

Legal Issues for the Public
Relations Professional

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Why Do You Need a Written Contract?

- Clarity of the scope of work you will be performing;
- Clear understanding of client's obligations with respect to the work to be performed;
- Ability to use the work you create after submission to your client;
- Avoid or limit liability for work you create; and
- Payment terms including expense reimbursement.

Scope of the Contract

1. Set out the work you will be performing in detail.
 - a. Attach as Schedule A to the contract to include specifics of work to be performed and how many times you will revise the work.
2. Modifications of the scope of work can only be in writing.
 - a. Avoids your having to do additional work beyond the scope of what you originally agreed to for which you will not be paid.
 - b. Modifications may be subject to an additional fee, depending on whether substantial in nature, subject to written approval of client.

Payment for Services

1. Monthly or long-term contract (other than one time work):

- a. Payment of one-month retainer up front.
- b. No work is performed until retainer is paid. If monthly payment is not timely paid, work does not continue.
- c. Late fee if monthly fee is not timely paid.
- d. Fee schedule is reviewed once per year in January and may be adjusted.
- e. Submit monthly bill to client.

2. One-time work – two approaches:

- a. Fifty (50%) percent of fee due up front – balance due upon final approval.
- b. One-third due up front, one-third due upon submission of draft, and final one-third due upon final approval of work.

Remember – once you provide services you cannot take them back if you are not paid.

Payment of Expenses

1. Expenses not included in the estimate will only be incurred upon written approval of client.
2. Submit periodic invoices to client for expenses incurred or include such expenses in the monthly retainer fee invoices.
3. Payment of periodic expense invoices is due within fifteen (15) days of receipt of each invoice. Payment of expenses included in the monthly retainer invoice is due within the time frame set forth in the payment provision for monthly retainer.
4. Late payment of expense invoice results in a late fee equal to ten (10%) percent of the balance of the invoice.

Payment of Expenses – Travel Costs

1. All costs for travel beyond reasonable driving area which are incurred on behalf of, or for the benefit of client, shall be reimbursed by client. Such travel costs include, but are not limited to, airline tickets, car rentals, hotels, meals, taxis, parking and tolls.
2. Should travel be required outside of reasonable driving area, you shall determine, in your sole discretion, if an additional fee will be required for any work performed for client while traveling. Any such additional fees will be agreed to in writing by you and client prior to any travel.
3. Submit periodic invoices to client for travel costs incurred on their behalf, or you may include such costs in the monthly retainer fee invoices.
4. Payment of periodic travel cost invoices is due within fifteen (15) days of receipt of each invoice. Payment of travel costs included in the monthly retainer invoice is due within the time frame set forth in the payment provision for monthly retainer. Late payment results in a late fee equal to ten (10%) percent of the balance of the invoice.

Copyright - Portfolio Rights

You cannot use the work you create if your client owns the copyright to the work unless you reserve portfolio rights for yourself in the contract:

1. Non-exclusive right to use works that are in the “public domain” defined as completed works displayed by your client, client’s agent or any other third-party authorized to display the work for your marketing purposes, including display on your website, any websites you are featured or displayed on and in physical form.
2. No additional fee will be owed for grant of portfolio rights and no royalty owed for business obtained by you through use of portfolio rights.
3. Reserve the right to request the right to use completed works for any other purposes not stated in the contract. Client agrees it will not unreasonably withhold consent.

Copyright – Client Perspective

As the client, if you want to own the copyright to the completed work you must include in your contract that the creator of the work assigns all interest in the copyright to you and they retain no interest in any copyright to the work.

If the contract does not state that the client owns the copyright, the person creating the work owns the copyright. In that case, the client should include in their contract that they have an exclusive license for use of the work, including the right to display in any manner deemed appropriate by the client, and in any medium of display. That way, the PR professional cannot claim a violation of the scope of the license if the work is displayed in mediums other than the one for which they were hired to create the work.

Advertising Client List

A PR professional wants to advertise on their website that they have done work for big name clients. The client, on the other hand, may or may not want to give permission for you to publicize that you did PR work for them.

1. PR professional – include in your contract that your client grants you the right, without the payment of any fee, to advertise on your website, or any other medium for marketing or advertising purposes, that you have done work for their company. **Note** – you cannot use your client's logo unless you get a license to do so because using their logo without permission may constitute trademark infringement – whether or not the logo is trademarked.
2. Company hiring PR professional – if you do not want your company's name listed on your PR professional's website or in other advertising or marketing mediums, state in your contract that the PR professional may not include you in their client list without express written permission.

Working with Bloggers

Companies are increasingly seeking out bloggers who have large followings to have those bloggers discuss a product, a particular topic, a medical condition which a drug company has a medication for, etc.. Here are some issues to consider if you are working with bloggers:

1. Should you sign a contract with a blogger if you are simply discussing ideas with them for a short period of time?
2. What information must a blogger include in their blog if they do write about your company's product?
3. Should you get releases from bloggers you work with?

Approval of Work

In order to protect yourself from issues which may arise from work you produce which your client uses for their own purposes, or for a third party, you need to get written approval from your client for all work you produce. Provisions to include for client final approval are:

1. Client is solely responsible for final content of work.
2. Client assumes all responsibility for proofing and final approval before work is released to the public and other third parties.
3. Client will provide written approval by signing a copy of final submitted materials, or by stating such approval in an e-mail within ten (10) days of receipt of materials. Failure to provide written approval shall be deemed an automatic approval as though provided in writing and shall be an express waiver of all objections to final submitted materials.

Hold Harmless and Indemnification

You can limit your liability for work you perform in two key areas – 1) liability for damages and 2) cost of defending a lawsuit.

1. Hold harmless provision – your client agrees to hold you harmless for any damages, whether compensatory, incidental, consequential, lost profits, that may result from errors and/or omissions in the work you perform.

2. Indemnification – this provision provides that your client will be responsible for paying any judgment for damages entered in a lawsuit, including attorneys fees and court costs. Indemnification may occur during the lawsuit, or may require you to file a separate lawsuit against your client seeking reimbursement of costs incurred, or damages which you pay as a result of a lawsuit.

How to Protect Against a Potential Client Using Your Proposal Without Hiring You

When submitting proposals to a potential client, there are a few steps you can take to protect against a potential client using your work without hiring you:

1. Limit the information you put in your proposal. Include enough information to interest the client, but hold back enough that they need to hire you to get the work done.
2. Include language in your proposal that all work is deemed confidential and copyrighted, which they agree to by accepting the proposal. Although you have not registered the proposal with the Copyright Office in Washington, D.C., it may give your potential client reason to be concerned. Even if you do not register a work with the Copyright Office, it still has common law copyright protection. However, you cannot bring a lawsuit for a copyright violation until the work is registered.