

## **Chapter 2**

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**CONFLICTS**  
of Interest

# Chapter 2

## Conflicts of Interest

Conflicts of interest can pop up at any time. The best practice is to perform a preliminary conflicts check before the initial consultation with a potential client, and then another, more comprehensive, conflicts check after the initial consultation but before accepting the representation. Finally, another conflicts check should be performed each time a new party enters into the legal matter. If a conflict is found and the conflict is one that is not consentable, or is consentable, but informed consent is not obtained, then the lawyer must decline the representation or, if already representing the client, withdraw from the representation. Otherwise, the lawyer may face grave consequences, including disqualification, mandatory withdrawal, disciplinary actions, reversal of proceedings, forfeiture of fees, and possibly malpractice claims. A non-engagement letter or a disengagement letter (see samples) should be sent to document such declination or termination of the representation.

### Types of Conflicts

Generally, conflicts of interest fall into two categories. Conflicts may arise from directly adverse representations or where the representation of a client is materially limited as a result of the lawyer's other responsibilities or interests. A directly adverse conflict arises when you are called upon to represent one client against another client. A lawyer cannot represent two opposing parties in the same litigation. Moreover, a lawyer may not act as an advocate in one matter against a client the lawyer currently represents or previously represented in some other matter. Former clients also present a conflict with the matters one substantially related to one another.

Even when there is no directly adverse conflict, a conflict of interest may nevertheless exist if there is a significant risk that the lawyer's representation may be materially limited as a result of the lawyer's responsibilities to other clients, to third persons or entities, or as a result of the lawyer's own personal interest.

- This type of conflict may arise in the context of dual or multiple representations (i.e., representing a husband and a wife, or a buyer and a seller, or two or more clients forming a business entity).
- It also may arise in the context of a financial interest (i.e., owning a percentage of a client's business).
- Further, a conflict may arise in the context of a hidden interest (i.e., romantic or sexual involvement with a client). Nor should you enter into any business transactions with your clients, or knowingly acquire an ownership or other pecuniary interest adverse to your clients.<sup>1</sup>
- You should not enter into an agreement to limit your malpractice liability without first making sure that your client is represented by independent counsel.

You should closely scrutinize the circumstances of each representation to determine whether the clients have "differing interests" that may call for different attorneys representing each client. It is also your duty to reject or disengage from any representation which is going to cloud your independent professional judgment and not allow you to render objective advice.

## Consentable Versus Non-Consentable Conflicts

You must independently and objectively decide whether a conflict is consentable. “When a *disinterested* lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client’s consent.” Annotated Model Rule of Professional Conduct at p. 124 (ABA 2d ed. 1992) (emphasis added). When in doubt, the lawyer should decline the adverse representation.

While clients may consent to representation notwithstanding a conflict, some conflicts are non-consentable. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client. Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to a representation burdened by a conflict of interest. Representation is prohibited if, under the circumstances, the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation as required by Rules of Professional Conduct 1.1 and 1.3. See also Restatement (Third) of the Law Governing Lawyers § 122(2)(c) (2000). For this reason, representing opposing parties in the same litigation is uniformly prohibited. This conflict cannot be waived and is non-consentable. Other conflicts are non-consentable because applicable law prohibits the representation. For example, under federal criminal statutes, certain representations by a former government lawyer are prohibited, despite the informed consent of the former client.

### Consentable Conflicts

Not all representations containing the types of conflicts described above have to be declined or terminated, if the potential or existing client gives informed consent. The following types of transactions can be entered into, but only with the client’s informed consent:

► **Business transaction or acquiring pecuniary interest adverse to the client - LA RPC Rule 1.8 (a)<sup>1</sup>**

You may not enter into a business transaction or acquire an ownership or other pecuniary interest adverse to the client unless:

1. the transaction is fair and reasonable to the client;
2. the terms are fully disclosed and given to the client in writing, in a manner clearly understood by the client;
3. the client is advised in writing well in advance of the transaction and is given a reasonable opportunity to seek advice of independent counsel; and
4. the client consents in writing.

► **Using information relating to a client’s representation – LA RPC Rule 1.8 (b).**

You may not use information relating to the representation of an existing or former client to the disadvantage of the client, unless the client has been fully informed and consents to its use.

► **Compensation from another party - LA RPC Rule 1.8 (f).**

You may not accept compensation for representing a client from any person other than the client unless the client gives informed consent, or the compensation is provided by contract with a third person, such as an insurance contract or a prepaid legal service plan; there is no interference with a lawyer’s independence or professional judgment or with the client-lawyer relationship; and the information relating to the representation of a client is protected as required by Rule 1.6 (Confidentiality of Information).

► **Multiple client settlements – LA RPC Rule 1.8 (g).**

You may not enter into an aggregate settlement of the claims of or against multiple clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent in a writing signed by the client, in a writing signed by the client or a court approves a settlement in a certified class action. The lawyer’s disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

<sup>1</sup> Most legal malpractice insurance policies exclude from coverage claims arising out of legal services performed by the insured attorney for a client, if at the time of the act or omission in the performance of the legal services, the attorney owned a greater than 10% interest in the client’s business.

► **Former clients – LA RPC Rule 1.9 (a).**

If you formerly represented a client in a matter, you shall not represent another person in the same or a substantially related matter if that person's interests are materially adverse to the interests of the former client, unless your former client gives informed consent, confirmed in writing.

► **Imputation of conflicts of interest - LA RPC Rule 1.10 (a).**

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

► **Special conflicts of interest for former and current government officers and employees – LA RPC Rule 1.11 (a)(2) and Rule 1.11 (b)(1) &(b)(2).**

A lawyer who has formerly served as a public officer or employee of the government shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a public government officer or employee, unless the government agency gives its informed consent, confirmed in writing, to such representation. Additionally, no lawyer in a firm with which that lawyer is associated may represent this client, unless the disqualified lawyer has been timely screened from any participation in the matter, is not given any part of the fee, and the former government agency is notified immediately in writing.

► **Former judge, arbitrator, mediator or other third-party neutral - LA RPC Rule 1.12 (a) and Rule 1.12 (c)(1) & (c)(2).**

You may not represent a client in connection with a matter in which you participated personally and substantially as a judge, other adjudicative officer, or law clerk to such a person, or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing. Additionally, your firm may not represent this client, unless you are timely screened, you are not given any part of the fee, and written notice is given to the appropriate tribunal.

► **Organization as client – LA RPC Rule 1.13 (a) and Rule 1.13 (g).**

If an organization is your client, you represent the organization acting through its duly authorized constituents. If you represent an organization, you may also represent any of its directors, officers, employees, members, shareholders, or other constituents subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is being represented, or by the shareholders.

► **Financial assistance to clients – LA RPC Rule 1.8 (e).**

Financial assistance to clients is allowed under certain circumstances.

## Non-Consentable Conflicts

Some conflicts cannot be waived and are deemed non-consentable. Some examples of prohibited representations include, but are not limited to:

- Preparing an instrument giving yourself or any person related to you any substantial gift from your client, including a testamentary gift, unless you and your client are related. LA RPC Rule 1.8 (c).
- Negotiating an agreement giving yourself literary or media rights to a portrayal of the representation. LA RPC Rule 1.8 (d).
- Directly adverse representation in the same matter. LA RPC Rule 1.7(a)(1).
- Despite the prohibition in Rule 1.8(e) against providing financial assistance to clients, it is permitted under certain circumstances. (See in the Fees, Billing and Trust Accounts section.)
- Agreeing prospectively to limit your liability to a client for malpractice unless the client is independently represented in making the agreement or settle a claim or potential claim for malpractice liability with an unrepresented client or former client without first advising the client in writing that independent representation is appropriate. LA RPC Rule 1.8 (h)(1) and (h)(2).
- Acquiring a proprietary interest in the cause of action or subject matter of the litigation, except you may acquire a lien authorized by law to secure your fees/expenses and contract with your client for a reasonable contingent fee in a civil case. LA RPC Rule 1.8 (i)(1) and (i)(2).

## Informed Consent

You've determined that there is a conflict and that the conflict is consentable. What do you do next? (Remember, if the conflict is non-consentable, your job is finished except for mailing the non-engagement or disengagement letter.) First, you must conclude that the conflicting representation will not damage your client's case. The Rules of Professional Conduct require that this decision is made using objective, reasonable and independent standards. Second, each client must consent to the representation after being informed of the conflict. And the consent that is required is "informed consent." Rule 1.0 Terminology paragraph "e" defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Informed consent is voluntarily and knowingly granted after full disclosure of all relevant information that likely would influence the client's decision.<sup>2</sup>

So, what should be included in the client's informed consent letter?

1. The full disclosure of all relevant information, including actual and foreseeable adverse risks associated with the representation, transmitted in writing to the client in a manner reasonably understood by the client. Tell the client that he now has a choice to make – stay with you and your conflict, or go with a lawyer that does not have a conflict. If he chooses the latter, additional costs may be incurred by the client for the conflict-free new lawyer to catch up. Also, explain to the client that, while you believe it is unlikely, one of the risks of your continued representation is your disqualification from the representation if it is determined that you have violated the conflict rules.
2. An acknowledgment that the client was given a reasonable opportunity, confirmed in writing, to seek the advice of independent counsel in consenting to the conflict, and whether or not the client sought independent counsel.
3. The client's consent in writing, which includes client acknowledgement that by allowing you to continue the representation, he is foregoing his right to retain another conflict-free lawyer. However, it should be understood by the client, that the client's representation in writing may still not prevent your disqualification, if a court so rules.
4. An acknowledgment that all affected clients were sent the informed consent letter, with the same disclosures described in number 1 above.
5. If applicable, an assurance that any disqualified lawyer will be timely screened from any participation in the matter, will not be given any part of the fee, and will not reveal any protected confidential information.

Having such a detailed informed consent letter, signed by the client, will likely insure against a client asserting that he did not give informed consent because the disclosure of the risks and relevant information was inadequate.

Any conflicts of interest checking system should:

- ▶ Be integrated with other office systems;
- ▶ Provide conflicts data for everyone in the office;
- ▶ Check for varying spellings of names;
- ▶ Show any party's relationship with the client; and
- ▶ Remind lawyers to document all conflict search results with memos in the file.

2 Schneider, Harry H. Jr., "An Invitation to Malpractice; Once a Conflict of Interest is Spotted, Take Action Promptly," ABA's Standing Committee on Lawyer's Professional Liability.

# Additional Resources for Conflicts of Interest

See sample informed consent letter.

The “Conflict of Interest” Rules of Professional Conduct:

- ▶ Rule 1.7 - Conflict of Interest: Current Clients;
- ▶ Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules;
- ▶ Rule 1.9 - Duties to Former Clients;
- ▶ Rule 1.10 - Imputation of Conflicts of Interest: General Rule;
- ▶ Rule 1.11 - Special Conflicts of Interest for Former and Current Government Officers and Employees;
- ▶ Rule 1.12 - Former Judge, Arbitrator, Mediator or Other Third-Party Neutral; and
- ▶ Rule 1.13 - Organization as Client;
- ▶ Rule 1.18 - Duties to Prospective Clients.

## Books and Articles

- ▶ ABA, *The Business Lawyer*, Conflict of Interest Issues, 50 Bus. Law 1381 (1995).
- ▶ *Lawyers Liability Review*, Vol. 14, No. 10 (Oct. 2000).
- ▶ Mallen, Ronald E., Smith, Jeffrey M., *Legal Malpractice No. 2*, Chapter 14, Fiduciary Obligations in General; Chapter 15, Fiduciary Obligations - Conflicting Interests; Chapter 16, Fiduciary Obligations Adverse Representation (4th ed. 1996).
- ▶ National Reporter on Legal Ethics and Professional Responsibility, *Kansas Formal and Informal Opinions*, Opinion No. 95-04, Conflict of Interest; Adverse Representation (University Publications of America).
- ▶ Ciolino, Dane S., *Louisiana Rules of Professional Conduct*, 4th Edition (Louisiana State Bar Association, 2016) see <http://lalegaethics.org/louisiana-rules-of-professional-conduct/>
- ▶ Frank L. Maraist, *et al.* 21 LA. CIV. L. TREATISE, LOUISIANA LAWYERING §8.1, *et seq.* (2013 ed.)
- ▶ Louisiana State Bar Assn. Rules of Prof. Conduct Committee, *Conflict of Interest: Simultaneous Representation of Driver and Guest-Passenger*, Public Opinion No. 08-RPCC-016 (March 29, 2008)
- ▶ Louisiana State Bar Assn. Rules of Prof. Conduct Committee, *Conflicts of Interest and the Part-Time Prosecutor*, Public Opinion No. 07-RPCC-011 (February 15, 2007)
- ▶ CNA Sample Conflict of Interest Waiver Letter. See [www.lsba.org/goto/cnaattorneytoolkit](http://www.lsba.org/goto/cnaattorneytoolkit)

## Case Management (Conflicts) Software

- ▶ Practice Master 16.2, Software Technology, Inc., (402)423-1440
- ▶ Amicus Attorney V, Gavel & Gown Software, (800)472-2289
- ▶ Abacus Law, Abacus Data Systems, (800)726-3339
- ▶ Thomson Elite, (800)977-6529
- ▶ Tussman Program 7.1, Tussman Programs, Inc., (800)228-6589
- ▶ Lexis Nexis Practice Management, (800)328-2898
- ▶ Lawtopia's PC Law, (866) 306-9007
- ▶ Orion Law Management Systems, Inc. (800) 305-5867

# Conflicts of Interest Checklist

- All attorneys and staff must disclose necessary information concerning potential conflicts relating to past clients at prior places of employment, but not confidential information.
- Prior to the initial consultation, the potential clients must disclose all name information, including their other names (*i.e.*, maiden, other marital, etc.), opposing parties' names, and associated persons' and/or entities' names.
- Thereafter, at the initial consultation, the potential clients must disclose more detailed information in order for a more comprehensive conflicts check to be made.
- The attorney then performs the conflicts check, reviewing the master client list, the former client list, and the subject matter list, if applicable.
- The Conflicts Search Results Memo must be circulated to all attorneys and staff for their review and input.
- Follow up with any attorney or staff member who fails to return the Conflicts Search Results Memo within 24 hours of distribution.
- Analyze the results of the circulated memo and of the preliminary and comprehensive conflicts checks to determine whether a conflict exists.
- If no conflict is found, the new client is entered into the conflict system and sent an engagement letter.
- If a conflict is found and the attorney is not allowed to accept the representation, send a non-engagement letter explaining the conflict.
- If a conflict is found and the attorney is allowed to accept the representation:
  - disclose the circumstances which give rise to the actual or potential conflict;
  - disclose a description of actual/foreseeable adverse effects of those circumstances;
  - if the potential conflict arises out of dual or multiple representation, then disclose that no attorney-client privilege exists as between the clients;
  - if the potential conflict arises out of a past representation (*i.e.*, past representation of adverse party in an unrelated matter), then disclose all pertinent non-privileged facts necessary for the potential client to make an informed decision as to whether to waive the conflict.
- Obtain written informed consent after advising the potential client to seek independent legal advice regarding the waiver.
- Accept the representation by sending an engagement letter.
- Perform another conflicts check each time a new party enters into the legal matter. If the new party creates an adverse non-consentable conflict, withdraw and send a disengagement letter.

# Conflicts of Interest Search Form (Privileged and Confidential)

The following must be completed by the potential client, attorneys and staff:

1. Obtain all the information on the potential client:

Name \_\_\_\_\_  
Other names \_\_\_\_\_  
Nicknames \_\_\_\_\_  
Address \_\_\_\_\_  
Spouse's name \_\_\_\_\_  
Spouse's other names \_\_\_\_\_  
Spouse's nicknames \_\_\_\_\_  
Address (if different) \_\_\_\_\_  
Opposing parties' names \_\_\_\_\_  
Associated persons or entities \_\_\_\_\_

*Potential client stops here and Preliminary Conflict Check performed. If no conflict is found, potential client completes § 2 and then attorneys and staff complete the remainder.*

2. Determine which area of law is involved and write in the names, nicknames or other names of the associated persons/ entities involved:

**If litigation matter, who is the:**

Insured \_\_\_\_\_  
Plaintiff(s) \_\_\_\_\_  
Defendant(s) \_\_\_\_\_  
Insurer \_\_\_\_\_  
Tutor/minor \_\_\_\_\_  
Expert witness(es) \_\_\_\_\_  
Other attorneys involved \_\_\_\_\_

**If divorce matter, who is the:**

Client \_\_\_\_\_  
Spouse \_\_\_\_\_  
Child(ren) \_\_\_\_\_  
What is/are the age/ages of the child(ren)? \_\_\_\_\_  
Other attorneys involved \_\_\_\_\_

**Continued**

**If corporate/business/real estate matter, who is the:**

Owner(s)/spouse(s) \_\_\_\_\_  
Buyer(s) \_\_\_\_\_  
Partner(s) \_\_\_\_\_  
Seller(s) \_\_\_\_\_  
Officer(s) \_\_\_\_\_  
Directors \_\_\_\_\_  
Shareholder(s) \_\_\_\_\_  
Subsidiaries/affiliates \_\_\_\_\_  
Key employees \_\_\_\_\_  
Property address(es) \_\_\_\_\_  
Any opposing party in a transaction \_\_\_\_\_  
Other attorneys involved \_\_\_\_\_

**If probate matter, who is the:**

Deceased \_\_\_\_\_  
Spouse/child(ren)/heir(s)/legatee(s) \_\_\_\_\_  
Succession representative \_\_\_\_\_  
Attorney for succession representative \_\_\_\_\_  
Other attorneys involved \_\_\_\_\_

**If worker's compensation matter, who is the:**

Injured worker \_\_\_\_\_  
Employer \_\_\_\_\_  
Insurer \_\_\_\_\_  
Other attorneys involved \_\_\_\_\_

**If estate planning matter, who is the:**

Testator/testatrix \_\_\_\_\_  
Spouse/child(ren)/heir(s)/legatee(s) \_\_\_\_\_  
Trustee \_\_\_\_\_  
Other attorneys involved \_\_\_\_\_

**Continued**

**If criminal matter, who is the:**

Accused \_\_\_\_\_

Victim(s) \_\_\_\_\_

Witness(es) \_\_\_\_\_

Co-Defendant(s) \_\_\_\_\_

Other attorneys/prosecutors involved \_\_\_\_\_

**If bankruptcy matter, who is the:**

Client \_\_\_\_\_

Creditor(s) \_\_\_\_\_

Spouse \_\_\_\_\_

Other attorneys involved \_\_\_\_\_

**Results of Search**

Conflict System Search done by: \_\_\_\_\_

Title \_\_\_\_\_ Relationship to firm \_\_\_\_\_

**Instructions:**

- Duplicate of this form and attached Conflicts Search Results Memo routed to and signed by all attorneys and staff.
- No conflict found; entered as new client into conflict system and engagement letter sent by \_\_\_\_\_
- Conflict found, analyzed, and client accepted (explain reasons)

\_\_\_\_\_  
\_\_\_\_\_

- Engagement and Informed Consent letters sent by \_\_\_\_\_
- Conflict found, client not accepted, non-engagement letter sent by \_\_\_\_\_

# Conflicts of Interest Search Results Memo

1. Circulate this form to all attorneys and staff, making sure to attach the completed Conflicts of Interest Search Form.

2. Give a deadline for the return of the memo: \_\_\_\_\_

3. Have all attorneys and staff answer all of the following questions:

a. Do you have any business interest with:

Client? Yes \_\_\_\_\_ No \_\_\_\_\_

Anyone associated with client? Yes \_\_\_\_\_ No \_\_\_\_\_

Anyone associated with persons/entities? Yes \_\_\_\_\_ No \_\_\_\_\_

b. Do you have any personal interests with:

Client? Yes \_\_\_\_\_ No \_\_\_\_\_

Anyone associated with client? Yes \_\_\_\_\_ No \_\_\_\_\_

Anyone associated with persons/entities? Yes \_\_\_\_\_ No \_\_\_\_\_

c. Have you had any current or past relationship, affiliation or association with this client? Yes \_\_\_\_\_ No \_\_\_\_\_

d. Do you know of any reason we should not represent this client? Yes \_\_\_\_\_ No \_\_\_\_\_

If you have answered yes to any of the above, please give details below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Attorney/Staff: \_\_\_\_\_ Date: \_\_\_\_\_

# Sample Conflict of Interest Non-Engagement Letter

June 20, 20—

Mr. John J. Non-Client  
123 Main Street  
Anytown, Louisiana 45678

Re: Conference on June 19, 20—;  
Potential Personal Injury Claim against Mr. Smith.

Dear Mr. Non-Client:

I enjoyed meeting with you recently regarding your potential claim against Mr. Smith. As we discussed, I believe I have a conflict of interest. Although we did not discuss the particulars of your potential claim, it does not appear to be appropriate under the ethical rules for our firm to represent you. We must therefore decline to represent you. Under these circumstances, you should consult other counsel immediately to determine your rights and interests. Please keep in mind that you may be facing important deadlines, so you should not delay in contacting other counsel.

Thank you for offering us this engagement. If we may be of service to you in other matters in the future, we hope you will contact us then.

Sincerely,  
FIRM NAME

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Attorney Name

# Sample Conflict of Interest Informed Consent Letter

June 20, 20—

Mr. John J. Potential Client  
123 Main Street  
Anytown, Louisiana 45678

Dear Mr. Potential Client:

Below is your Informed Consent of our firm representing you in a business acquisition, to which you agree after careful consideration of all the facts, even though there are actual and potential conflicts of interest. At this time, we wish to remind you of the relevant information with respect to the conflicts, which you used to make your decision.

- ▶ The actual risks associated with this representation are . . . .
- ▶ Some potential risks associated with this representation are . . . .
- ▶ Our firm may be disqualified if there is a finding of a non-concentable conflict of interest...
- ▶ You acknowledge that our retention may limit you financially from also retaining conflicts-free counsel at this time...

We previously recommended to you in writing that you seek independent legal advice regarding the conflicts. Having followed that advice, you sought independent legal counsel and were apprised of conflicts that exist and may arise. Nevertheless, as is evidenced by your signature below, you knowingly and voluntarily consent to representation by the firm, (FIRM NAME), and waive any and all actual and potential conflicts of interest.

## [Optional]

[Additionally, Attorney Smith has been disqualified from taking any role in the representation of your case and will be timely screened from any participation in the matter. He will not be given any part of the legal fee, nor will he be allowed to reveal any of your confidential information he may have obtained previously.

All affected clients have been put on notice by being sent a copy of this informed consent letter.

Sincerely,  
FIRM NAME

\_\_\_\_\_  
Attorney Name

Client Signature \_\_\_\_\_

Client Name Typed \_\_\_\_\_

Date \_\_\_\_\_

# Sample Conflict of Interest Disengagement Letter

June 20, 20—

Mr. John J. Former Client  
123 Main Street  
Anytown, Louisiana 45678

Re: File Subject or Matter Description  
Calcasieu Parish, Louisiana

Dear Mr. Former Client:

Thank you for allowing us to be of service to you in the above-captioned matter. The joining of A.B. Sea, Inc. in your lawsuit has created a conflict of interest for our firm because one of our partners, (Attorney Name), has been and continues to be A.B. Sea's primary counsel in other matters. Your continued representation would result in a conflict of interest pursuant to the Rules of Professional Conduct. Therefore, we must withdraw from representing you at this time. Additionally, (Attorney Name) will refer A.B. Sea to independent counsel for representation in your matter only.

We are enclosing your entire file with this letter, as well as a check in the amount of \$750.00, representing a refund of unearned fees. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. A status report with deadlines, if applicable, is attached. Your new counsel should have adequate time to serve your best interests, and you should provide said counsel with the enclosed file and status report.

Our final invoice for service rendered is enclosed. It was a pleasure serving you, and we wish you the best in all your future endeavors. If we may be of service to you in other matters, please contact us.

Sincerely,  
FIRM NAME

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Attorney Name

Enclosures

(CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct, especially Rule 1.16(c) requiring permission of a tribunal when terminating a representation.)

# Sample Conflict<sup>1</sup> of Interest Financial Assistance Agreement

June 20, 20—

Mr. John J. Client  
123 Main Street  
Anytown, Louisiana 45678

Dear Mr. Client:

This is a Financial Assistance Agreement between you, Client, and our firm, outlining the terms by which this firm may advance financial assistance to you in connection with pending or contemplated litigation, as permitted by Rule 1.8 (e) of the Rules of Professional Conduct and jurisprudence.

Subject to your written consent below, we may advance you any or all of the following:

- Court costs and expenses of litigation, including but not limited to: Filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation-related medical expenses; and any other specific expense directly related to our representation. [Your repayment of these expenses advanced by our firm is contingent on the outcome of the matter for which you hired our firm, provided these expenses were reasonably incurred] or [Your repayment of these expenses advanced by our firm is not contingent upon the outcome of the matter for which you hired our firm, and you remain liable to us for these expenses]. We will provide you with a written statement of our specific financial assistance and the time frame within which you have to repay it.
- [If you are an indigent client, and are unable to pay for legal representation, our firm may pay court costs and expenses of litigation on your behalf.]
- Actual invoiced costs incurred solely for purposes of our representation: Computer legal research charges; long distance telephone expenses; postage charges; copying charges; mileage and outside courier service charges. We cannot pass on to you any overhead costs that may be incurred by us, which may include, but are not limited to: Office rent; utility costs; charges for local telephone services; office supplies; fixed asset expenses; ordinary secretarial and staff services. [However, if you are paying us at an hourly rate, and not at a fixed rate or on a contingency basis, we may advance you reasonable charges for paralegal services. If we do advance paralegal services to you, you will be notified at the beginning of the representation.]
- If you are in necessitous circumstances (after a determination by us that without minimal financial assistance, your case would be adversely affected), we may provide financial assistance to you, in addition to court costs and litigation expenses, as follows:
  - o You acknowledge that we have not used this advance or loan guarantee as an inducement by us, or anyone acting on our behalf, to secure employment.
  - o You acknowledge that neither our firm, nor anyone acting on our behalf, has offered to make advances or loan guarantees prior to being hired by you, nor that we publicized or advertised a willingness to make advances or loan guarantees to you.
  - o Financial assistance may not exceed the minimum sum necessary to meet your needs, and/or your spouse's needs, and/or your dependents' needs for food, shelter, utilities, insurance, non-litigation related medical care and treatment, transportation expenses, education, or other documented expenses necessary for living. [Please note that a blanket request for assistance without documented receipts or invoices cannot be honored.]

**Continued**

Subject to your written consent below, we may advance you financial assistance, with the following restrictions:

- Financial assistance that we may provide to you using our own funds cannot bear interest, fees or charges of any nature.
- We may use our firm's line of credit or loans obtained from financial institutions in which we have no ownership, control and/or security interest (unless our ownership, control and/or security interest of a publicly traded financial institution is less than 15%), provided we make reasonable, good faith efforts to obtain a favorable interest rate.
- In using a line of credit or loan, we may not pass on to you interest charges, including any fees or other charges connected to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less.
- We may only provide a guarantee or security on a loan to you to the extent that the interest charges, including any fees or other charges connected to such loans, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding.
- Prior to the execution of any settlement documents, approval or any disbursement sheet (as provided in Rule 1.5), or upon submission of a bill for our services, we will provide you with a complete text of Rule 1.8 (e), as re-enacted, of the Louisiana Rules of Professional Conduct, effective date of April 1, 2006.

**This Agreement is null unless you date and sign below.**

Sincerely,

FIRM NAME

\_\_\_\_\_  
ATTORNEY'S NAME (typed or printed)

\_\_\_\_\_  
CLIENT'S NAME (typed or printed)

\_\_\_\_\_  
ATTORNEY'S SIGNATURE

\_\_\_\_\_  
CLIENT'S SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
WITNESS NAME (typed or printed)

\_\_\_\_\_  
WITNESS'S SIGNATURE

\_\_\_\_\_  
DATE

1 A conflict that is reasonably anticipated, although not present at the inception of the representation, can be waived in advance with adequate disclosure and consent by the client.