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Make Sure You and Client Know and Agree on Scope of Legal Services

ABA Model Rule 1.5(b) states that the scope of the representation must be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. The Rules of Professional Conduct of many states contain the same requirement. Identifying the services that the lawyer agrees to provide in a written engagement letter or agreement is not only an ethical requirement but an excellent risk management tool to help avoid malpractice claims. Often it is also helpful to identify some specific services that the lawyer is not providing, for example, a workers compensation lawyer might state in writing that she is not handling any third party claims, or a real estate lawyer might state that he is not advising the client on any zoning or tax issues. When the scope of services is not clearly stated and acknowledged by the lawyer and the client, the client might be expecting services that the lawyer does not consider to be part of the retention. When those services are not provided, and the client is harmed by the lack of action on the part of the lawyer, a malpractice claim can result. Engagement letters that clearly set out the scope of services to be rendered can avoid such claims.