

How to Sort out the Clients of a Family Office Attorney

Our previous [post](#) illustrated ethical quagmires that can result when a staff attorney of a family office tries to negotiate the potentially conflicting interests of the family's members. This post explains how a well-crafted engagement letter can help an attorney navigate such quagmires through clarity in who is the intended client and who is not. It also considers using non-client letters to keep things sorted out.

Identifying Your Clients

Although it is a nascent and uncommon practice, it's not unreasonable for an attorney employed by a family office to request an engagement letter from the family office. Unlike a typical engagement letter, however, a family office letter should also address the extent to which the attorney may represent members of the family and whether such representation would be limited to an official capacity (such as board member or trustee) or extended to personal representation (such as estate planning). Our previous post identified the range of clients such an engagement letter might cover. If the engagement letter permits the representation of individual family members in any capacity, then it should be signed by all of the potential clients and will need to be refreshed to reflect changes in circumstances. Similar to law firm practice, it is prudent to update the engagement letters from time-to-time for all related clients. The letter should address: (i) the terms of joint or concurrent representations, (ii) what would happen if the lawyer could not properly represent different "clients" under certain circumstances (so called "noisy" or "quiet" withdrawals); (iii) waiver of conflicts to continue representing one party should another party terminate the engagement and seek replacement counsel; and (iv) when the lawyer may seek ethical advice from a third party without necessarily breaching any attorney-client privilege with any client. A standard law firm engagement letter could be used as a model. Even if it were decided not to execute a written engagement letter, it would still be prudent to discuss conflicts of interest, ethical obligations and joint and/or concurrent representations with all family members with whom the lawyer expects to interact, so that there are no unfounded expectations.

Identifying Your Non-Clients

Ideally, every family member would execute the engagement letter to document their understanding of whether they are or are not represented by the lawyer, including in which capacity any representation will exist, and the limitations of any representation. Although it is rarely feasible to cover all of the potential permutations created by future representations, the engagement letter should nevertheless serve as a reference point for determining when the lawyer should consider documenting a family member's understanding that he or she is not the lawyer's client, at least in certain capacities. In the event that the lawyer finds that the scope of the representation is expanding, it would be important to supplement the engagement letter accordingly. Our law firm has had success in obtaining "non-client" letters in family office matters. Such a letter indicates the matter affecting the addressee, who acknowledges that our firm represents only the interest of the family office or another family member, and that we do not represent the addressee, even though the addressee is also a party to the transaction. If this is not practical, it should still be helpful to refer to the engagement letter in the transmittal letter for the transaction documents and remind the addressee of the limits of the lawyer's representation to protect the interests of all the involved parties without falling into an ethical quagmire. Finally, a family office attorney should consider the possibility that a family member who is a client will share the attorney's work product with family members who are not clients. It may be expedient to indicate for whom the attorney prepared any work

product and to state that the only the addressee may rely upon the work product.

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