

ETHICAL COMPLIANCE QUESTIONNAIRE

Definitions

“business practice” means a standard adopted or implemented, or a method, act, or practice as a lawyer performed with such frequency as to indicate a general business practice.

“claimant” means any person seeking damages from me.

“disqualifying conflict of interest” means that you may be required to make a choice that will necessarily hurt me and help the insurer but you have not obtained my informed written consent.

“I” and “me” means the person or entity you represent as a party in the lawsuit.

“independent counsel” means any attorney I select and direct to defend me in the lawsuit.

“insurer” means any entity that hired you to defend me in the lawsuit.

“lawsuit” means any civil proceeding in which any pleading has been filed against me.

“policy” means any contract of insurance issued by any insurer that has hired you to defend me.

“you” means any lawyer hired by any insurer to defend me in the lawsuit.

Please answer the following questions by checking the appropriate “Yes” or “No” box that most accurately responds to each question and furnish complete explanations to all of your responses. You do not have my consent nor authority to represent me until you have complied with Rule 1.7.

SETTLEMENT

YES NO

Will you promptly solicit from all claimants an offer to settle the lawsuit within my policy limit?

Do you promise to fully advise me regarding all negotiations to settle the lawsuit?

YOUR PROPOSED RELATIONSHIP WITH ME

Are you required to have my consent and authority to represent me in the lawsuit?

Do you have duties to me of undivided loyalty, disclosure, confidentiality, and competent representation?

Have you been hired by the insurer to protect my interests in the lawsuit?

Will you preserve my secrets and not disclose to the insurer privileged information relevant to any coverage disputes?

Will you follow my directions regarding the conduct of my defense?

Do you need to obtain my informed written consent to limit the scope of your representation of me?

YOUR RELATIONSHIP WITH THE INSURER

Do you have an attorney-client relationship with the insurer?

Do you have duties to the insurer of undivided loyalty, disclosure, confidentiality, and competent representation?

Have you been hired by the insurer to protect the insurer’s interests in the lawsuit?

Have you been hired in your capacity as a lawyer to discharge the insurer’s promise to defend me in the lawsuit?

Is your representation of the insurer directly adverse to me?

Is there is a significant risk your representation of me will be materially limited by your responsibilities to or relationships with the insurer or by your own interests?

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YOUR RELATIONSHIP WITH THE INSURER (con't)	YES	NO
Does your representation of me involve the insurer's assertion of a claim against me?	<input type="checkbox"/>	<input type="checkbox"/>
Will you allow the insurer to do anything to interfere with your independence of professional judgment or your anticipated client-lawyer relationship with me?	<input type="checkbox"/>	<input type="checkbox"/>
Has the insurer disclosed to you any litigation guidelines?	<input type="checkbox"/>	<input type="checkbox"/>
Has the insurer asked you to obtain its approval to incur expenses or to do work in the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>
Will you accept compensation from the insurer to represent me?	<input type="checkbox"/>	<input type="checkbox"/>
Do you represent the insurer regarding any matter separate from the lawsuit other than only as an indemnitor?	<input type="checkbox"/>	<input type="checkbox"/>

CONFLICTS OF INTEREST

Have you analyzed the complaint, my policy, all denials of and limitations on coverage, and the relevant circumstances and the material risks, including any actual and reasonably foreseeable adverse consequences to me of the insurer's claimed limitations of coverage?	<input type="checkbox"/>	<input type="checkbox"/>
Are you required to disclose to me potential conflicts of interest?	<input type="checkbox"/>	<input type="checkbox"/>
Will you explain to me the full implications of the insurer's reservation of rights to deny coverage and your joint representation of us?	<input type="checkbox"/>	<input type="checkbox"/>
Do all grounds upon which the insurer has reserved its rights to deny coverage have nothing to do with any issues in the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>
Does the insurer's coverage position create for you any potential or actual disqualifying conflict of interest?	<input type="checkbox"/>	<input type="checkbox"/>
Has any conflict of interest arisen which creates a duty on the part of the insurer to provide independent counsel to defend me in the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>
Would the insurer be affected substantially by resolution of the lawsuit?	<input type="checkbox"/>	<input type="checkbox"/>

BUSINESS PRACTICES

Do you have a business practice to:		
• Perform legal services with competence?	<input type="checkbox"/>	<input type="checkbox"/>
• Maintain inviolate the confidence, and at every peril to yourself to preserve the secrets of your clients?	<input type="checkbox"/>	<input type="checkbox"/>
• Render a full and fair disclosure to your clients of all facts which materially affect your clients' rights and interests?	<input type="checkbox"/>	<input type="checkbox"/>
• Protect your clients in every possible way, devote your entire energies to their interests, not assume any position adverse or antagonistic to them, nor be required to choose between conflicting duties without their informed written consent?	<input type="checkbox"/>	<input type="checkbox"/>

When an insurer's reservation of rights may create a duty to provide independent counsel to your policyholder/client, do you have a business practice to:		
• Analyze whether the complaint, the policy, and the insurer's coverage position creates a duty by the insurer to provide independent counsel to defend the policyholder?	<input type="checkbox"/>	<input type="checkbox"/>
• Disclose 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?	<input type="checkbox"/>	<input type="checkbox"/>

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BUSINESS PRACTICES (con't)

YES NO

- Disclose that the insurer's duty to provide independent counsel depends on whether the insurer's reservation of rights creates a disqualifying conflict of interest?
- Disclose that the insurer has a duty to provide independent counsel unless all bases of the insurer's reservation of rights are limited to grounds that have nothing to do with disputed issues in the lawsuit?
- Disclose all facts and circumstances to enable your clients to make intelligent decisions regarding whether to consent to your representation?
- Disclose that it would create a conflict of interest to comment on any coverage dispute between the insurer and your policyholder/client?
- Disclose that no disqualifying conflict of interest exists without making written disclosure of your analysis?
- Disclose that you have no attorney-client relationship with the insurer?
- Disclose that a tripartite relationship permits your dual representation regardless of existence of potential conflicts of interest?
- Disclose the substantive law of comparative fault without disclosing the law of setoff when cross-claims are insured?
- Advise the policyholder/client to retain another lawyer regarding any coverage dispute with the insurer and settlement?
- Attempt to limit the scope of your representation of the policyholder/client without the client's informed written consent?
- Accept compensation from the insurer to represent the policyholder without the policyholder/client's informed written consent?
- Accept compensation from the insurer while allowing it to interfere with your independence of professional judgment or your client-lawyer relationship with the policyholder?

INFORMATION REQUEST

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