

Appendix D: Model Language for Current Client Conflict Disclosure and Consent

You have asked me to represent (list clients) jointly in connection with (full description of matter). I would be pleased to do so, subject to the following understandings.

Although your interests in this matter appear to be aligned, important differences between your situations may exist or become evident during the course of representation. There are risks to proceeding with joint representation in light of this potential for conflicts.

OPTIONS TO BE USED AS APPROPRIATE

(All matters) It may be in your respective best interests to take different legal positions because of such differences. I may not be permitted to represent both (all) or any of you if you do become adverse to each other.

(All matters) You may discover that you have confidential information pertinent to this matter which you do not want to share with each other. I will not represent both(all) of you unless I have your agreement that I can convey critical information important to the representation to both (all) of you.

(All matters) You may have different financial and taxation considerations that affect your best interests in this matter. I will not represent any of you in analyzing unique aspects of your financial or tax situation.

(Litigation) You may differ as to whether you want to settle this matter or upon the terms of a settlement. I cannot advocate separately for each of you if you fundamentally disagree on offers of settlement.

(Family representation) You may (contemplate divorce) (having a falling out as a family) and disagree on appropriate actions with respect to this matter.

(All matters) I may be required to withdraw from representing both(all) of you because of differences, necessitating payment of additional attorney fees that would not be required if you secure separate counsel at this time.

While these differences may exist or become evident, I have reviewed the information available to me and believe that the likelihood that there are or will be meaningful differences affecting the common purpose in this representation is small. I believe I can adequately represent the interest of both of you in this matter. If I determine that the risk of conflict between you has increased based on receipt of additional analysis or receipt of additional information, I will discuss the situation with you and take appropriate action. You may always consult separate counsel at your own expense at any time you believe it is appropriate to do so.

There are advantages to jointly representing both (all) of you in this matter. You can share attorney's fees and expenses. Less time will be spent communicating between attorneys because

of separate representation. If these advantages outweigh the risks of joint representation in your mind, I will be happy to proceed with joint representation.

OPTION, TO BE USED FOR ACCOMODATION CLIENTS

I have represented (CLIENT) on many matters over the years. I do not intend to represent (name remaining parties) in additional matters. In the event that differences between you make it impossible for me to represent both (all) of you, I may represent (CLIENT) and withdraw from representing (name remaining parties) if I am ethically and legally permitted to do so at the time.

Comment: This clause must be used with care. If the lawyer is incorrect in his determination as to whether both clients could be adequately represented, it is critical to assess whether this should have been obvious from the commencement of the representation before actually continuing with representation of just one party. This paragraph was drafted based on the considerations noted in Restatement 132, comment (i).

If you have any questions about the issues involved in joint representation, or any information that you believe affects the likelihood that differences exist or will arise, please contact me at your earliest convenience. You should contact other counsel if you have decided that the advantages of joint representation do not outweigh the risks outlined above, or if you believe that further confidential analysis of your situation is warranted before agreeing to joint representation.

If you wish to proceed with joint representation on the terms stated above, please indicate your agreement below. Your consent also authorizes me to freely convey necessary information provided to me by one of you to (the other) (all of you), and that there will be no secrets as between you unless both of you expressly agree to the contrary.

Consent

I consent to the joint representation.

Signature lines