Use Non-Engagement Letters to Avoid Claims

Lawyers are sometimes sued by persons they never thought were their clients. The person suing the lawyer for failure to take action, however, asserts that she or he had reason to believe that the lawyer was protecting her or his interests and failed to do so. It is also not unusual for unrepresented individuals who are parties to a transaction or litigation to believe that the lawyer representing another party also represents them. Sometimes lawyers try to be helpful by explaining things to the unrepresented party, causing confusion as to whether the lawyer is also representing that party. When there is an unrepresented party to a transaction or litigation, it is important to make it clear to that person that you do not represent them. This may be done orally, but then there is no record of the disclosure when it is needed. A useful tool to prevent claims by persons you do not consider to be your clients is a “non-engagement letter.” Such letters are sent to prospective clients who do not ultimately retain the lawyer, clarifying that the lawyer is not representing them. They are also sent to unrepresented parties by lawyers who represent other parties, clarifying who the lawyer represents, and suggesting that, if the unrepresented party desires legal advice, that he or she obtain it from their own, independent attorney.