

POTENTIAL MALPRACTICE CLAIM CHECKLIST

This checklist is intended for use in conjunction with a sample letter to the client, regarding a potential malpractice claim against an attorney.

		Yes	No
1.	Has lawyer taken an action, or failed to take an action, that could have an adverse impact on the matter? (In other words, has the lawyer 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.		
4.	Does a personal conflict of interest exist under Oregon RPC 1.7(a)(2)? Is there a significant risk that the lawyer's representation of one or more clients will be materially limited by the lawyer'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).		
5.	If the answer to 4 is yes, does the lawyer reasonably believe that the lawyer 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 <i>also</i> , "Production of Client File or Documents" practice aid (www.osbplf.org).		
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 could be waived.		
8.	If the answers to 4 and 5 are yes, and 7 has been analyzed, lawyer should contact client to discuss conflict and determine if client will provide informed consent to continue the representation. Lawyer may want to prepare a draft letter to client before meeting or phone call to frame discussion. See <i>also</i> , "Malpractice Disclosure Letters" practice aid (www.osbplf.org).		
9.	After client contact, revise malpractice disclosure letter 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 lawyer's records.		

IMPORTANT NOTICES

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