

Ep #57: Is Your Engagement Agreement Scaring Your Clients?



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John E. Grant

[The Agile Attorney](#) with John E. Grant

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Law firm engagement letters occupy sort of a strange liminal space in your practice and in your client's mind. On the one hand, they're contracts that govern your attorney-client relationship. On the other, they're the final step in your marketing cycle, the literal moment where a prospect becomes a client. And yet, so many engagement letters feel dense, overwhelming, and even off-putting through the lens of the client experience.

In today's episode, I break down a real-world engagement letter. I talk about what works, what doesn't, and how it shapes client trust before you even start the work. And I share some simple, actionable ways to make your engagement letter a seamless, welcoming transition into the legal services that you provide.

You're listening to *The Agile Attorney Podcast*. I'm John Grant, and it's my mission to help legal professionals of all kinds build practices that are profitable, sustainable, and scalable for themselves and the communities they serve. Ready to become a more Agile Attorney? Let's go.

Hey everyone. So this week I'm going to do something a little different partly because I've got this thing that is sort of like burning a hole in my brain and I just kind of want to get it out. And I know a lot of you probably have a similar situation to what I'm in right now, right?

Because I'm a lawyer, because you're lawyers, when people have legal problems, they tend to come to you to ask about sort of first steps or next steps or whatever. Mine is a little different because a lot of my friends and family members know that I work with lawyers. And so they come to me when they know they need to engage a lawyer, but they ask me to sort of help give them pointers about how to make sure that they're not gonna get screwed over by lawyers, because this is a very real thing, right?

People don't trust us. They know they need us, but they don't trust that we're going to work with them in a way that is clear and fair. And, you know, frankly, they're mostly worried about just getting gouged on fees.

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And I kind of get that, right? There's a lot in the sort of ether around working with lawyers that just tells everybody this is gonna be stupid expensive. And it is gonna be expensive. I'm not saying that your fees aren't worth it, but as I've talked about several times in the last few episodes, I want to make sure that you're conveying your value in a way that clients actually understand and appreciate so that they feel like what they're paying you is worth it.

So I've got this very specific situation with a family member who needs to engage a lawyer. And we talked a little bit and then they have reached out and found a lawyer. And then they've sent to me this lawyer's fee agreement. And so what I'm going to do today is a little bit of a contract teardown, with apologies to my friend Mike Whelan, who had an actual contract teardown show on YouTube. I'm gonna try to tear down this contract a little bit.

I'm not gonna do it live on YouTube, partly because I don't want to expose this attorney, I don't want to expose, obviously, the client, my family member, but there are some things in here, good and bad, that I think are worth calling out. So I'm just gonna dive through it. I'll call out things as best as I can, and I'm gonna give you my opinion about what's working here and what people should probably do a little better.

And I'll start with something I love right off the top, right? The first page of this document, it came as a PDF by the way, and the first page of this document is titled Attorney-Client Fee Agreement Checklist. And the header says, please consult and use this form when completing and returning your attorney-client fee agreement. And then it's got a list of checkboxes.

And this is something that I talked about a couple of weeks ago when I talked about client homework, giving clients a really clear punch list about what they need to do when you assign them something, when you give

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them something to do, I think is a great practice. And this firm, this attorney has got it down. It is a really thorough, maybe even a little over thorough, but again, I'd rather err on the side of completeness as long as it's not overwhelming, right? It's a punch list and I love the fact that it's a clear punch list.

I also like about this punch list that there's a little bit of an iconography to it. So there's a couple of things on here that need to be filled out on DocuSign, which I think again is a great practice. I love DocuSign or electronic signing tools. And this particular checklist makes it really clear where the activity needs to happen in DocuSign. So that's great.

One of the other things that's interesting in here, and I think it's a good practice, is it's got a couple of quality assurance checks that are assigned to the client. So one of them here, it says, please ensure that your flat fee payment in this agreement is the same as the flat fee payment that is listed on the credit card authorization form, both of which are DocuSign documents, but it's being clear that you need to double check the firm's work and make sure that they match up.

Now, one of the things that is maybe less good about this is that the amount of money in the retainer agreement or that advanced fee deposit in this letter is different than what the attorney said to my family member over the phone. So that's a problem. But in terms of the agreement itself, I think that's a good thing.

The next page of the document I also really like. It's very clear at the top. It says instructions to completing the attorney-client fee agreement. And then it says, please follow the below instructions before reading, reviewing, completing, signing, and dating, and returning the hosed attorney-client fee agreement. So very thorough, typically lawyerly, but not wrong, right?

And so it goes through a list of things. I think there are nine things on here that kind of, again, step-by-step the client is expected to do, including,

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again, check our spelling and our math. Please make sure the spelling of your name is correct and please double check the retainer payment on the agreement. So I think it's good to give client authorization, authority, permission to actually check on some things.

One other thing that is in this instruction set that I really like, partly because it hadn't occurred to me when I was talking with this family member, is there is a line item to make arrangements with insurance or double-check and see whether this relationship could be covered by insurance. And so I think that shows a lot of professionalism and expertise to say, okay, this may not be fully on your nickel. You may be able to get someone else to pay for it. And then it's got a little bit of a sub-instruction on how to get a tender of defense letter if that is the thing that is going to be possible in this situation.

One last thing in this instruction that I like is that there's a specific call out to contact our office with questions. And it's written really well. It says, if you do not understand any article or clause of this agreement, please contact our office immediately. And it gives a phone number. And it goes on to say, our legal support staff is trained to answer many general questions. In the event that they can't answer your question, we can arrange for you to have an additional complimentary consultation with your attorney to address your questions. Just call and ask.

So I love that, right? It's lowering the barrier to entry. It's making it clear that there is an opportunity to discuss this. It's not just something that you're expected to sign because it got put in front of you. Really great approach.

Let me back up and talk for just a minute about what this agreement looks like. And again, I'm trying to paint a picture for you over audio, but it's pretty clear to me that this is done in a Word document and probably has been around a while, partly because the font is Century Schoolbook, which was like the default font in Word through like the first part of the 2000s. And part of it is because the formatting, the tables and the table headers are just sort

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of that classic Microsoft Word, you know, a little bit brutalist, a little bit blunt, and you know, it's not wrong. It could be nicer.

It is really, really narrow margins. So I think it's only got like half inch margins left and right, and also top and bottom, which would mean if I were trying to read this on a phone, it would be really hard to read on a phone. And so I think that there's an opportunity and it's not an urgent thing, but it could look nicer.

It's in all black and white and grayscale. That's another thing. I think to the extent that you can get some of these things designed, even if it's just putting a splash of whatever colors are in your logo or anything else that just kind of break up a big wall of gray and make it more pleasant to look at. I think that it's gonna basically give a better impression to your client a little bit more warm a little more inviting this overall thing comes across is very cold and very lawyerly and it kind of makes it so like I don't necessarily want to read it reading it is gonna feel like a chore just because of how it looks.

So when I get into the meat of the contract itself, a few things again that jump out at me. One, and again, this is sort of specific to the way this instance of the fee agreement came out, they got the client's name not fully right. And in fact, at the very bottom where the signatures are, they've got a slightly different version of the client name than they've got at the top. And so, you know, number one, that tells me they're probably not using document automation because if they were, then there would be sort of an interview or some other way to capture that information once and have it go in all of the places where it belongs in the same way. And number two, there was something just missed in the quality assurance or maybe nobody gave it a quality assurance review before it got sent out to the potential client. And so they missed something.

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Now, they put it on the client to check that too as part of their instruction agreement. So I guess it's a good thing they did that, but a little bit sloppy drafting in terms of getting those things to match and getting the names right right out of the chute. So something you notice is right at the top of the agreement, the client name isn't right, that's going to leave a less good impression.

So then working down in the agreement itself, the first section of the agreement is for the scope of the agreement. And one of the things they do that I approve of, and I actually recommend to a lot of my clients to use more often, is they're really clear that this is a limited scope representation agreement. And I think that's a really good idea. The rule for that, ABA model rule 1.2c, I want to say, and I think that's a really great way of working. However, when they limit the scope, and this again, getting back to this particular agreement, the scope that they limit it to is simultaneously, oddly specific, but really vague.

And what I mean by that is it basically says legal advice and representation and all activities concerning, and then there's a specific thing. And I don't mind that, right? In the early going, I do think that it's understandable that we want to say, okay, this is a specific issue we're trying to solve, but we don't know exactly what's going to happen with it.

I might quibble with it, and maybe this will evolve over the course of the actual representation, but it's a little bit vague as to what I'm gonna pay for if I'm the client, right? And so tapping back into that thing I said at the top of the episode where clients are really worried about legal fees getting out of control, there's something about the vagueness in this language, and then I think it's compounded by some other language that I'll get to in a minute, that makes me sound like there's like a blank check element of this that I'm not really comfortable with. So like I said, I'll talk about that more in a minute.

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The agreement then goes on to do, again, probably some lawyerly overkill from my perspective. It says this does not include initiating or defending any other claims, which requires a separate agreement. That totally makes sense.

Then there's a whole other section that says these are the things that are outside of the scope of representation, including but not limited to. And then it talks about criminal law, family law, bankruptcy, personal injury, property damage, workers comp, health care, blah, blah, blah, blah, blah. And it's like, man, I understand the attorney's like instinct to be really clear on what's out of scope. But in the context of this engagement agreement, if one of the goals at least of this agreement is to make the client feel good about the relationship they're building with you, this is putting up a whole lot of walls.

And so I guess if you really felt like you needed to say this, I would say tack it on as a schedule at the end, or otherwise, kind of discuss it later. But this laundry list of things that I'm not gonna help you with, it just is a little off-putting.

Also, by the way, and I maybe should have said this at the top, the whole agreement is like 34 pages long. It is long. And so that in and of itself is overwhelming, is overpowering. I'm not saying that we need to boil it all the way down to a one-pager either. I think that there is a Goldilocks zone, but this one has got so much in it, and it's full of these types of legalistic things that, again, I get from like a contract law perspective, might be good to be in there, but I think there's ways to do it that are going to create a better customer experience for the purposes of completing and returning this engagement letter.

So it then moves on to a section that is titled Duties of Attorney and Client, and it talks about different things and it gives a nice overview of attorney-client privilege, which I think is great. But then it's got two subsections, one

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of which is Responsibilities of Attorney and the other is Responsibilities of Client. And the Responsibilities of Client is more than twice as long as the Responsibilities of Attorney. And, again, that's one that just feels funny to me. It's not necessarily wrong, but the Responsibilities of the Attorney in here are actually really vague.

It's diligently represent client, complete the scope of legal services as outlined in section 12, timely submit information and or documentation to client. It's like, okay, that's really vague. And then the Responsibilities of the Client is, like I said, quite a bit longer, quite a bit more detailed, perhaps a little bit more onerous.

There's also, and this is maybe a little nitpicky, but like the spacing is funny. Some of the bullet points here have spaces between the bullet items and some of the bullet points don't. And so the longer the line in some of these, the harder it is to read because everything's getting mashed together. So again, sort of a design and formatting challenge.

Then it's got this next section that is about communication, which again, in theory, I love the idea of sort of laying out what the best way for us to communicate in an attorney-client relationship is gonna be. But this one is just like total boilerplate. Like there's a section that is available forms of communication, and then it just lists basically the obvious, right? In-person, video conference, telephone, voicemail, text message, facsimile, email, postal mail, and overnight delivery services or couriers.

It's like, well, okay, I don't know why I need to call that out in a contract. Then there's this other legalistic sort of thing about when notice between attorney and client will be deemed received. And then for each of the communication methods, it talks about how we're going to calculate notice constructively instead of actual notice. And it just is like this whole kind of very lawyerly approach that doesn't sound friendly or workable at all.

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It's like going straight to like these worst case scenarios of an attorney-client dispute as opposed to setting things up for the relationship actually working. And I think by going to these, you know, doomscroll-y type places, catastrophizing, whatever you want to call it. It's erecting again, these trust barriers or these questions about, oh gosh, why do we have to be this formal right now about this thing?

I'm not saying there aren't formalities you need to take care of. I'm not saying you don't need to cover yourself, but the way this one reads, it's just not quite right to me.

The thing goes on to give a lot of disclaimers about basically the use of legal tech and cloud computing and email and things like that, which I guess it makes sense that it's in there. It probably does need to be in there somehow. Again, I wonder whether it might be better off as a schedule or an attachment or something that isn't kind of part of the main thrust of the engagement letter that you need to read.

It's hard to read, it's hard to understand. It seems like it should mostly be part of the cost or the way that business is done in the 21st century. And I know that there's bar rules and ethics opinions and other stuff that tells us that we should have this stuff in there. We just have to, I think, be more intentional and be more client-friendly in terms of how we word this stuff, because the way this firm has worded it is off-putting.

One of the other odd little things is that lumped in with all of these disclosures is an opt-in to receive the law firm's marketing newsletter. And that just seems weird to me. I mean, either send them the newsletter or not, but like having this written as like a formal clause of the engagement letter doesn't seem like the right place for that. Then we get to the section about fees and payment. And again, this is like, it's fascinating to me from a few standpoints.

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Number 1, this is the only part of the agreement that also requires a client initial for each and every section of the agreement. And on the one hand, I guess I understand, but really wanting to call it out and by putting that client initials, maybe you are trying to ensure that they read it more closely, but it also means that they're going to read it more closely. And so if you're going to do that, you better have it really well dialed in.

And one of my problems with this particular one is that there's some internal inconsistencies. So aside from the fact that the retainer payment in this agreement was different than what my family member was told on the phone. So that's a problem right out of the chute.

This particular agreement talks about an initial retainer and then a replenishing retainer. And because they're in two different sections that each have to be initialed, it actually looks like you have to pay the retainer twice. That was one of the questions that my family member asked me. I was like, oh, do I actually have to pay two retainers to this firm? And I don't think that's true, but the way the agreement reads, it's not entirely clear to me.

I do like that they're using replenishing retainers, sometimes called evergreen retainers. I advise my clients to use them if you're not using them and especially if you're still billing hourly, I highly, highly, highly recommend that you implement them. It's a great way to make sure that you don't get stuck doing a bunch of work that you don't get paid for.

But the way that this particular agreement describes the replenishing retainer could be clearer. And part of it again is it's written in this very lawyerly way. So client will pay any additional balance in the amount necessary to return the retainer amount to the initial level.

At the conclusion of the matter, the retainer will be applied to the final bill in which event client will be responsible for any remaining amount due over and above the retainer, if no amount remains due after the retainer funds

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have been applied to the final invoice, and should any retainer funds remain, client is entitled to and will have those funds returned in a timely manner.

Holy cow, what a run-on sentence. So I would love to have seen this described in a clearer way, in a more client-friendly way, and not just have it be sort of the legal CYA language that I think, again, comes naturally to us, but I think we got to put ourselves in the client's shoes a little bit more.

It then goes on for like two and a half more pages with just a bunch of, again, really sort of CYA type things around how fees are gonna be charged and how they're gonna be billed and things like that. It gives a complete listing. Well, here's one. It's got a table that describes how six minute increments work. And it basically says that if you use one to six minutes we're going to bill you a 0.1 if you use seven to 12 minutes we're going to bill you a 0.2 right all the way down to 0.9 and one so I don't know that we need to describe it in a table. It takes up more room, not to mention the table itself crosses pages, which makes the table hard to read. So again, a little bit funny in terms of how some of these things are presented. Probably you could just say that we're going to bill in six-minute increments.

It then has a 13-bullet-point list of all of the things that this firm considers to be billable activities. And again, I guess on the one hand, I can see the value in being really explicit about this, but it adds to the length, it adds to sort of the arm's length, the formality of the agreement that I just don't know how customer friendly it is. I guess I can go either way on this. Like I see the value, but the way that they've presented it in this particular agreement is still sort of a challenge.

So then there is a subsection in here that talks about costs and other charges. And this law firm is doing something that I really don't like,

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certainly from a client perspective. But I don't know why you would do it from a law firm perspective either.

So number one, it makes clear that the law firm will incur various costs and expenses in performing the legal services, and client agrees to pay for cost disbursements and expenses in addition to hourly fees. So I think that makes sense. The cost will be included in the invoice.

Then it says, attorney and the firm does not typically issue itemized charges for faxes, routine copies under 10 pages, and regular US mail under \$5, which great. Okay, that makes sense to me.

Then it says, however, attorney charges an administrative fee of 5.5% of the outstanding invoice balance at the end of each month that will appear in the cost section of the monthly invoice to pay for postage delivery fees, physical and electronic file storage, cloud-based services and hosting fees.

And man oh man, that feels really, not just nickel and dimey, but like, that actually feels kind of like, I don't know, dollar and fiver to me. 5.5%, the court attorney in this matter is charging almost \$550 an hour. And so, this idea that you would calculate administrative fees at this 5.5% of this already high billable rate, that just doesn't smell right to me.

Again, I guess I can see under a certain logic why you would do it that way, but to me, that's turning these costs into a profit center and doing that on the back of the client when you're already charging a high hourly rate, that's not a good relationship. That's not a good indicator.

The other thing that's in here that I recommended to my family member that they pushed back on is it gives the right to the firm to engage consultants, experts, investigators, etc. at their discretion and the client will pay for the fees and charges that attorney selects.

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And no way would I as a client be like, yeah, you can go hire an expert. You just send me the bill without checking with me first, without making it part of the plan, without getting agreement that, yeah, actually we need an expert or we need an investigator for this part of the work and this is what it's gonna cost.

So this is the kind of thing that really lends to this feeling that people have that they're just writing this blank check to their lawyers. And I really, really would counsel you to not do something like this. Make it clear up front that you're going to check with people, that you're going to check in with them, that you care that they're engaged and understand what their money is going to, that you're not just treating it as a blank check because that's a bad look.

All right, I'm going to kind of mostly leave it at there for now. There's a section on disclaimer of guarantee, which again, I get, except that this disclaimer provision is almost an entire page long. I think it could be tightened up. There's a whole section that is miscellaneous provisions, and that is almost two full pages long. I feel like it could be tightened up. I understand why some of these things are in there, but again, in terms of like the overall experience of having to go through this thing, it's a lot, right? I mean, again, that's a lot of pages to have to get through.

The one other thing I do want to talk about, and this isn't apparent inside of the engagement agreement itself, but this particular family member of mine actually has a background in operations and project management. And so one of my suggestions to them was that they really need to get a promise from their lawyer that, okay, this is the scope of the agreement, but we're gonna have a plan. There's gonna be some living document, call it a strategy document, call it a project plan, however it works, a case management plan that is going to, number one, be really clear about what are the goals of the representation, what are the activities that we're going

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to engage in to try to support those goals, and where we are in terms of our progress towards those goals.

And because even though, like I said before, it's a limited scope engagement on the one hand, but the scope of the work of resolving this particular dispute is actually potentially a pretty big scope. And so I think that what I really want to see is a lawyer and a law firm that is demonstrating to the client that we have a plan, that I'm not just making it up as I go, that I'm not just winging it through your issue.

Even if you've got the skill and experience and knowledge and expertise to be able to wing it, it's a bad look. The client wants to know what's happening. They want to know what the plan is. And I'll admit, this is something I'm trying to be better about in my own practice. I actually got that very specific feedback from a client of mine and, you know, it wasn't something that was like risking the relationship overall, but as the calendar turned into the new year, the client was like, hey, let's try to come up with a project plan. Like, what do you see this year going like? And it was a fair request.

And so I've been working to put that together and I think we've got a pretty good idea. I think I still need to be better about it. And probably I need to be better about it on a more consistent way in sort of productizing my own coaching and consulting offerings. So, you know, again, another one of those instances where sometimes the cobbler has holes in his shoes, but I think it was a fair criticism from my client, a fair request from the client. It wasn't even a criticism that I'm trying to be better on, and I will encourage you to try to be better about it as well.

So a few high-level takeaways to wrap this up. Number one, invest a little in the design of these things. Design has changed since the turn of the century. Even if your language hasn't, I think there are still ways to present it in a format that looks a little bit more approachable, a little bit more

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modern. I think if you can get some color in there, if you can get more white space, I think if you can get margins in a place where the document itself is easy to read on a mobile device or better yet, get it out of PDF format entirely so that you can use sort of the natural capabilities for formatting things on a mobile device that those devices have, so it looks right depending on whatever screen you're reading it on.

Number two is try to get it in as much plain language as you can. And I know, again, there are bar rules, there are ethics opinions, there's advice from malpractice carriers, whatever, that want you to use certain magical incantations to avoid certain risks. And so we may not be able to get things into plain language in all instances. But keep in mind, this engagement letter is kind of the last phase of your marketing pipeline, of your biz dev pipeline, right?

You could have invested a lot of time and energy and effort and money into getting this client in the door and giving them the initial consultation, maybe for free, maybe paid, either way. But if your engagement letter sort of reads as this wall of gray legalistic text that leaves a client feeling like, oh my gosh, I don't even know if I want to do this, this sounds like such a pain, you could lose the client, right? And then all that investment you've made and all those parts of your best-if pipeline are for nothing. And you're going to feel really grumpy about it too.

So I think as much as you can do to treat your engagement letter as that final phase of the marketing. Yes, there's the legal things that have to be part of it, but you want it to be inviting, you want it to be encouraging, you want it to be something that people feel comfortable signing and beginning this relationship with you. It also is going to set the tone for the rest of the relationship.

So I think it's important for that sort of future engagement or ongoing engagement that I've talked about before, making sure that the client

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remains engaged with the matter throughout the course of your delivery pipeline.

Number three, anything you can do to try to put some guardrails around scope and expense from the client's perspective. The biggest thing they're worried about is that this is gonna go off the rails and they're gonna have tens of thousands of dollars in legal fees to go with their stress and discomfort and uncertainty around being involved in this legal matter.

So I really encourage you all to be clear about scope. I've talked before, and I will actually talk again in some future episodes about flat fees and phase flat fees. I think that is frankly a far more client-friendly way of working, and I think it shows levels of expertise. But even if you're billing hourly like this firm clearly is, I still think that you need to treat the thing in terms of phases and being able to estimate and respecting the fact that this is going to be an expensive thing for the client and making sure that they are comfortable with the expense, that they feel like they're getting value out of the expense. We're not trying to make it cheaper, but we are trying to make it feel worth it.

And then the last thing, and you know this should probably go without saying, and we've all been there, but double-check your dang work before it goes out to the client, because this particular letter has some internal inconsistencies, and then it also has some inconsistencies between what the agreement says and what the attorney had said in the consultation. So making sure, right, it's just not a great look to sort of get some of those things wrong right out of the shoot.

All right, that's it for this week. As always, if you have questions, if you have topics you wanna hear me talk about on the show, feel free to reach out to me, john.grant@agileattorney.com. We can even talk about your engagement letter if you want.

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If you have a friend or colleague that you think would benefit from this episode, please don't hesitate to forward it to them. I've actually heard from a few people lately that an episode of my podcast had been forwarded by a friend or a colleague. And so if you were the one that did the forwarding, thank you.

This podcast gets production support from the fantastic team at Digital Freedom Productions, and the theme music is Hello by Lunara. Thanks for listening and I will catch you next week.