

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 there exists a conflict.
- 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.¹
- If a conflict is found, all necessary disclosures are made, and written informed consent is obtained, accept the representation by sending an engagement letter.²

□ Once representation has been accepted, perform another conflicts check each time a new party enters into the legal matter. If the new party creates a conflict, withdraw and send a disengagement letter.

¹ Remember, some conflicts cannot be waived, even though an informed consent was obtained.

² However, we recommend that you do *not* accept the representation because informed consents do not cure all conflicts and there may still be a violation of the ethical rules.

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) _____

If divorce matter, who is the:

Client _____

Spouse _____

Child(ren) _____

What is/are the age/ages of the child(ren)? _____

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 _____

If probate matter, who is the:

Deceased _____

Spouse/child(ren)/heir(s)/legatee(s) _____

Succession representative _____

Attorney for succession representative _____

If worker's compensation matter, who is the:

Injured worker _____

Employer _____

Insurer _____

If estate planning matter, who is the:

Testator/testatrix _____

Spouse/child(ren)/heir(s)/legatee(s) _____

Trustee _____

If criminal matter, who is the:

Accused _____

Victim(s) _____

Witness(es) _____

Co-Defendant(s) _____

If bankruptcy matter, who is the:

Client _____

Creditor(s) _____

Spouse _____

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 have a possible 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

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 may 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 potential conflict, which you should use to make your decision.

- This representation will
- This representation will also
- " _____"

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, if you knowingly and voluntarily consent to representation by the firm, (FIRM NAME), and waive any and all actual and potential conflicts of interest, please sign below and return this letter to us.

[Optional]

[Additionally, Attorney Smith has been disqualified from taking any role in the representation of your case and will be 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 obtained while working at his prior law firm.]

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 an adverse conflict of interest.¹ Therefore, we must withdraw from representation of you at this time. Additionally, Mr. Wisdom will refer A.B. Sea to independent counsel for representation in your matter.

We are enclosing your entire file with this letter, as well as a check in the amount of \$750.00, representing a refund to you of the amount of the advance deposit which has not been earned. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. Your new counsel should have adequate time to serve your best interests, and you should provide said counsel with your file for necessary review. A complete status of the matter with deadlines noted is attached.

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.

Sincerely,

FIRM NAME

Attorney Name

Enclosures

(CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct.)

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.

Conflict 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 you financial assistance in connection with pending or contemplated litigation, as permitted by Rules 1.4 (c) and 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 timeframe 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 your 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:
 - 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;
 - 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;
 - 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.]

- You agree that you will not broadcast to others our financial assistance to you.

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

- Financial assistance that we may provide to you 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)

CLIENT'S NAME (typed)

ATTORNEY'S SIGNATURE

CLIENT'S SIGNATURE

DATE

DATE

WITNESS NAME (typed)

WITNESS'S SIGNATURE

DATE