

WARNING AND DISCLAIMER: The below information was prepared by The Bar Plan from the Missouri Bar Client Keeper Handbook and is for general information purposes only. It should not be construed as legal advice or legal opinion with regard to any specific circumstance or set of facts. This form document is not, and cannot be, inclusive of all the possible or required contents for such letters, and each attorney preparing such a letter must make an independent evaluation of the necessary and required contents, given the circumstances of the representation.

Closing Letter Basics

A Closing Letter is a valuable tool in both securing future business and avoiding malpractice and ethics risks from unintended continuing attorney-client relationships. Reluctance to use one usually arises from a concern that the client will misinterpret it and conclude the lawyer doesn't want to represent them on future matters. Unquestionably such letters are equal parts of art and science.

Experienced attorneys routinely have an oral end-of-representation discussion with the client. However, for that to be an effective defense in a future dispute about the lawyer's status, there should be a written record of what transpired. Without it, lawyers are vulnerable to second-guessing regarding their status, potentially determined by whether the client's understanding of the lawyer's role is reasonable in the circumstances. See, for example, *Jones v. Rabanco, Ltd.*, 2006 WL 2237708 (W.D.Wash. 2006), in which the court found that a three year break in contact between the attorney and client did not constitute an event inconsistent with the attorney-client relationship. As stated by that court "[O]ther courts have held that 'once established, a lawyer-client relationship does not terminate easily. Something inconsistent with the continuation of the relationship must transpire in order to end the relationship'" *Id.* at 4, citing *SWS Financial Fund A v. Salomon Bros., Inc.*, 790 F.Supp. 1392, 1398 (N.D.Ill.1992).

A lawyer can get a good start crafting a Closing Letter by dictating the routine end-of representation discussion into draft form. It likely already contains a statement regarding the lawyer's status which has proved to be inoffensive to clients and can be massaged into an equally inoffensive written confirmation that the representation and the lawyer's role are concluded.

Closing Letters should be used at the conclusion of every attorney-client relationship.

If the lawyer is withdrawing from a continuing client matter, the letter should disclose the specific reason for the withdrawal and the date the motion to withdraw will be heard, if one has been filed. A copy of the motion to withdraw should be included. The requirements of any local rules of court on withdrawal from a representation should be reviewed and complied with.

If withdrawing from an on-going representation, the attorney should advise the client of the specific date of any deadlines or statutes of limitations as and where appropriate, and a description of the consequences to the client if the date/activity is missed.

The client should be advised of the importance of immediately obtaining new counsel, especially in cases of withdrawal, so as to prevent any adverse impact on the case.

The firm's position with regard to compensation for consultation with subsequent counsel should be disclosed, along with the firm's intentions regarding any unpaid balance.

Reference should be made to the client's file. Generally, expenses which the attorney has paid for out-of-pocket and not been reimbursed, such as, but not limited to, transcripts, may be retained by the attorney until paid for, but the balance of the file must be forwarded to the client upon request, notwithstanding that the client has an outstanding fee balance.

In both termination and closing letters, disclosure should be made of any important deadlines or other uncompleted activities, in addition to a statement disclaiming responsibility for matters outside the relationship or subject matter of the representation.

If you discussed your file retention procedure with your client in the engagement letter and plan to adhere to that, make sure you again address the procedure in this letter.

If you represent the client in other matters, the status of your representation in those matters should be clarified.

Most importantly, the letter should not be drafted as though it were a CYA document. It is not. It is an important counseling tool containing information clients need to protect their interests.

With those thoughts in mind, below is a basic starting template for a form Closing Letter.

Sample Closing Letter

Re:

Dear Client:

Thank you for allowing our firm to represent you in this matter. Your case and our representation of you are now concluded. We are closing our file and will take no further action on your behalf. **[See User Note 1 Below]**

[Option 1] We will retain your file for a period of _____ years. After _____ years, the file may be destroyed in our discretion. **[See User Note 2 Below]**

[Option 2] We are returning all original documents and papers you gave us in connection with this case. You should keep all your information concerning this matter in a safe place in case you need it in the future. **[See User Note 3 Below]**

If we may be of assistance in the future to you or to friends or family members who may need legal help, we hope you will contact us.

Very truly yours,

User Note 1

Every Closing Letter should contain the phrase, “This concludes our representation of you,” regardless of whatever else is discussed in the letter. Do not add potentially ambiguous language such as “This concludes our representation of you **in this matter**,” as it may lead a client to believe you are protecting their interests in some other matter they believe they have or later discover they had. If there are other on-going representations with a client, they can be referenced accordingly.

User Note 2

A lawyer is required to maintain a client file for a reasonable period of time. However, unless a lawyer fails to make other arrangements with the client, the file must be maintained for a minimum of ten (10) years. See Rule 4-1.15(m). See The Bar Plan’s Sample File Retention Policy for more information on this issue.

User Note 3

If this option is chosen, it is recommended that the lawyer maintain a copy of the file for the lawyer’s future use. The client may not be charged