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Limiting the Scope of Retention Can Limit Your Liability

Limiting the scope of retention in your engagement agreement can protect lawyers against malpractice claims. In Freude v Di Renzo & Bomier, LLC, et al, Wis. Ct. App. Case No. 2023AP764 (Aug. 7, 2024), plaintiff/legal mal plaintiff Freude hired the Di Renzo firm to represent Freude in a worker's compensation claim arising out of a slip and fall. Importantly, the engagement agreement specified that the law firm was not employed to bring claims against third parties and that its representation as to non-worker's comp claims would need to be memorialized in a separate agreement.

Di Renzo was hired by Freude to pursue the worker's comp claim, and later entered into a separate fee agreement to represent Freude with respect to a social security disability claim. Di Renzo withdrew from representing Freude in the worker's comp claim, and Freude hired another attorney, who settled that matter. Later, Freude filed a complaint against Di Renzo alleging that the lawyers knew "that third-party claims could be made" against the defendants but negligently failed to advise Freude that he might be able to assert those claims, and of the statute of limitations for such claims. The trial court dismissed the complaint, and the appellate court affirmed the dismissal, because the engagement agreement limited Di Renzo's scope of representation.

In addition to specifying the particular claim for which Di Renzo agreed to represent Freude, the agreement expressly described what the firm would not do:

> I understand that the firm is being employed solely to prosecute a worker's compensation claim on my behalf and that the firm has not been employed to bring actions against third parties as a result of my injury, the date of which is set forth above, nor is the firm being employed to prosecute any employment related claims arising under state or federal law. I acknowledge and understand that if the firm was to be employed to provide representation as to nonworker's compensation claims that a separate fee arrangement shall need [to] be agreed upon to compensate the firm for prosecution of such other claims.

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This language carried the day for the court, which reasoned that a mere limitation describing what the firm would do, without a description of what was NOT covered by the agreement, might be sufficiently vague to provide support for the plaintiff's argument. Here, however, the lawyer took pains to specifically identify the services that the lawyer would not provide. In doing so, the firm protected itself against later claims that it committed malpractice by not advising about those other issues.

It's best practice to take a few extra minutes at the beginning of an engagement to carefully consider limiting the scope of retention and describing what will be the lawyer's job, and what will not be the lawyer's job. Those few minutes can save a lot of time and money. Keep in mind that most states' ethics rules require that you obtain informed consent from the client and prohibit limitations in scope that are unreasonable. See, e.g., ABA Model Rule 1.2(c).

If you have questions about limiting the scope of your engagements, contact Attorneys Risk Management to talk with one of our senior risk management attorneys.

To obtain a consultation, you should log in to Attorneys Risk Management, and click on the "Request a Risk Management Consultation" button.