you at our meeting of [Date], but the rest of the file remains at our office and will soon be placed in storage. You are welcome to pick up the file at any time, but please be advised that we will need advance notice in order to retrieve the file from storage and copy the documents, per our retainer agreement, at your expenses. If you choose not to collect the file in the next 10 years, it will be destroyed in accordance with our file destruction policy, taking care to preserve your confidentiality and conform to environmental standards without further notice to you.

Thank you again for entrusting this matter to our firm, it has been my pleasure to work with you and your family. If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

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**Termination of Representation Letter - Case Closed**  
**(Form ER04)**

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[Date]

[Name and Address of Client]

RE: Termination of Representation

FILE: [FILE NUMBER]

Dear [Client's Name]:

We are pleased to have had the opportunity to represent you in connection with your [LEGAL MATTER]. The case is now concluded. Since we have completed our legal work, we are closing our file and removing it from our active files list.

Enclosed are the documents from your file, which are being returned to you. We are in possession of no other funds or property belonging to you. We suggest that you keep all of the contents of your personal file in a safe place where you can easily find them. We periodically clean out and destroy our closed files. Unless we hear from you to the contrary in writing, our file regarding this will be destroyed on our regular schedule.

There is some follow up required in this matter, specifically [SUMMARIZE DETAILS] (e.g., filing of continuation statements within five years of the date of the original financing statements were filed; changing beneficiaries on the life insurance policies, discharging the liens in bankruptcy, etc.). Our firm will not be doing those tasks, and you will need to take the further action, as appropriate.

Again, it was our pleasure representing you. Thank you for your confidence in us. Please contact us if we can be of service to you in the future.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

Enclosures

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**Termination of Representation Letter - Permissive Withdrawal  
(Form ER05)**

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[Date]

[Name and Address of Client]

Dear [Client's Name]:

This letter will confirm our understanding that effective [DATE] this firm will no longer represent you in connection with [LEGAL MATTER].

I urge you to promptly retain other counsel to represent you in this matter. I will cooperate with your new counsel during the transition process and will provide him/her with any original documents [keep copy for yourself], correspondence, pleadings, investigative reports and records, which I have not previously sent to you.

[WHERE COUNSEL OF RECORD] I will notice the Court and have prepared the enclosed Order releasing me as counsel of record. Please endorse the Order releasing me and return it in the enclosed stamped envelope so I may present it to the Court for entry. Without your signature, it will be necessary for you to appear at the hearing. If you have already retained new counsel, please let me know who it is so I may forward the appropriate Order to your new attorney.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

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**Termination of Representation Letter - Exigent Circumstances**  
**(Form ER06)**

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[Date]

[Name and Address of Client]

Dear [Client]:

We appreciate the opportunity to have served as your attorney [PRACTICE MATTER OR TIME PERIOD]. However, due to the circumstances surrounding [PROVIDE DETAILS], I must terminate my representation of] at this time, and it is in the best interest of all concerned for you to seek other counsel to serve your needs

As a reminder, listed below are some of your upcoming deadlines, which your new counsel will need to address: [DEADLINES]

I will be glad to assist you and your new law firm in making this transition as smooth as possible.

Sincerely,

[ATTORNEY SIGNATURE]

[NAME OF ATTORNEY]

[FIRM NAME]

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**File Destruction Authorization Form**  
**(Form ER07)**

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RE: [File Name and Close File No]

I, \_\_\_\_\_, the responsible attorney on this case, have reviewed this file and found:

- \_\_\_\_\_ It has been over ten (10) years since the file was closed.
- \_\_\_\_\_ I have examined the file and have found no client property in it or have returned any and all client property found.
- \_\_\_\_\_ I have examined the file and found no reason to retaining it.
- \_\_\_\_\_ The pending destruction letter has been sent to the client and the client has either consented or there has been no response from the client.

This file may, therefore, be purged from the closed file archive and destroyed.

[Firm Name]

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[Attorney Name]

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Date

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