



Newsletters

The Lawyers' Lawyer Newsletter - Recent Developments in Risk Management (Long 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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Attorney-Client Relationship – Engagement Letters – Standing to Sue Corporation's Law Firm Denied to Individual Shareholders Based Upon Written Engagement Agreement With Corporation

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 lawyers 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., 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)

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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?

Continuous Representation – Statute of Limitations for Malpractice Actions – Effect of Failure to Give Clear Writing Terminating Engagement

[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)

Gotay v. Breitbart, 2008 WL 4821764 (N.Y.A.D. 1 Dept.), 2008 N.Y. Slip Op. 08432, Nov. 6, 2008, Reversed 2009 NY Slip Op. 05209, June 25, 2009 (N.Y. 2009)

Risk Management Issue: What can lawyers and law firms do to avoid application of the “continuous representation” doctrine, and thus prevent losing the 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)

In the April 2008 issue of *The Lawyers’ Lawyer Newsletter*, we discussed 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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