

CHECKLIST FOR POTENTIAL MALPRACTICE CLAIM AGAINST LEGAL PROFESSIONAL

[To Be Used in Conjunction with Sample Letters to Client with Potential Malpractice Claim Against Legal Professional]

		Yes	No
1.	Has legal professional taken an action, or failed to take an action, that could have an adverse impact on the matter? In other words, has the legal professional committed potential legal malpractice.		
2.	Contact the Professional Liability Fund (or other professional liability insurance carrier) and speak to a Claims Attorney regarding the matter.		
3.	Consider whether to: a) consult with in-house counsel or risk management partner at your firm; b) retain outside ethics counsel; or c) contact OSB General Counsel for guidance regarding ethical issues.		
4.	Does a personal conflict of interest exist under Oregon RPC 1.7(a)(2)? Is there a significant risk that the legal professional's representation of one or more clients will be materially limited by the legal professional's personal interest in the matter due to the alleged conduct? See, e.g., OSB Formal Ethics Opinion No. 2009-182; The Ethical Oregon Lawyer § 9.2 (OSB Legal Pubs 2015) (Economic and Personal Conflicts).		
5.	If the answer to 4 is yes, does the legal professional reasonably believe that they will be able to provide competent and diligent representation to each affected client?		
6.	If the answer to 5 is no, prepare a complete copy of client file for production to client, take appropriate measures to withdraw, send a disengagement letter, and provide an accounting to the client of any funds in trust (and return any unearned fees). See also, "Production of Client File" practice aid.		
7.	Consider carefully whether facts or circumstances exist, that would make it preferable for the client to obtain new counsel, even if the conflict arguably can be waived.		
8.	If the answers to 4 and 5 are yes, and 7 has been analyzed, legal professional should contact client to discuss conflict and determine if client will provide informed consent to continue the representation. Legal professional should remind the client that they always have the right to consult with an independent legal professional. Legal professional may want to prepare a draft letter to client before meeting or phone call to frame discussion. See, "Sample Letter to Client with Potential Malpractice Claim Against Legal Professional" practice aid.		
9.	After client call, revise "Sample Letter to Client with Potential Malpractice Claim Against Legal Professional" and provide to PLF (or other carrier) Claims Attorney (or your own ethics counsel) for review and comments.		
10.	Retain signed copy of informed consent letter for legal professional's records.		

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IMPORTANT NOTICES

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