

ETHICAL COMPLIANCE QUESTIONNAIRE

A claimant has sued me. My insurer has reserved its rights to deny coverage and hired you to represent me. Since you are a lawyer, I need you to educate me. Please earn my trust by answering the following questions and please furnish me with complete explanations to all of your responses. You do not have my consent nor authority to represent me until you have complied with Rule 3-310.

	YES	NO
Will you explain to me the full implications of my insurer's reservation of rights to deny coverage and your joint representation of us?	<input type="checkbox"/>	<input type="checkbox"/>
Has a conflict of interest arisen which creates a duty on the part of my insurer to provide independent counsel to me?	<input type="checkbox"/>	<input type="checkbox"/>
Will you promptly solicit from the claimant an offer to settle within my policy limit?	<input type="checkbox"/>	<input type="checkbox"/>
If you do anything in handling the lawsuit or reveal any confidential information to my insurer that adversely affects by coverage, will you pay for my resulting loss?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "yes" to these four questions, please promptly return this email, and disregard the remainder of this Questionnaire.

If you answered "no" to any question, please promptly complete and return the remainder of this Questionnaire.

MY COVERAGE	YES	NO
Have you read the complaint, my policy, all reservation(s) of rights, and my insurer's responses to a Coverage Questionnaire?	<input type="checkbox"/>	<input type="checkbox"/>
Do all grounds upon which my insurer has reserved its rights to deny coverage have nothing to do with the issues being litigated in the liability dispute?	<input type="checkbox"/>	<input type="checkbox"/>
Does my insurer's reservation of rights create for you any potential or actual disqualifying conflict of interest?	<input type="checkbox"/>	<input type="checkbox"/>

CONFLICT OF INTEREST

Have you analyzed the relevant circumstances and the actual and reasonably foreseeable adverse consequences to me of my insurer's reservation of rights?	<input type="checkbox"/>	<input type="checkbox"/>
Would my insurer be affected substantially by resolution of the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>
Are you required to disclose to me potential conflicts of interest?	<input type="checkbox"/>	<input type="checkbox"/>
Do you promise to advise me regarding all settlement negotiations of the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>

CONFIDENTIALITY

Will you preserve my secrets and not disclose to my insurer privileged information relevant to coverage disputes?	<input type="checkbox"/>	<input type="checkbox"/>
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YOUR RELATIONSHIP WITH MY INSURER

Do you have an attorney-client relationship with my insurer?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been hired in your capacity as a lawyer to discharge my insurer's promise to defend me in the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>

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YOUR RELATIONSHIP WITH MY INSURER

YES NO

- Have you been hired to protect my insurer's interests in the lawsuit?
- Do you have a legal, business, financial, professional, or personal relationship with my insurer?
- Do you have duties to my insurer of undivided loyalty, disclosure, competent representation, and confidentiality?
- Will you allow my insurer to do anything to interfere with your independence of professional judgment or your anticipated client-lawyer relationship with me?
- Has my insurer disclosed to you any litigation guidelines?
- Has my insurer asked you to obtain its approval to incur expenses or do any work in the lawsuit?
- Will you accept compensation from my insurer to represent me?
- Do you represent my insurer in any matter separate from the lawsuit?

YOUR PROPOSED RELATIONSHIP WITH ME

- Have you been hired to protect my interests in the lawsuit?
- Do you have duties to me of undivided loyalty, disclosure, competent representation, and confidentiality?
- If I consent to your representation, will you follow my directions regarding the conduct of my defense?
- Are you required to have my consent and authority to represent me in the lawsuit?
- If you propose to limit the scope of your representation of me, do you need to obtain my informed written consent?

BUSINESS PRACTICES (standards adopted, implemented, or performed)

Does dependent counsel have a business practice to:

- Perform legal services with competence?
- Maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client?
- Render a full and fair disclosure to the client of all facts which materially affect his or her rights and interests?
- Protect a client in every possible way, devote one's entire energies to a client's interests and not assume any position adverse or antagonistic to a client, nor be required to choose between conflicting duties without the client's informed written consent?

When the insurer's reservation of rights may create a duty to provide independent counsel to me, does dependent counsel have a business practice to:

- Analyze whether an insurer's reservation of rights creates a duty for the insurer to provide independent counsel to the policyholder?
- Disclose to a policyholder and insurer all facts and circumstances to enable them to make intelligent decisions regarding continued representation?
- Claim that the scope of representation of the policyholder is limited to the defense of a liability claim without informed written consent?

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BUSINESS PRACTICES

YES NO

- Advise a policyholder that it would create a conflict of interest to become involved in a coverage contest between a liability insurer and its policyholder?
- Advise a policyholder to retain private counsel or consult the insurer's claims agent to analyze any coverage contest with a liability insurer?
- Advise a policyholder that an insurer's reservation of rights does not necessarily create a conflict of interest for dependent counsel to represent the policyholder, without making written disclosure of the lawyer's analysis?
- Advise a policyholder that dependent counsel does not have an attorney-client relationship with the insurer?
- Advise a policyholder that the tripartite relationship among insurer, counsel, and policyholder permits dual representation regardless of potential conflicts of interest?
- Advise a policyholder that rules of comparative fault may reduce cross-claims of damage without advising the policyholder that there is not setoff when cross-claims of damage are insured?
- Refuse to read the policy or the insurer's reservation of rights letter?
- Advise a policyholder that no conflict of interest exists that warrants that the insurer to provide independent counsel worth worrying about, without disclosing dependent counsel analysis?
- Disclose to a policyholder that the insurer's duty to provide independent counsel to the policyholder depends on whether the insurer's reservation of rights creates a disqualifying conflict of interest?
- Disclose to a policyholder that the *Cumis* case states that "Canons of Ethics impose upon lawyers hired by the insurer an obligation to explain to the insured and the insurer the full implications of joint representation in situations where the insurer has reserved its rights to deny coverage"?
- Accept compensation from an insurer for representing a policyholder and allowing the insurer to interfere with the lawyer's independence of professional judgment?
- Accept compensation from an insurer for representing a policyholder and allowing the insurer to interfere with the with the client-lawyer relationship between dependent counsel and the policyholder?

INFORMATION REQUEST

- All of your correspondence with my insurer regarding the lawsuit?
- All writings describing the terms of your engagement by my insurer?
- My insurer's litigation guidelines?
- The names of all cases and the total dollar amount paid by my insurer to you or your firm for each of the last three years?