

DON'T LEARN THE HARD WAY

Representation Agreements
Should Be Written With Care

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WHEN IT COMES TO must-haves in client representation agreements, a lot depends on just who the client is.

Charles J. Homiller, a solo in Richmond, Va., tries to keep his agreements to two pages for criminal defense clients, but expands them to three to four pages for personal injury and family law clients. He says the key is to include no more than is necessary because he doesn't want clients to feel overwhelmed.

"For criminal cases, it's pretty much just how far does this retainer take you. I'll represent them through certain stages of the case, and then if the case goes further than

unexpectedly bound over for full trial, Homiller found he was stuck with the representation even though the client couldn't pay. Homiller had neglected to specify in his agreement that the small retainer the client had scraped together was only supposed to cover the initial appearance. Since then, he says, he's been careful to specify the scope of his representation each time.

Similarly, in personal injury and family law matters, Homiller is careful to outline what the retainer covers and what it doesn't. He adds language about the cost of expert witnesses, if needed, as well as unforeseen contingencies. In family law, he specifies whether the agreement covers only dissolution, or whether custody matters are included. He is also careful to point out that pursuing the opposing party for nonpayment of support is not included in the original fee.

Marion J. Browning-Baker, a U.S. lawyer who practices in Stuttgart, Germany, says she won't work without a representation agreement. Browning-Baker's clients are mostly U.S. military personnel assigned to the local Army base. She learned the hard way that some soldiers, just like civilians, will try to get out of paying their bill.

"I had one really bad experience where I represented a guy on an emergency basis without an agreement," she says. "When I sent him my bill, he took it to the local Army legal assistance office, which advised him that as he'd not signed an agreement, he didn't have to pay me."

NEVER TOO CAREFUL

WALTER D. JAMES III, WHO PRACTICES IN GRAPEVINE, Texas, has a six-page standard representation agreement that generally grows to eight or nine pages with addenda.

James' clients are mostly corporations seeking counsel on complex environmental law issues.

"I'd rather be abundantly cautious up front than have problems later," James says.

His agreement begins by defining the client—the corporate entity or organization. He states that he does not represent individual board members or executives. He then notes the person he considers his primary contact at the client's office—usually the lawyer who hires him.

James adds clauses stating his hourly rate, disclosing any conflicts based on information supplied by the client, disclaiming liability for any representations about the outcome of the case, and explaining his right to exercise his own professional judgment in handling a case.

The key to making sure that clients are in sync with him on costs is good communication, James says. "If they're surprised by anything when they open the bill, then I haven't communicated effectively."

James is so confident of his communication skills that if a client calls to complain about a charge, he will often delete it from the bill. But woe to the client who takes unfair advantage of James' generosity; the next time the client calls with a new case, James may just be too busy to take it on. ■

Charles Homiller has found that it pays to clearly define the scope of representation.

that, they'll have to pay more," Homiller says.

It's a lesson he learned the hard way. When he was fresh out of law school, he agreed to represent a client on a fairly routine criminal appearance. When the case was