

**Sample Letter to Client with  
Potential Malpractice Claim Against Attorney**

Dear [        ]:

As you know, I have filed a complaint against X on your behalf. Confirming our recent discussion, it is possible that your claim against X may be barred by the applicable statute of limitations and that you may have a claim against me for failing to timely file the complaint. Although it is a factual issue whether your claim arose more than [     ] years before I filed the complaint on your behalf, it is possible that a court could so rule. The purpose of this letter is not to ask you to waive any claim you may have against me but to seek your consent to my continuing representation of you in this case.

The Oregon Rules of Professional Conduct (ORPC) prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client's, unless the client consents. Consequently, I can continue to act as your lawyer in this matter only if you give your informed consent.

It is possible that, because you may have a potential claim against me, my professional judgment may differ from what an independent lawyer would advise you. For example, I may be more inclined to recommend settlement in these circumstances. **[Give other examples.]** Although I do not believe that to be the case, you must necessarily decide this for yourself. The ORPC requires me to recommend that you consult independent counsel to determine whether consent should be given, and I encourage you to do so. Whether you do is up to you.

ORPC 1.0(g) and 1.7(a)(2),(b)(4) require me to inform you of the conflict, explain the conflict to you, confirm the explanation in writing, and recommend that you seek independent counsel. The purpose of this letter is to fulfill those obligations.

If you decide to consent to my continuing representation of you, please sign the enclosed copy of this letter and return it to me for your file. Thank you.

Very truly yours,

[Attorney]

I hereby consent to the representation set forth above:

\_\_\_\_\_  
[Client]

Dated: \_\_\_\_\_

NOTE:

This sample letter originally appeared in *Beating Discipline and Malpractice: The How and Why of Effective Disclosure and Consent Letters*, materials for an Oregon State Bar CLE program presented on December 3, 1993. The following information about disclosure and consent letters is from the introduction to Chapter Two of those CLE materials.

Sooner or later, almost every lawyer needs to write a disclosure and consent letter, a nonrepresentation letter, or a termination of engagement letter. Until now, however, the Oregon State Bar had never made a set of form letters available to its members. This collection of letters is intended to fill that gap. It should be read together with our companion memorandum on the theory of disclosure and consent letters generally.

Although we believe that attorneys who use these letters will generally meet or exceed their ethical obligations, a word of caution is appropriate. These are, of necessity, “form” letters. Depending upon the specific facts in a given situation, the degree of client sophistication and other factors, an attorney may be obligated to provide greater disclosure than that which is contained in these letters. In addition, and as noted in our companion memorandum, there are some situations in which disclosure and consent letters clearly will not protect an attorney – because, for example, the particular conflict to which consent is sought is nonwaivable.

Our efforts have been aided by those lawyers and firms who submitted one or more form letters to us for consideration. We wish to thank those individuals and firms: Diane DePaolis (DePaolis, Shepard & Vallerand); Lewis Hampton (Hampton Bolliger & McCobb); Christopher Kittell (Albright & Kittell, P.C.); the firm of Kramer & Toth-Fejel; Michael Scott (Furrer & Scott); Edward Sullivan (Preston Thorgrimson Shidler Gates & Ellis); the law offices of Lee Werdell; Carol Westendorf (Mason, Roulette, McFarland, Westendorf & Richardson); and Randall Wolfe (Bailey & Wolfe).

Any mistakes, however, are ours alone. If you find any, or if you have suggestions for improvements, please let us know.