DECEMBER 2017

Are There Persons Who Believe That They Are Your Client When You Think They Are Not?

When a lawyer declines to accept a legal matter, it is best to communicate that declination to the declined client in writing, by a non-engagement letter, to avoid any misunderstanding. Non-engagement letters should expressly inform the prospective client that the law firm has not provided any advice regarding the legal matter and will not represent the prospective client in that matter. The letter should make it clear that the prospective client should not rely on the lawyer for any advice or legal action, and, if appropriate, state that no confidential information was received.

When declining to accept a legal matter, lawyers should be careful not to give any legal advice or opinion regarding the prospective client’s claim. Any such advice can provide the basis for a later malpractice claim against the lawyer if it turns out that the advice or assessment was wrong and the prospective client relied on that advice to his or her detriment.

In addition, when representing a client in a matter in which there are unrepresented parties, make it clear to those unrepresented parties that you do not represent them and will not protect their interests. Sending non-engagement letters clarifying who is and is not your client may help prevent a claim.