

# Advisor

*An update on issues regarding liability protection for the legal profession.*



## FILE/MATTER CLOSURE

Telling your client, even a client who regularly engages you on many matters, that your legal services for that engagement have concluded, is an excellent way to protect your client's interests as well as your own.

Written notification in the form of a file closure letter is highly recommended. Be sure to keep a copy of the letter in your paper file or hard drive storage file. If email is your choice of methods to deliver the closure message, be sure you print a copy of that email for your paper file if you choose not to store it on your hard drive.

As illustrated below, the closure letter need not be lengthy and is not a complicated communication. A closure letter can serve as a good client retention tool. In addition to the essential information that you have completed the engagement described in your engagement letter (that you did prepare and deliver, of course), use the closure letter as an opportunity to remind the client of what you have accomplished on their behalf and to invite the client to call on you for future representation.

### Content of the Closure Letter:

- Thank the client for the engagement and tell

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them you would be happy to represent them in the future.

- Advise that you have completed the legal services.
- Ask the client if they have any remaining questions or concerns about the concluded matter. Should the client raise issues, respond in writing.
- Include the final statement, unless the fee has already been paid.
- Advise the client of the firm's file retention policy. This is an opportunity to invite the client to pick up any documents or other items that belong to and should be returned to the client.
- Expressly tell the client that you will, or will not, provide follow-up advice or other related services. For example, if your engagement involved estate planning and related documents, advise the client that your engagement does or does not require the firm to monitor tax law changes. If this service is provided, the firm must be sure these timely follow-up services are provided and recognize that this modified closure letter acknowledges a duty and obligation to provide ongoing legal services.

### Case Examples

An Attorney helped an investor group, structure a \$40 million stock purchase to minimize taxes.

Five years later when the investors sold the stock, tax law changes had eroded the projected profit.

The investors sued the attorney, charging that although he and the investors had discussions about tax law changes during the period between stock purchase and sale, the attorney never advised the investors of negative consequences to their stock deal. The attorney denied discussing any tax law changes with the investors and claimed they never consulted him about their stock sale.

Did the attorney have a duty to keep the investors informed about the impact of tax law changes on the original stock purchase? The court thought the issue was worth considering, and so denied the firm's motion to dismiss the \$33 million suit (the tax the investors had to pay).

According to a *Wall Street Journal* article, this marked the first time an attorney had been sued for failing to provide current information to a former client. The investors, however, claimed that it was a case of continuing representation. The case was resolved under a confidential agreement. *Lama Holding Co., Rasha Investments N. v., and Rana Investments, Ltd., Plaintiffs, v. Shearman & Sterling, Bankers Trust Co., Defendants*, United States District Court for the Southern District of New York, no. 89 Civ. 3639 (KTD) 758 F. Supp. 159, 1991 U.S. Dist. LEXIS 339, Jan. 1991.

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## FILE/MATTER CLOSURE SAMPLE LETTER

The letter concluding representation need not be complicated. For example:

Dear Client:

Thank you for allowing me to represent you in the matter of ABC. It is always a pleasure to be of service to you, and I was happy that the matter reached such a successful conclusion. Now that ABC is resolved, my representation on this particular matter is concluded. If there are any other actions which you feel should be taken or any issues you believe remain open, please let me know as soon as possible. I look forward to representing you on other matters in the future.

In appropriate instances, you could remind the client of your file retention policy and their responsibility for collecting original documents from you.

Further, it is a good idea to begin new matters – even for an ongoing client – with a brief engagement letter or email. For example:

Dear Client:

It will be my pleasure to represent you on XYZ. Please be advised that the engagement terms/fee agreement dated [October 10, 2009] will govern the terms of this engagement.

Upon conclusion of the matter, provide a closure letter or email. 🌴

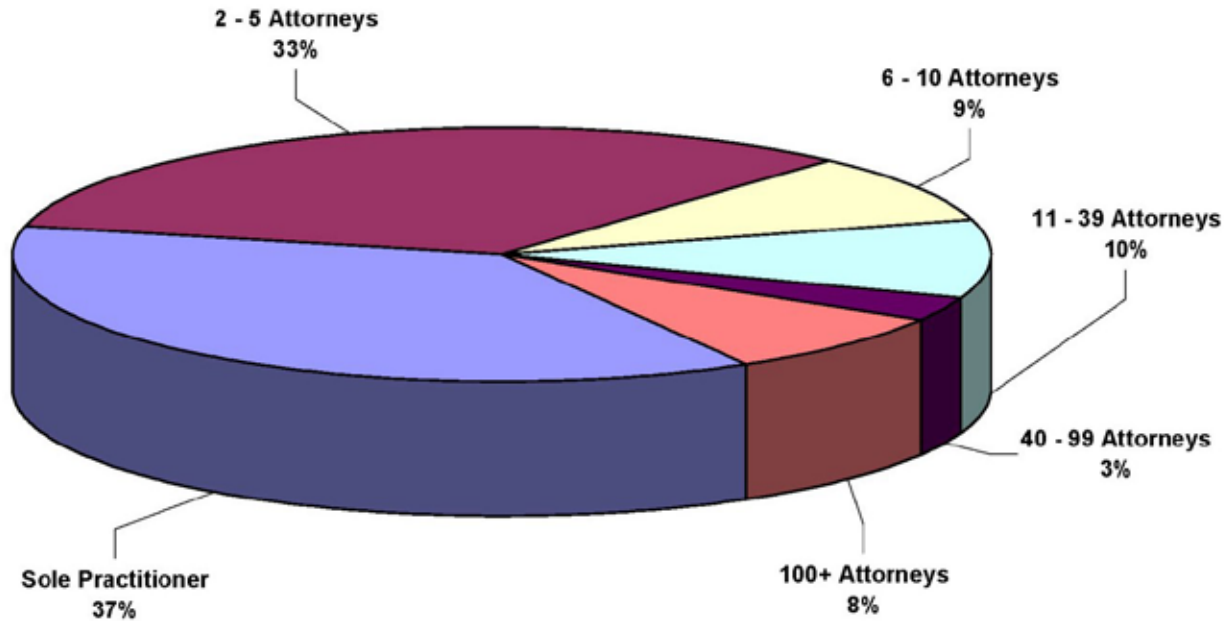
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# Claims by Firm Size



Source: *Profile of Legal Malpractice Claims 2004-2007*, American Bar Association (2008)

The American Bar Association (ABA) periodically publishes the *Profile of Legal Malpractice Claims*, a study of national legal malpractice claims data. "Claims by Firm Size" is one of the categories measured.

To keep the data in perspective, consider that 48% of U.S. firms and 32% of Florida firms are solo practitioners and that 15% of U.S. firms and 34% of Florida firms are made up of 2 to 5 lawyers. 🌴

## Comparison of Claims by Firm Size ABA Profile of Legal Malpractice Claims Studies 1999 - 2007

| Number of Attorneys in Firm | 2007 | 2003 | 1999 |
|-----------------------------|------|------|------|
| Solo Practitioner           | 37%  | 33%  | 35%  |
| 2-5                         | 33%  | 33%  | 39%  |
| 6-10                        | 9%   | 9%   | 12%  |
| 11-39                       | 10%  | 10%  | 11%  |
| 40-99                       | 3%   | 4%   | 1%   |
| 100 or more                 | 8%   | 11%  | 3%   |

Totals may not equal 100% due to rounding.

Prior to 1999, studies reported on firms 1-5. In 1999, the studies made solo practitioners a stand-alone category.

**Case Studies: Conflicted Out**

In a case of perceived ongoing representation, a law firm was disqualified from representing employees in a suit against their employer because the firm previously represented one of the employer's subsidiaries. The firm had not had contact with the subsidiary in more than three years, but had open files on the employer's family of companies, had received notices in a settlement agreement and continued to store company documents from the

previous representation. *Jones v. Rabanco Ltd.*, No. C03-3195P (W.D. Wash. Aug. 3, 2006)

Another case resulted in the disqualification of a California law firm. The law firm defended a company sued for patent infringement. However, the firm had previously represented the plaintiff, who claimed the firm was still the law firm of record. There was no file closure letter, and the firm was disqualified from representation. *Mindscape v. Media Depot, Inc.*, 973 F.Supp. 1130 (N.D.Cal.1997). 🌴

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