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When It Counts

Terminating the Client Relationship – How to Say Goodbye to Your Unwanted Clients

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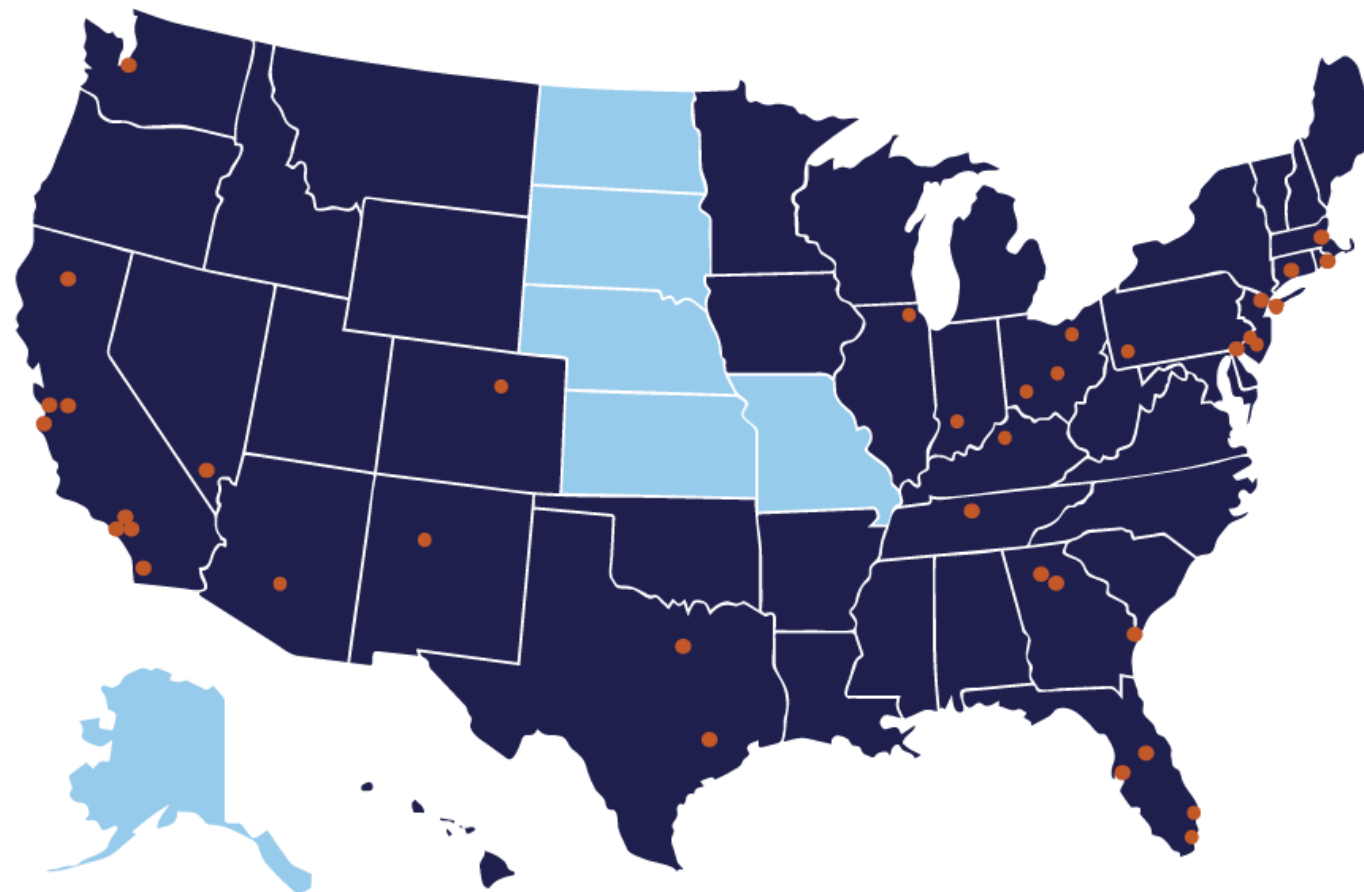
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Terminating the Client Relationship

- BEFORE THE DISENGAGEMENT YOU MUST ENGAGE
 - A brief primer on engagement letters

Terminating the Client Relationship

- **EXERCISE DUE DILIGENCE BEFOREHAND**
 - The Easiest Client to Terminate is the Client You Never Agreed to Represent
 - Examine Potential Conflicts of Interest

Terminating the Client Relationship

- **RESEARCH ENGAGEMENT LETTERS**
 - Contact a professional
 - Use local and national resources (AICPA, Professional Liability Insurer)

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Terminating the Client Relationship

- ESSENTIAL TERMS OF THE ENGAGEMENT LETTER
 - Engagement Letter is a Contract
 - Goal = Manage Expectations
 - Defined, understood, agreed
 - Expectations gap is single biggest contributor to failures
 - Who will receive the services
 - Specify the client's name and address
 - Define scope of engagement (watch out for hyperbole)
 - Tailored to reflect objectives
 - Scope and limitations
 - Responsibilities
 - Fees and other terms and conditions

Terminating the Client Relationship

- ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.
 - Period of engagement
 - Specify when the engagement will begin and end
 - Professional standards which govern the engagement

TERMINATING THE CLIENT RELATIONSHIP

- **ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.**
 - **Fee Structure**
 - Match services to the fees
 - Review documents = \$_____
 - Prepare annual filings = \$_____
 - How much and how often the client will be billed
 - Triggers if client requests services outside the scope of engagement
 - Clause for late payment
 - Period of engagement
 - **Confirmation of terms**
 - Signed by both parties before work begins

TERMINATING THE CLIENT RELATIONSHIP

- **ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.**
 - Confidentiality/Protection of Client Data
 - Cyber Risks and Liability are at the forefront for everyone
 - Use of Technology
 - Transfer to Third Parties
 - Protection of Privilege

TERMINATING THE CLIENT RELATIONSHIP

- **ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.**
 - Work Papers/Client records
 - Common sources of complaints/problems
 - Lost client issues
 - Return of client records (varying standards by state)
 - Access by successor to accountant's workpapers
 - Ownership of Accountant's workpapers
 - Written permission
 - Release
 - Contingent upon payment of fees

TERMINATING THE CLIENT RELATIONSHIP

- ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.
 - DOCUMENT RETENTION/DESTRUCTION POLICY
 - Goal = Create record retention policies that are cost effective and not unduly burdensome to establish, maintain and simplify the purging and disposal of records no longer needed
 - Why?
 - In recent years, corporate and accounting frauds and allegations of wrongful document destruction have prompted legislators, regulators, and others to establish new laws and regulations that impose civil and criminal penalties and other sanctions for mishandling certain types of records

TERMINATING THE CLIENT RELATIONSHIP

- **ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.**
 - **Document Retention/Destruction Policy cont'd.**
 - Maintaining a documented policy which is consistently followed and monitored to prevent improper destruction of paper or electronic documents is an effective means of avoiding allegations or presumptions of improper document destruction when faced with a lawsuit or government inquiry.
 - A written policy provides clear direction to professional staff about which records should be maintained by the firm at the conclusion of an engagement, which should be returned to the clients, and which should be destroyed.

TERMINATING THE CLIENT RELATIONSHIP

- **ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.**
 - **Document Retention/Destruction Policy cont'd.**
 - It also provides internal communications about records management by providing instructions on how long records should be maintained, how and where they should be maintained, and how they should be destroyed.
 - Providing clients with the firm's written records retention policy helps eliminate misunderstandings about responsibility for maintaining records and notified clients of the time frames for destruction of the firm's records. It also demonstrates the firm's commitment to client confidentiality and adherence to applicable record retention laws and regulations.
 - The timely destruction of records no longer needed reduces the risk that these records become subject to discovery.

TERMINATING THE CLIENT RELATIONSHIP

- **ESSENTIAL TERMS OF THE ENGAGEMENT LETTER cont'd.**
 - Document Retention/Destruction Policy cont'd.
 - Why retain workpapers and records?
 - Facilitating future engagements
 - Responding to client requests
 - Responding to inquiries by taxing authorities
 - Participating in peer or quality review and inspections.
 - Comply with legal, regulatory, and contract requirements
 - Defending malpractice claim or litigation

TERMINATING THE CLIENT RELATIONSHIP

- **BUSINESS RISK ALLOCATION**

- Limitation of Liability

- Critical if a lawsuit is filed
 - Law varies from state to state
 - Addresses contractual liability to clients
 - Direct damages (e.g. cost to complete or warranty work)
 - Special or consequential damages (might include lost profits or business opportunities – potentially much greater)
 - Punitive damages

- Drafting issues

- Try to capture any basis upon which a claim could be made including breach of contract or negligence
 - Do not make it broader than the law will allow

TERMINATING THE CLIENT RELATIONSHIP

- BUSINESS RISK ALLOCATION cont'd
 - Limitation of Liability cont'd
 - Drafting issues cont'd
 - Try to capture any basis upon which a claim could be made including breach of contract or negligence
 - Do not make it broader than the law will allow
 - Make it prominent and bring it to the client's attention
 - Might need the clause in several sections

TERMINATING THE CLIENT RELATIONSHIP

- BUSINESS RISK ALLOCATION cont'd
 - Indemnification
 - What is it?
 - Shifts cost of liability from one contractual party to the other
 - Pay client's costs to defend a claim made by third parties against the client that resulted from the CPA firm's negligence
 - Fund a settlement, judgment
 - To a Third Party
 - Client's bank

TERMINATING THE CLIENT RELATIONSHIP

- BUSINESS RISK ALLOCATION cont'd
 - Indemnification
 - Protect yourself against unreasonable clients
 - Clients want to insulate themselves from exposure and shift liability to the CPA firm
 - Absent a contractual duty, a CPA firm is not liable to reimburse a client for its legal costs or amounts paid by the client to settle claims made by a third party
 - Some states have anti-indemnification statutes

TERMINATING THE CLIENT RELATIONSHIP

- **BUSINESS RISK ALLOCATION** cont'd
 - Indemnification cont'd
 - Need to protect your firm against client management's misrepresentation or intentional withholding of information
 - Review rules related to independence
 - Does not necessarily impair it

TERMINATING THE CLIENT RELATIONSHIP

- **BUSINESS RISK ALLOCATION** cont'd
 - **Dispute Resolution**
 - Speak to a lawyer in your jurisdiction first
 - Often helpful to compel arbitration or mediation and avoid lengthy litigation expenses
 - Could have insurance coverage implications.
 - **Non-engagement letter**
 - For those non-clients you do not take, it is critical to get a timely letter to the non-client informing them that you do not represent them

TERMINATING THE CLIENT RELATIONSHIP

- WHAT NOT TO INCLUDE
 - Marketing Information
 - Not the time or the place – it is a legal contract
 - Limits services; does not sell them
 - Absolute language
 - Avoid use of the words all, absolute, complete, total, every
 - No superlatives
 - Avoid confusing language
 - Keep it simple

TERMINATING THE CLIENT RELATIONSHIP

- **PURPOSE OF DISENGAGEMENT**
 - Establish that the relationship is no longer continuing.
 - Clear, concise, in writing

TERMINATING THE CLIENT RELATIONSHIP

- **DISENGAGEMENT**
 - **REASONS TO DISENGAGE**
 - Unethical or Illegal Behavior From a Client
 - Client has committed fraud
 - Your Reputation; Your License

TERMINATING THE CLIENT RELATIONSHIP

- **DISENGAGEMENT**

- **REASONS TO DISENGAGE Cont'd**

- No Payment or Slow Payment
 - Do Not Ignore Payment Problems
 - Determine the Reason and decide whether to keep or disengage the client
 - Do not allow it to go to suit
 - Expensive
 - Often leads to a counterclaim for malpractice

TERMINATING THE CLIENT RELATIONSHIP

- **DISENGAGEMENT**
 - **REASONS TO DISENGAGE Cont'd**
 - Client Will Not Cooperate
 - Consider whether it is sloppy recordkeeping or deliberate
 - Constantly chasing a client becomes a waste of resources
 - Client behavior like this is often a red flag of unethical or illegal activity

TERMINATING THE CLIENT RELATIONSHIP

- DISENGAGEMENT CONT'D
 - REASONS TO DISENGAGE cont'd
 - Changes to Your Client's Business
 - No longer qualified to perform the work
 - Private client grew and decided to go public

TERMINATING THE CLIENT RELATIONSHIP

- DISENGAGEMENT CONT'D
 - REASONS TO DISENGAGE cont'd
 - Your Firm Changes
 - Loss of a Partner with Certain Expertise
 - Firm no longer desires to handle the type of work done by the client

TERMINATING THE CLIENT RELATIONSHIP

- DISENGAGEMENT cont'd
 - REASONS TO DISENGAGE cont'd
 - Potential or Actual Conflict of Interest
 - Client Partnership Dissolves, Bankruptcy, Merger, Divorce
 - Deteriorating Relationship
 - Look for abrupt changes in a client's behavior
 - Don't ignore warning signs
 - Failure to respond
 - Threatens to sue

TERMINATING THE CLIENT RELATIONSHIP

- **DISENGAGEMENT CONT'D**
 - **THE DISENGAGEMENT LETTER**
 - Do not necessarily need to include a reason
 - Tell the client what is necessary for them moving forward and the consequences for failure to take action
 - Use a Traceable Delivery Method
 - Fully Terminate the Relationship
 - Make sure there are no imminent deadlines before terminating

TERMINATING THE CLIENT RELATIONSHIP

- **DISENGAGEMENT cont'd**
 - **TRANSITION TO NEW SERVICE PROVIDER**
 - I.R.C. 7216 Authorization to Provide Tax Information to a Third Party
 - Successor CPA Letter
 - Client Transfer Letter

TERMINATING THE CLIENT RELATIONSHIP

- OTHER CONSIDERATIONS
 - Honesty and Transparency go a long way
 - Confidentiality
 - Maintain client confidentiality at all times to the extent possible



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A large, centered version of the FMG LAW logo, with 'FMG' in white and 'LAW' in blue, set against a dark blue square background.

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