When a Client Relationship Goes Wrong: Minimizing Malpractice Exposure at Disengagement

One of the most consistent findings in law firm malpractice claims data is this: A significant percentage of claims involve matters where the attorney-client relationship ended badly and where the disengagement was handled poorly.

The Disengagement Problem

Attorneys spend a great deal of time thinking about how to take on new clients. Far less attention goes to how to properly close matters and end client relationships. That asymmetry is a meaningful source of professional liability exposure.

When a client becomes difficult (fails to pay, provides conflicting instructions, pursues objectives the firm cannot in good conscience advance or simply becomes too demanding), the instinct is often to let the relationship quietly deteriorate rather than execute a formal disengagement. That approach is understandable. It is also a significant risk management mistake.

What Goes Wrong at Disengagement

The most common disengagement-related claim scenarios share a few characteristics. First, the attorney stopped working on the matter without formally withdrawing, creating ambiguity about whether representation was ongoing. Courts have found that attorneys can remain responsible for matters they believed were over if proper disengagement steps weren't taken.

Second, critical deadlines were missed during or after the breakdown in the relationship. If a statute of limitations runs while both parties believe the other is handling the matter, the client has a clear claim. Third, the file wasn't transferred or documented properly. Clients are entitled to their files. Failure to produce them promptly upon request is itself a bar complaint and can significantly complicate a subsequent malpractice defense.

Finally, there was no written disengagement letter. In the absence of a clear written record confirming that representation has ended, the scope and duration of the attorney-client relationship becomes a factual dispute, which means it becomes a jury question.

The Disengagement Letter and File Retention

A disengagement letter doesn't need to be long or complex. It should confirm in plain language that the firm's representation has concluded, identify any pending deadlines or outstanding matters the client needs to address, specify the firm's file retention policy, and provide instructions for how the client can obtain their file.

File retention itself is a risk management practice that many firms handle inconsistently. Malpractice claims can arrive years after a matter closes and sometimes at the edge of the applicable statute of limitations. Firms that have destroyed files before that window closes can find themselves unable to mount an effective defense. Work with your malpractice carrier to understand what retention period is appropriate for different matter types.

A Word From Gallagher

Gallagher's law firm practice team regularly works with firms to review engagement and disengagement practices as part of broader professional liability risk management. These conversations often surface issues that are easy to fix proactively and expensive to address after a claim. Contact us to learn how we can support your firm's risk management program.

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