



Guidelines: Disengagement Letters

Disclaimer: LMICK is providing general legal information for Kentucky lawyers drafting disengagement letters. This document is intended to provide a starting point and must be adjusted to suit your practice's and your client's needs. LMICK is not providing legal advice.

Disengagement letters are recommended whenever the representation must end prior to the conclusion of the matter. This can come up in a variety of scenarios—conflicts of interest, scope of matter beyond the lawyer's capacity, lack of payment for services, issues in client control, client dissatisfaction—and can be triggered by the client or the lawyer. While the specifics of the letter will vary depending on the circumstances, there are some general guidelines to get you started.

Draft a disengagement letter that:

- Confirms that the relationship is ending with a brief description of the reasons for withdrawal.
 - Be clear but concise about why the relationship is ending. Who is terminating and why?
 - If you are terminating the relationship because the client has become difficult, mention this but refrain from airing out your frustrations, here. Consider statements like, *Due to our continued disagreements about the goals of the representation, I am no longer able to effectively represent you in this matter.*
 - Obtain the client's agreement in writing. The recommended method is to obtain the client's signature at the close of the disengagement letter. However, an email response from them would also suffice if circumstances prevent obtaining the signature.
- Provides reasonable notice before withdrawal is final.
 - In litigation matters, sending a letter prior to filing a motion to withdraw and a closing letter once the motion is granted is recommended.
- Avoids imprudent comment on the merits of the case.
 - If you are withdrawing, you also need to step lightly to avoid continued advice to the client.
 - Additionally, during disengagement there are often hard feelings. Avoid airing these frustrations in the letter and, instead, focus on the administrative pieces of termination. Instead, document your frustrations in your file for reference in any future bar complaint or malpractice claim.

- Indicates whether payment is due for outstanding fees or expenses.
 - Refer to your engagement letter provisions outlining the client’s obligation to pay for services rendered.
 - Include an amount and a final invoice, if possible.
 - Consider foregoing payment for a small amount of outstanding fees and expenses.
- Recommends seeking other counsel.
 - Also, explain under what conditions the lawyer will consult with a successor counsel.
- Identifies important deadlines.
 - If appropriate, consider including a closing status report outlining additional details, such as steps taken up to disengagement.
- Includes arrangements to transfer client files.
 - It is also helpful to reference your file retention policy, indicating how long the file will be retained in the normal course of business if they fail to pick up the file. If you have explained the file retention policy in your engagement letter, you can refer them to that provision or copy and paste the provision into your disengagement letter.
 - REMINDER: You cannot condition the release of the file on payment for services rendered. You must release the file to the client and comply with your ethical obligations under [SCR 3.130 \(1.16\), Declining or Terminating Representation](#) and [SCR 3.130 \(1.9\), Duties to Former Clients](#).
- Miscellaneous provisions:
 - Indicate the method of delivery to the client (Sent via email, certified mail, etc.)
 - Remember to include a signature line at the conclusion of the letter for your client to sign and return to you to confirm they understand the relationship is terminated.
 - It may also be helpful to obtain a signed confirmation that the client has received the file, documenting the date it was picked up.

After disengagement, carefully follow through on the duty to take necessary actions to protect the client’s interest and comply with the representations in the disengagement letter. These actions help to avoid a malpractice claim based on the manner of withdrawal.

Finally, maintain a complete copy of the file. A disengaged client or one that terminated you has a high potential to be a malpractice claimant. The first line of defense is a complete file with a comprehensive disengagement letter. This is the best evidence for showing competent and ethical practice in disengaging a client. For more information, please contact Courtney Risk at risk@lmick.com.