

Courts Propose Mandatory Engagement Letters

BY LAZAR EMANUEL

The Office of Court Administration has requested public comment on a proposed new rule which would require all New York lawyers to provide all clients with a written letter of engagement whenever the anticipated fee will exceed \$1,000. The new rule would apply to all matters except domestic relations matters, which are subject to Part 1400 of the Joint Rules of the Appellate Division, 22 NYCRR.

Under the proposed rule, the letter of engagement must include an explanation of the services to be provided; an explanation of fees to be charged, including expenses and billing practices; and, if applicable, notice of the client's right to arbitration of fee disputes under the new Part 137 of the Rules of the Chief Administrator. [See, NYPRR March 2001, pages 9-10 and April 2001, page 1 et. seq.] Note: Implementation of new Part 137 has been postponed until January 1, 2002; see page 2.

The letter of engagement need not be signed by the client. A signed retainer agreement, as in a contingency matter, may be used as the letter of engagement, provided the retainer agreement includes all the information required for a valid letter of engagement.

The period for public comment will expire on November 5, 2001. The full text of the request for comment follows, as does the text of the Board's explanation of the proposed rule and of the rule itself:

REQUEST FOR PUBLIC COMMENT Written Letters of Engagement

The Administrative Board of the Courts requests public comment on a proposed addition to the Joint Rules of the Appellate Divisions that would require attorneys who represent a party for a fee to provide to their clients a written letter of engagement at the outset of representation where the fee to be charged is expected to be \$1000 or more. A copy of the proposed rule is attached, together with an explanation of its scope and application.

Written comments should be sent to: Michael Colodner, Esq., Counsel, Office of Court Administration, 25 Beaver Street, New York, New York 10004.

Letters of Engagement

Explanation of Proposed Rule

The Administrative Board of the Courts has released for public comment a proposed addition to the Joint Rules of the Appellate Divisions that would require attorneys who represent a party for a fee to provide to their clients a written letter of engagement at the outset of representation where the fee to be charged is expected to be \$1,000 or more.

This rule implements a proposal by the Commission on the Profession and the Courts, a blue-ribbon panel appointed by the Chief Judge, which investigated sources of public dissatisfaction with the legal profession and identified the need to enhance the client's understanding of a lawyer's responsibilities in performing legal services and the client's financial obligations for those services. Experience has shown that many misunderstandings and disputes between attorneys and clients — particularly over fees -- could have been avoided if the client had a clear understanding of the terms of the representation. The letter of engagement serves as a permanent record of the parties' expectations and obligations, and each can refer to it in the future. Many lawyers in New York and around the country already use letters of engagement or written retainer agreements as a matter of good practice.

This proposed rule is intended to ensure that there is a memorialized meeting of the minds with regard to the most basic terms of the engagement. The rule prescribes three matters that must be covered in the letter of engagement — the scope of legal services to be performed, the fee to be charged, and, where applicable, the notice of the right to arbitrate fee disputes (as recently promulgated in Part 137 of the Rules of the Chief Administrator). The rule is not intended to interfere with or supplant written retainer agreements currently in use by lawyers. Furthermore, it is flexible; no model letter of engagement is proposed, as the circumstances of representation vary so widely based on different practice settings that no single form could be useful. The lawyer should feel free to develop a letter that reflects the circumstances of his or her practice. The letter of engagement should not be a complex legal instrument, but should be a succinct and clear statement of the basics of the representation arrangement guided by the nature of the services to be performed.

The proposed rule would not apply where the fee to be charged is below \$1000, thus excluding many types of services and situations that simply do not merit the formality of an engagement letter. Where a written retainer agreement exists between the parties, as in most contingency fee matters, the agreement should satisfy the letter of engagement requirement. Unlike retainer agreements, the client need not provide a signature confirming acceptance of the terms of the letter of engagement; presentation of the letter to the client would be sufficient. Finally, the rule does not apply to domestic relations matters covered by Part 1400 of the Joint Rules of the Appellate Division (matrimonial rules), which has its own retainer agreement requirement.

We look forward to receiving the input of the Bar on this important initiative.

Text of Proposed Rule

§ _____ Written Letter of Engagement

- (a) Effective _____, 2002, an attorney who undertakes to represent a party and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement at the commencement of representation. 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, including expenses and billing practices; and
 - (3) Where applicable, notice of the client's right to arbitration of fee disputes under Part 137 of the Rules of the Chief Administrator.
- (b) An attorney may comply with the provisions of subdivision (a) by entering into a signed written retainer agreement with the client, provided that the agreement addresses the matters set forth in subdivision (a).
- (c) This section shall not apply to (1) representation of a client where the fee to be charged is expected to be less than \$1000, and (2) representation in domestic relations matters subject to Part 1400 of the Joint Rules of the Appellate Division [22 NYCRR].

Fee Arbitration Rules Postponed to January 1, 2002.

Chief Administrative Judge Jonathan Lippman has announced a delay in the implementation of Part 137 which will impose compulsory arbitration of all fee disputes involving more than \$1,000 but less than \$50,000. The new Part will take effect on January 1, 2002. The delay will enable local bar associations to develop the machinery for conducting the arbitrations. Court officials are looking to these local associations to carry out the program. The program will be administered by an 18-member Board of Governors.