Report on Engagement Letters of the Professional Responsibility Committee of the Association of the Bar of the City of New York

An Analysis of the Letter of Engagement Rule - Part 1215 to Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York (the "Rule")

I. Introduction

This report is intended to provide guidance to the Bar on what does and does not constitute compliance with the requirements of the Rule. This report is not intended to be a comprehensive analysis of the best practices as to what should and should not be included in an engagement letter.[1]

II. The "Rule"

The Rule was proposed and adopted by the New York State Office of Court Administration on March 4, 2002 and amended soon thereafter on April 3, 2002.[2] The Rule was designed to limit misunderstandings between attorneys and clients about the scope and cost of legal services;[3] it was not, however, designed as a means of disciplining attorneys.[4] The Subcommittee on Engagement Letters of the Professional Responsibility Committee of the Association of the Bar of the City of New York has drafted this report with analysis and comment on the Rule. The objective of this Report is to provide guidance to the Bar on: (i) the key elements of the Rule; (ii) how best to comply with the dictates of the Rule; and (iii) factors that can lead to non-compliance with the Rule and an inability to collect fees.

III. Purpose of the Rule

The Rule was adopted as a court rule rather than as a Disciplinary Rule, and enforcement of the Rule through the disciplinary system was not envisioned by the courts.[5] Contrasting the disciplinary purpose of the rules governing matrimonial matters,

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[1] See Association of the Bar of the City of New York Formal Opinion 2006-1 regarding advance conflict waivers.

[2] N.Y. COMP. CODES R. & REGS. tit. 22, §§ 1215.1, 1215.2 (2002).

[3] "The Craco Committee report identified misunderstandings over the scope and cost of legal services as one of the greatest sources of public dissatisfaction with lawyers." Roy Simon, SIMON'S NEW YORK CODE OF PROFESSIONAL RESPONSIBILITY ANNOTATED 1560 (2007).

[4] Chief Administrative Judge Jonathan Lippman said ". . . this is not about attorney discipline in any way, shape or form, and we certainly do not expect in any significant degree there to be a large number of disciplinary matters coming out of this rule." John Caher, Rule Requires Clients Receive Written Letters of Engagement, 227 N.Y.L.J. 1 (2002).

[5] Roy Simon, SIMON'S NEW YORK CODE OF PROFESSIONAL RESPONSIBILITY ANNOTATED 1562-1563 (2007).

the Second Department in Seth Rubenstein, P.C. v. Ganea, 833 N.Y.S.2d 566, 2007 WL 1016998 (2d Dep't 2007), noted that "[the Rule] contains no penalty language in the event of an attorney's noncompliance, and it is not underscored by a specific Disciplinary Rule, unlike 22 NYCRR 1400.3 and Code of Professional Responsibility DR 2-106(C)(2)(b). If the Appellate Divisions…intended for [the Rule] to serve a penal or disciplinary purpose, language could have been included to accomplish that purpose. The Appellate Divisions did not do so. We decline to extend [the Rule] beyond its expressed terms." Seth Rubenstein, 2007 WL 1016998 at 6.

IV. The Elements of the Rule

A. The Letter

1. When a client brings a matter to an attorney and seeks representation, the client may not be sure what the next step is. Letters of engagement and retainer agreements ("Letter(s)") help outline the terms under which the attorney will represent the client, and offer the client a better understanding of the attorney's path of representation. A retainer agreement is a letter of engagement that has been countersigned by the client.[6]

B. The Rule Explained

1. The Rule, which is attached hereto as Exhibit A, requires that a written Letter be provided to the client prior to commencement of representation when an attorney undertakes to represent a client and enters into an arrangement for, charges or collects any fee from the client.[7] If doing so is impracticable or the scope of the engagement cannot be determined at that time, then the Letter should be provided within a reasonable time after commencement of the engagement.

2. The Rule goes on to classify certain entities, including insurance carrier entities, as the "client" when such entities engage the attorney to represent third parties. This is important to understand, especially in those situations where "it's advisable to recognize that both the insurer [and other third-party] and insured [or other type of client] come within the definition of 'client.'"[8] If someone other than the client will pay the lawyer's fee bills, DR 5-107(A)(1)

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[6] David G. Keyko, Practicing Ethics: Engagement Letters, 234 N.Y.L.J. 16 (2005).

[7] In New York, written engagement letters are also required in contingency fee matters (governed by DR 2-106(D)) and in domestic relations matters (governed by 22 NYCRR 1400.3 and DR 2-106(C)(2)(b)).

[8] Roy Simon, Letter of Engagement and the Defense Bar, THE NEW YORK PROFESSIONAL RESPONSIBILITY REPORT (New York, N.Y.), May 2002, at 2.

requires the client's consent before the lawyer can accept such compensation.

3. When there is a significant change in the scope of services or the fees to be charged to the client, the attorney is required to provide an updated Letter that addresses those changes.

C. What the Letter Must Contain

1. The Letter must explain the scope of the legal services to be provided, as well as an explanation of fees, expenses and billing practices. Finally, the Letter must provide notice of the right to arbitrate fee disputes (where applicable). DR 2-106(E) requires fee disputes in civil representations to be resolved by arbitration at the client's election pursuant to Part 137 of the Rules of the Chief Administrator of the New York State Supreme Court, Appellate Division. These rules permit arbitration where the amount of disputed fees range from $1,000 to $50,000. The required disclosure regarding the state-sponsored fee arbitration program is not to be in lieu of including in the Letter any agreed-upon arbitration provision which applies to all disputes that might arise between the client and the lawyer and specifying in such provision the applicable rules and location of the arbitration proceeding.[9]

D. The Retainer Agreement

1. As noted above, a retainer agreement is a letter of engagement countersigned by both the attorney and the client, and contains all the elements that letters of engagement must contain.

E. Exceptions

1. A Letter does not have to be provided by the attorney when the representation is for a matter with fees expected to be less than $3,000, or when the matter is of the same general kind as previously rendered to and paid for by the client.

2. Domestic relations matters are not covered by the Rule. Instead, 22 NYCRR 1400.3 (Procedure for Attorneys in Domestic Relations Matters) governs the provisions of Letters in such matters.

3. Finally, the Rule does not govern representations by an attorney who is admitted to practice in another jurisdiction and does not maintain an office in the State of New York, or where no material portion of the services are to be rendered in New York.

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[9] David G. Keyko, Practicing Ethics: Engagement Letters, 234 N.Y.L.J. 16 (2005).

V. Probable Non-Compliance with the Rule

A. Over the last six years since the Rule was adopted, courts have rendered decisions on the application of the Rule in a number of cases. The Subcommittee has noted certain trends after reviewing the case law and commentary concerning the Rule. Courts have sought to effectuate the intent of the Rule by withholding fee payments where the attorney failed to provide a Letter to the client, and where exceptions to the Rule did not apply.

1. Feder, Goldstein, Tanenbaum & D'Errico v. Ronan, 195 Misc.2d 704, 761 N.Y.S.2d 463 (Dist. Ct. Nassau County 2003), was the first non-matrimonial case to interpret the Rule. The court found that failure to provide a Letter precluded an attorney from collecting payment for services. There, the plaintiff-attorney appeared once for an attorney/former classmate and both parties acknowledged that no Letter was provided. The court did not accept the plaintiff-attorney's argument that payment was due based upon an oral contract theory or a quantum meruit theory.[10] The court, noting that as of that date there was no precedent on the Rule, analogized the action to a domestic relations matter, to which the letter of engagement rule under 22 NYCRR 1400.3 applies. That rule states that an attorney is precluded from recovering fees if the attorney fails to provide the client with a written retainer agreement.

2. In Klein Calderoni & Santucci, LLP v. Bazerjian, 6 Misc.3d 1032(A), 800 N.Y.S.2d 348, 2005 WL 51721 (Sup. Ct. Bronx County 2005), the court granted summary judgment for the defendant where the plaintiff-attorney acknowledged that he failed to provide a Letter in representing the defendant before the September 11 Victim Compensation Fund. The plaintiff-attorney argued that it was impracticable to provide a Letter since the defendant contacted him on May 12, 2004, visited his office on May 14, 2004 and the hearing was held on May 19, 2004.

   The court disagreed and insisted there had been sufficient time to provide a Letter: "[The] Plaintiff's failure to provide a letter of engagement or a signed retainer agreement was deliberate, and not a result of being 'impracticable.'" 2005 WL 51721 at *1. The

[10] "As much as he has deserved. When a person employs another to do work for him, without any agreement as to his compensation, the law implies a promise from the employer to the workman that he will pay him for his services as much as he may deserve or merit. In such case the plaintiff may suggest in his declaration that the defendant promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth such a sum of money, which the defendant has omitted to pay. This is called an assumpsit on a quantum meruit." BOUVIER'S LAW DICTIONARY (6th ed. 1856) (citing 2 Bl. Com. 162, 3 1 Vin. Ab. 346; 2 Phil. Ev. 82).

court apparently focused on § 1215.1(a)(1) of the Rule, which allows a delay in providing a Letter if it is "impracticable" to do so before commencement of representation. For the court in Klein Calderoni, it was not impracticable to prepare and deliver a Letter within five to seven days after being retained by the client.

3. Similarly, in Nadelman v. Goldman, 7 Misc.3d 1011(A), 801 N.Y.S.2d 237, 2005 WL 877962 (Civ. Ct. New York County 2005), the court relied on Klein Calderoni to preclude the plaintiff-attorney from recovering legal fees because non-compliance with the Rule was intentional and the client denied agreeing to compensate the plaintiff for legal services. The Nadelman court distinguished In re Feroleto, 6 Misc.3d 680, 791 N.Y.S.2d 809 (Surr. Ct. Bronx County 2004), rejecting plaintiff's argument that non-compliance with the Rule does not preclude fee recovery on a quantum meruit basis. The court reasoned that "if such a claim were recognized, then the purpose of [the Rule] would be thwarted in the sense that non-compliance would engender no penalty. That would render [the Rule] meaningless." Nadelman, 2005 WL 877962 at 3.

VI. When Fees May Be Due Even Where the Rule is Not Followed Completely

A. In contrast to the outright preclusion of fees due to the attorney's failure to provide a Letter, courts have permitted partial recovery of fees under certain fact scenarios.

1. When fees are paid for services rendered failure to provide a Letter does not entitle the client to a return of the fees paid. Lewin v. Law Offices of Godfrey G. Brown, 8 Misc.3d 622, 798 N.Y.S.2d 884 (Civ. Ct. Kings County 2005). In that case, the defendant sought to be paid a total of $15,000 for his representation of the plaintiff's relative in a criminal action. Those arrangements were made orally without the preparation and delivery of a Letter. The plaintiff requested the return of $7,500 paid to the defendant.

The court found that the defendant had provided valuable legal services to the plaintiff and, similar to courts in previous decisions, analogized the action to a matrimonial case involving the failure to provide a Letter. In contrast to the court in Feder,[11] however, the court in Lewin cited a line of matrimonial cases that did not preclude the attorney from receiving fees when services were rendered and no Letter provided. The court noted:

[11] See Feder, 195 Misc.2d at 706, 761 N.Y.S.2d at 464-65.

> Even in that context of heightened caution [matrimonial cases], however, courts have held that an attorney's failure to execute a valid retainer agreement does not warrant 'the return of a retainer fee already paid for properly earned services.' Mulcahy v. Mulcahy, 285 A.D.2d 587, 588, 728 N.Y.S.2d 90, 92 (2d Dep't 2001); see also Markard v. Markard, 263 A.D.2d 470, 692 N.Y.S. 2d 733 (2d Dep't 1999). It follows then, that the same rule should apply here.

Id. at 626.

2. In Glazer v. Jack Seid-Sylvia Seid Revocable Trust, 2003 WL 22757710 (Dist. Ct. Nassau County 2003), the court also allowed an attorney to retain fees paid from an escrow deposit where the attorney provided services prior to enactment of the Rule, and the client conceded that the services were provided and that the material terms of the retainer were agreed upon orally. However,

   the attorney was precluded from receiving the full amount sought for representation of the client.

3. Similarly, the court precluded an attorney from recovering full fees in Grossman v. West 26th Corp., 9 Misc.3d 414, 801 N.Y.S.2d 727 (Civ. Ct. Kings County 2005), where the attorney failed to provide a Letter. The court reasoned that the attorney should be entitled to the $3,500 already paid by the client under a theory of quantum meruit; however, the full $8,900 requested by the attorney was denied. The attorney's arguments that: (i) he did not have sufficient time to provide a Letter, (ii) the scope of services could not be determined and (iii) the type of services were of the same general kind rendered in the past failed because the court found that five days was sufficient time to send a Letter and determine the scope of services. The court further noted that the services at issue - a new and more sophisticated kind of mortgage transaction - differed enough from the attorney's prior real estate representation so as to require a Letter.

4. The court's decision in In re Feroleto, 6 Misc.3d 680, 791 N.Y.S.2d 809 (Surr. Ct. Bronx County 2004), further underlines the notion that the Rule is not to be used to preclude recovery of fees when it is clear that services were provided in accordance with the expectations of both parties. The court in Feroleto found that where an attorney sent a retainer agreement (a signed copy of which was never returned) and the client disputed the billing during the representation, the attorney's failure to comply with the Rule was not willful and it would be too harsh to find that no fees

were due under the circumstances. The court further noted that "the more measured penalty [for non-compliance with the Rule] is to resolve any misunderstanding arising from the lack of a letter of engagement or signed retainer agreement in favor of the [client]." Id. at 684. Under that reasoning, the attorney was entitled to $3,000, rather than the requested $10,000.

5. In Beech v. Lefcourt, 12 Misc.3d 1167(A), 820 N.Y.S.2d 841, 2006 WL 1562085 (Civ. Ct. New York County 2006), the court granted summary judgment to a defendant attorney who failed to provide a Letter to a client where the client sought to recover a previously paid legal fee of $15,000. The court, citing In re Feroleto, 6 Misc.3d 680 at 683-684, reasoned that "a client cannot utilize noncompliance with [the Rule] as a sword to recover fees already paid for properly-earned legal services. …Instead, a violation of [the Rule] was only intended to be used as a shield or as a defense to the collection of unpaid legal fees." Id. at 3.

   In what amounts to a summary of the analysis of the Rule hereunder, the court in Beech further noted "…an attorney's failure to comply with [the Rule] has severe consequences for an attorney seeking collection of fees with the harshest penalty of forfeiture to be imposed on the intentional or willful noncompliance to the least sanction of a reduced fee imposed on a quantum meruit theory for unintentional violations." Id. at 3.

6. Finally, in 2007, the Appellate Division, Second Department in Seth Rubenstein, P.C. v. Ganea, 833 N.Y.S.2d 566, 2007 WL 1016998 (2d Dep't 2007), addressed for the first time the issue of whether an attorney who fails to provide a Letter to a non-matrimonial client, in violation of the Rule, may nevertheless recover the reasonable value of services rendered on a quantum meruit basis. The court, citing In re Feroleto, 6 Misc.3d 680 at 684, reasoned that "a strict rule prohibiting the recovery of counsel fees for an attorney's noncompliance with [the Rule] is not appropriate and could create unfair windfalls for clients, particularly where clients know that the legal services they receive are not pro bono and where the failure to comply with [the Rule] is not willful." Id. at 6. The court took into account the fact that the attorney's failure to comply was attributed to the promulgation of the Rule only seven weeks prior to his retention. Accordingly, the court permitted the attorney to recover attorneys' fees on a quantum meruit basis. However, the court noted that it's holding would be different were this matter a matrimonial action governed by the more stringent disciplinary requirements of 22 NYCRR 1400.3 and DR 2-106(c)(2).

The court acknowledged that prior published decisions from the Supreme, Surrogate and Civil Courts reached well-reasoned but conflicting conclusions. The court noted that these trial level decisions fall into three categories. The first category permits the quantum meruit recovery of attorneys' fees notwithstanding noncompliance with the Rule. These cases include In re Feroleto and Grossman. The second category takes a "middle ground", permitting the non-compliant attorney to keep fees already received from the client for services, while prohibiting the recovery of additional fees. These cases include Beech, Lewin and Smart v. Adams, 798 N.Y.S.2d 348, 2004 WL 2167819 (Sup. Ct. Duchess County 2004). The third category prohibits recovery of attorneys' fees for noncompliance with the Rules. These cases include Nadelman, Klein Calderoni and Feder.

VII. Guidelines for Complying with the Rule

A. *From Case Law* – It is clear an attorney must follow the Rule completely to ensure compliance and payment of all fees incurred. Trends from the case law reveal a number of key findings with respect to when the Rule is not followed completely. Below is a summary, based on the case law, of particular circumstances that may lead to no or partial recovery of fees.

1. A period of five to seven days following initial contact with the client should be sufficient time for the attorney to prepare and deliver a Letter. It is not “impracticable” to provide a Letter during such a period.

2. Oral contracts may establish the parties’ intent that fees be paid for representation; however, oral agreements that are not memorialized in a Letter will probably result in only a partial recovery of fees.

3. When a Letter is not provided but fees have been properly earned and paid, a court is not likely to require a refund of the fees because the payment is generally an indicator of the parties’ intent.

4. A court is more likely to deny collection of amounts not yet paid, which may or may not have been billed, when the Rule has not been followed.

5. It is important to be sensitive to the scope of a new engagement, as a court is likely to deny application of the “of the same general kind as previously rendered to and paid for by the client” exception to the Rule when a Letter has not previously been provided for the initial engagement.

6. The language in a Letter is more likely to be construed in favor of the client because it is the attorney who drafts the Letter.[12]

7. Failure to provide a Letter to the client may lead a court to construe any purported oral agreement related to the payment of fees in favor of the client.

8. Recent case law suggests that courts may be less likely to analogize cases involving the Rule to domestic relations matters, which are governed by 22 NYCRR 1400.3 and require the attorney to provide a Letter before commencement of representation. One commentator suggests that the analogy to domestic relations cases may not be appropriate in cases involving the Rule because the failure to provide a Letter in a domestic relations matter is also a violation of a Disciplinary Rule.[13] In contrast, the Disciplinary Rules do not contain a general obligation to provide a Letter, nor do they prohibit a lawyer from collecting a fee when no Letter is provided.

9. Recent case law from the Appellate Division, Second Department, suggests that attorneys have "every incentive to comply…with the Rule as compliance establishes in documentary form the fee arrangements to which clients become bound, and which can be enforced through Part 137 arbitration or [other] proceedings. Attorneys who fail to [comply are]…at a marked disadvantage, as [fee recovery] becomes dependent upon factors [beyond their]…control, such as …proving…that the terms [of the Letter] were fair, understood, and agreed upon." Seth Rubenstein, 2007 WL 1016998 at 6.

10. Failure to advise a client of the right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator of the New York State Supreme Court, Appellate Division may lead a court to preclude an attorney from seeking to recover fees over and above

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[12] Courts as a matter of public policy give particular scrutiny to fee arrangements between attorneys and clients, casting the burden on attorneys to show the contracts are fair, reasonable and fully known and understood by their clients. Shaw v. Manufacturers Hanover Trust Co., 68 N.Y.2d 172, 507 N.Y.S.2d 610 (Ct. App. 1986). The court in Fredericks v. Chemipal, Ltd., Slip Copy 2007 WL1310160 (S.D.N.Y. 2007), dealt with the issue of the enforceability of an ambiguous provision in a contingency fee retainer agreement. The court relied on Shaw and held that when a retainer agreement is ambiguous, there is a rebuttable presumption against the attorney and for the client's reading of the agreement.

[13] "The Feder, Goldstein court seemed unaware that a Disciplinary Rule in the Code of Professional Responsibility, DR 2-106(C)(2)(b), expressly prohibits a lawyer from collecting a fee in a domestic relations matter '[u]nless a written retainer agreement is signed by the lawyer and client . . . . ' No comparable Disciplinary Rule requires a lawyer to provide a client with a letter of engagement or prohibits a lawyer from collecting a fee in a matter where the lawyer failed to provide a letter of engagement." Roy Simon, SIMON'S NEW YORK CODE OF PROFESSIONAL RESPONSIBILITY ANNOTATED 1563-1564 (2005).

those already collected. See Smart v. Adams, 2004 WL 2167819 at 1.

B. *Sample Clauses in Letters of Engagement and Retainer Agreements* – The Subcommittee has reviewed a number of sample Letters in an effort to provide insight on how provisions in these documents can be used to further the intent of the Rule and limit misunderstandings between the attorney and the client about the scope and cost of legal services. The sample provisions were drawn from a wide range of sources, including retainer agreements from large in-house legal departments and letters of engagement from large to mid-size firms. We have kept the names of the companies and firms confidential in order to maintain their anonymity.

1. Although the Rule does not require specific reference thereto in a Letter, some sample Letters have included such reference. Examples:

   (a) "As required by the Joint Rules of the Appellate Divisions of the courts of New York State, it is our practice to provide an engagement letter to our clients prior to our commencing a new representation."

   (b) "NOTICE (Pursuant to Part 1215.1 to Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York)."

2. Explain the scope of the engagement – The Rule requires that the Letter explain the scope of the services to be provided, and also requires that an updated Letter be provided upon a significant change in the nature of the engagement or the fees to be charged to the client. The explanation of the scope of the services to be provided includes a description of the work to be done as well as the entity or entities to be represented. Examples:

   (a) "We look forward to representing _____ (the "Company") in connection with [DESCRIBE MATTER AND SCOPE OF ENGAGEMENT] [For example, if the matter entails a private placement of equity to investors to be identified by the Company the Letter should state: "Our engagement will involve assistance with the preparation of a private placement memorandum and compliance with federal and applicable state securities laws."]

3. Clarify the identity of the entity or entities to be represented and limit and/or disclaim the representation of other parties. Examples:

(a) "[Name of Firm] will represent [Client][14] in [description of scope of legal services].[15] In this engagement, we will not represent any directors, members, officers, partners, shareholders, subsidiaries or affiliates of, or other persons or entities associated with, [Client]."

(b) "Unless specifically stated in our letter, our representation of you does not extend to any of your affiliates and we do not assume any duties with respect to your affiliates. For example, if you are a corporation, we do not represent your parents, subsidiaries, sister corporations, employees, officers, directors, shareholders, or partners, or any entities in which you own an interest. If you are a partnership…"

4. Explain rates – The Rule requires that the Letter explain all fees, expenses, and billing practices. Examples:

(a) "Our schedule of hourly rates for attorneys and other members of the professional staff is based upon their years of experience, practice area, specialization, training and level of professional attainment. My standard billing rate is $__ per hour, with other partners generally billed at a lower rate, associates at $___ to $__ per hour and legal assistants at $__ to $__ per hour."

(b) "Although time and hourly rates (currently ranging from U.S.$__ for junior associates to U.S.$__ for senior partners) are considered in determining our fees, we may also consider the novelty and difficulty of the questions involved; the skills requisite to perform the services you require; the experience, reputation, and ability of those performing the services; the time limitations imposed by you or the circumstances; the amount at stake and the results we obtain; and any other factors that may be relevant under the applicable rules of professional conduct."

(c) "In addition to professional fees, [Client] will also be responsible for expenses incurred by [Name of Firm] on

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[14] The exact legal name of the specific entity or entities that the attorney will be representing in the matter should be used.

[15] The description should be reasonably detailed and, in addition to describing the legal services that are within the scope of the services to be provided, should describe those legal services that are not within such scope if appropriate in the particular circumstances to avoid any misunderstandings as to what is, and what is not, within such scope. In the event a significant change were later to develop in the scope of services or the fee to be charged, an updated letter of engagement should be provided to the client.

[Client's] behalf, including the cost of travel, computerized legal research, photocopies, telephone calls, and the like. We have attached our Policy Statement Concerning Charges and Disbursements, which explains our current expense policy in detail. All third-party invoices in excess of U.S. $___ will be passed on from [Name of Firm] to you for direct payment to the third party."

5. Explain arbitration rights – The Rule requires that clients be made aware of their arbitration rights where applicable. Examples:

(a) "Pursuant to Part 137 of the Rules of the Chief Administrator of the New York State Supreme Court, Appellate Division ("Part 137 of the Chief Administrator Rules"), [Client] has the right to request binding arbitration of fee disputes if the fee is between $1,000 and $50,000. Under the rules of certain jurisdictions, to the extent such rules are applicable to this engagement, [Client] may have the right to request binding arbitration of fee disputes in certain circumstances."

(b) "In the event of a fee dispute between [Client] and [Name of Firm] involving amounts from $1,000 to $50,000, [Client] shall be entitled to arbitration in accordance with Part 137 of the Chief Administrator Rules."

(c) "If we are unable to resolve any disputes regarding our invoices, you may be entitled to require arbitration under a procedure established in New York State for resolution of certain fee disputes pursuant to Part 137(b) of the Chief Administrator Rules. We will provide a copy of those Rules to you if such a dispute arises or upon your request. Except to the extent required by such Rules, any dispute or claim arising out of or in any way relating to the Firm's representation of you (including, without limitation, any claim of malpractice or breach of contract) shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York, New York. This agreement to arbitrate shall constitute an irrevocable waiver of each party's right to a trial by jury, but the arbitrators shall have the power to grant any remedy for money damages or equitable relief that would be available to such party in a dispute before a court of law in New York."

Letters of Engagement Rules

Joint Order Of The Appellate Divisions

The Appellate Divisions of the Supreme Court, pursuant to the authority invested in them, do hereby add, effective March 4, 2002, Part 1215 to Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York, entitled "Written Letter of Engagement," as follows:

Part 1215 Written Letter of Engagement
§1215.1 Requirements

a. Effective March 4, 2002, an attorney who undertakes to represent a client and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement before commencing the representation, or within a reasonable time thereafter (i) if otherwise impracticable or (ii) if the scope of services to be provided cannot be determined at the time of the commencement of representation. For purposes of this rule, where an entity (such as an insurance carrier) engages an attorney to represent a third party, the term "client" shall mean the entity that engages the attorney. Where there is a significant change in the scope of services or the fee to be charged, an updated letter of engagement shall be provided to the client.
b. The letter of engagement shall address the following matters:
   1. Explanation of the scope of the legal services to be provided;
   2. Explanation of attorney's fees to be charged, expenses and billing practices; and, where applicable, shall provide that the client may have a right to arbitrate fee disputes under Part 137 of the Rules of the Chief Administrator.
c. Instead of providing the client with a written letter of engagement, an attorney may comply with the provisions of subdivision (a) by entering into a signed written retainer agreement with the client, before or within a reasonable time after commencing the representation, provided that the agreement addresses the matters set forth in subdivision (b).

§1215.2 Exceptions
This section shall not apply to:

1. representation of a client where the fee to be charged is expected to be less than $3000,
2. representation where the attorney's services are of the same general kind as previously rendered to and paid for by the client, or
3. representation in domestic relations matters subject to Part 1400 of the Joint Rules of the Appellate Division (22 NYCRR), or
4. representation where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New

York, or where no material portion of the services are to be rendered in New York.

As amended April 3, 2002