



## Newsletters

### The Lawyers' Lawyer Newsletter - Recent Developments in Risk Management (Abridged Version) - August 2010

August 19, 2010

- Engagement Letters – Shareholder's Standing to Sue Corporate Counsel
  - Attorney-Client Relationship – Advocate Witness Rule and Former Client Conflict – Court Denies Motion to Disqualify Where Former Client Fails to Establish Present Attorney-Client Relationship
  - Engagement Letters – Nonrefundable Fees – Fixed Fees – Handling Advance Fee Payments
  - Clear Notice of Termination – Continuous Representation and Statute of Limitations
  - Outside Counsel's Affirmative Duties to Oversee Their Clients' Compliance With Discovery Obligations – Duty to Investigate
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#### Engagement Letters – Shareholder's Standing to Sue Corporate Counsel

*Kurre v. Greenbaum, Rowe, Smith, Ravin, Davis, and Himmel, LLP*, 2010 WL 2090092 (N.J. Super. Ct. App. Div. Apr. 16, 2010)

Risk Management Issue: What can law firms do to avoid representing unintended clients?

#### Attorney-Client Relationship – Advocate Witness Rule and Former Client Conflict – Court Denies Motion to Disqualify Where Former Client Fails to Establish Present Attorney-Client Relationship

*Worldhill Ltd. v. Sternberg et al.*, Slip Copy 25 Misc.3d 1224(A), available at 2009 WL 3805610 (N.Y. Sup. Ct. Nov. 2009)

Risk Management Issue: What can lawyers do to avoid being the target of a disqualification motion based upon the movant's claim of prior related representation?

#### Engagement Letters – Nonrefundable Fees – Fixed Fees – Handling Advance Fee Payments

Missouri Supreme Court Advisory Committee, *Formal Opinion* 128, May 18, 2010 (Nonrefundable Fees)

#### Service Areas

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Risk Management Issues: May a lawyer charge and retain client funds as a “nonrefundable” fee? Into what account should a lawyer place client funds paid in advance as a fixed fee? What language should a lawyer use in an engagement letter when receiving client funds in paid advance of services received?

### **Clear Notice of Termination – Continuous Representation and Statute of Limitations**

*[Editors’ Note: We take this opportunity to provide an update on a case discussed in the January 2009 issue of The Lawyers’ Lawyer Newsletter in conjunction with a new case that presents related risk management issues.]*

*Laclette v. Galindo*, 184 Cal. App. 4th 919 (Cal. App. 2 Dist. May 17, 2010)

Risk Management Issue: What can lawyers and law firms do to avoid the application of the “continuous representation” doctrine that would deprive them of a statute of limitations defense to malpractice claims?

### **Outside Counsel’s Affirmative Duties to Oversee Their Clients’ Compliance With Discovery Obligations – Duty to Investigate**

UPDATE: *Qualcomm vs. Broadcom Corporation*, 2010 WL 1336937 (S.D. Cal. Apr. 2, 2010)

The April 2008 edition of *The Lawyers’ Lawyer Newsletter* included a discussion of the original sanctions order of U.S. Magistrate Judge Barbara L. Major in this case. (See *Qualcomm Inc. v. Broadcom Corp.*, 2008 WL 66932 (S.D. Cal. Jan. 7, 2008); 2008 WL 638108 (S.D. Cal. Mar. 5, 2008).

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