



## Alerts

### A Clearly Drafted Engagement Letter Can Limit the Scope of Attorney's Duties

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*Lawyers for the Profession® Alert*

*SCB Diversified Municipal Portfolio et. al. v. Crews & Associates et. al.*, 2012 WL 13708 (E.D. La. Jan. 4, 2012)

#### Brief Summary

In a legal malpractice case, the U.S. District Court for the Eastern District of Louisiana granted a law firm's motion for summary judgment. The court found that the firm's clearly drafted engagement letter successfully provided a defense to the client's allegations that the firm did not provide adequate legal representation. The court rejected the client's argument that a narrow scope of representation requires informed consent.

#### Complete Summary

To fund a residential community project, a developer created a community development district to issue bonds. The developer retained the law firm as special counsel to assist with organization and as bond counsel regarding the issuance of the bonds. The parties signed a detailed engagement letter defining the law firm's scope of representation and duties as special counsel and bond counsel. During the course of the representation, the law firm issued several opinion letters regarding the validity and effect of the bonds, as well as the security for the bonds, the accuracy of legal provisions, and other topics dealing with the bonds.

After development of the project began, the Army Corps of Engineers posted a notice stating that the area had been used as a bombing range during World War II and that there was a danger of unexploded ordnance, munitions, and rockets. The Parish Engineer suspended any building permits until the area was cleared of dangerous materials. Unable to raise capital, the client defaulted on the bonds. It sued the law firm for legal malpractice for failure to conduct environmental due diligence, failure to gain consent for a limited scope representation, and other claims.

The law firm argued that as bond counsel, under the terms of the engagement letter, it had no duty to perform environmental due diligence. The firm further argued that the engagement letter explained the traditional duties of bond counsel and that the client did not present evidence showing that environmental due diligence falls within the scope of a bond counsel's duties. In return, the client argued that the firm's engagement letter invalidly limited the scope of

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representation because the firm did not gain consent regarding the scope of the duties stated in the engagement letter.

The Court reviewed the engagement letter and found that the letter was clearly drafted, providing a successful defense to the allegation of a duty of due diligence for an environmental report. The Court also rejected the client's assertion that the law firm had invalidly limited its representation without consent, finding instead that the law firm had properly created a narrow and clear scope of representation in the engagement letter.

### **Significance of Opinion**

This decision demonstrates that a well-drafted and clear engagement letter is plainly the best defense to a charge that the attorney failed to do what the client requested.