TERMINATING THE ENGAGEMENT

CONTINUING MATTERS

If a project has not been completed and representation has been terminated by the client or the law firm has withdrawn, a letter should be sent to the client explaining the reasons for termination or withdrawal, and indicating on the basis of whose action the engagement has ceased. A clear, unequivocal written communication may not even be enough in the case of withdrawal, as some clients may simply not understand that they are no longer being represented. Circumstances may dictate that additional action is necessary to assure that the client's interests are being protected.

A termination letter should refer to the status of outstanding statements and set forth the firm's expectation with respect to the payment of fees and charges, whether or not billed. Reference might be made to facilitating the transition to new counsel, with some indication as to the procedures or limitations, if any, that will be imposed on the transfer of files. Finally, the client should be advised of any imminent deadlines, such as statutes of limitation or filings, and obligations that have not yet been satisfied and are known at the time of the termination. However, it should be made clear that the law firm has no further obligation to advise the client with respect to these or any other matters.

A sample of a termination letter when the matter is continuing is included as Exhibit 7.

CONCLUDED MATTERS

Short of termination by a client or withdrawal by the law firm, there often is an issue as to whether an attorney-client relationship, once established,
continues to exist. The comment to Model Rule 1.3 deals with this issue as follows.

If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so.

There are several practical advantages to law firms employing a practice of sending termination or disengagement letters to clients, at least when a task or project has been completed. The duties owed to a former client drastically decrease once the attorney-client relationship ends. For example, a law firm is prohibited from undertaking representation directly adverse to an existing client without that client's consent. After termination of the attorney-client relationship, a firm is not precluded from later representing another client in an unrelated matter even though adverse to the prior client. This distinction has become critically important in several decisions that resulted in disqualification of trial counsel. A firm also will be relieved of its obligation to advise the client of future legal developments, including changes in statutes or new court decisions, that may have a bearing on the subject of the engagement. In addition, a termination letter can establish the date from which the statute of limitations for the specific engagement will begin to run. In some states the statute of limitations for bringing a legal malpractice action is tolled so long as a lawyer continues to represent the client.

A termination letter usually will explain that the matter has been completed, describe the results achieved, and include a final statement for services rendered and charges incurred. Reference can be made as to whether the client will continue to be served in other matters. Some firms provide a questionnaire with the letter and use this as an opportunity for the client to comment on the firm's performance. If the former client is to be kept on the firm's mailing list, this could be addressed specifically to avoid any implication that the attorney-client relationship continues. The letter might note that conclusion of the matter will permit the law firm to represent other parties whose representation may have been prohibited by the engagement. The firm's policy regarding retention of closed files also might be mentioned, giving the client an opportunity to retrieve documents in the firm's possession prior to destruction. Any other continuing obligations or undertakings imposed by the terms of the engagement letter should be acknowledged or, if there are none, negated.

A sample of a termination letter where the matter has been completed is included as Exhibit 8.

2. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7 (1995).


4. See, e.g., *Shearing v. Allergan Inc.*, No. CV-S-93-866, 1994 WL 382450 (D. Nev. 1994) (lack of work for over one year after representation for 13 years insufficient to constitute lapse of relationship); *SWS Fin. Fund A v. Salomon Bros. Inc.*, 790 F. Supp. 1392 (1992) (court found no express termination by either party, the parties' behavior was not inconsistent with continuation of the relationship and it could not reasonably be stated that the relationship lapsed due to the passage of time).


7. Certain duties, such as the duty to maintain confidentiality of information imparted, continue after the attorney-client relationship terminates. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.6 cmt. (1995).