

APPENDIX H

INTERMEDIARY LETTER TO BE SIGNED BY CLIENT (WRPC 2.2)

[Date]

Re:

Dear _____ and _____:

You have requested that I represent both of you in connection with [*formation of your corporation, preparation of a shareholders' agreement, etc.*]. Although it does appear to me that the matter can be resolved on terms compatible with each of your interests, the Washington Rules of Professional Conduct (WRPC) require me to consult with each of you to explain the implications of common representation and the advantages and risks involved. The Rules also require me to obtain your written consent to the common representation.

This letter summarizes my discussions with you regarding common representation. After reviewing this information once again, if you still wish me to act as an intermediary in the transaction, you should provide me with your written consent to proceed, by signing the enclosed copy of this letter which should be returned to me for my files.

I.

ADVANTAGES OF COMMON REPRESENTATION

The primary advantage of common representation in connection with [*formation of the corporation or preparation of applicable agreement*] is that you will probably save time and legal fees in having one lawyer prepare the documents. In preparing the documents, I will be acting, in effect, as an intermediary. I will attempt to advise each of you about your options and will assist each of you in seeking a common ground of agreement rather than pressing fully a position that might be advantageous only to one party. Because you are seeking to establish a business relationship on an amicable and mutually advantageous basis, you may find that having one lawyer will enhance the likelihood of efficiently establishing the terms of this relationship.

[*List any other advantages of common representation, describing such matters as the lawyer's familiarity with one or more of the parties, the fact that the lawyer will be acting primarily as a scrivener if the parties intend to negotiate, and are capable of negotiating, material terms of the business relationship without the lawyer's assistance, etc.*]

APPENDIX H

II. RISKS OF COMMON REPRESENTATION

A. GENERAL.

You have told me that there do not appear to be any substantial differences of opinion [*between/among*] you regarding major legal issues involved in preparation of the documents. In the capacity of an intermediary, I may, however, unintentionally fail to advise one of you of a risk or possible benefit that is peculiar to your own situation. [*Describe how each client's interest may differ in the context of the applicable situation.*]

There are a multitude of alternative provisions that you may include in these documents. As an intermediary in preparing them, I will do my best to advise you, fairly and in an evenhanded fashion, of the key options that you have, and I will assist you in reaching a common ground for agreement on each issue. But our focus on the achievement of this common ground necessarily detracts from advancement of the position of any one party to the relative detriment of the other.

B. EACH OF YOU CAN REQUIRE US TO WITHDRAW AT ANY TIME.

Another risk of common representation is that I will be forced to withdraw from further representation if either of you requests me to withdraw for any reason, or if I determine at any time during my representation that: (1) I cannot resolve issues [*between/among*] you on terms compatible with each of your best interests; (2) I believe that one of you is unable to make adequately informed decisions regarding your representation; (3) the failure to complete negotiation of the agreement will materially prejudice the interest of one of you; or (4) for any other reason I conclude that I cannot continue to represent you impartially or without improper effect on my responsibilities to one of you. In any event, you would be responsible for payment of all our accrued legal fees and any outstanding expenses I have advanced on your behalf.

C. NO MATERIAL LIKELIHOOD OF OUR REPRESENTING EITHER PARTY IN FUTURE DISPUTES.

It is unlikely I could represent either of you should a subsequent dispute arise regarding the documents that I have prepared on your behalf. In the event of a dispute, all parties would therefore have to incur the additional expense of engaging new counsel. If that should occur, the attorney-client privilege with respect to communications between either of you and members of our law firm in connection with the subject matter of the dispute would be waived as to the other party.

D. LIMITATION ON CONFIDENTIALITY WITH RESPECT TO JOINT REPRESENTATION.

I do not believe I can effectively represent each of you if information disclosed to me by one of you in connection with [*formation of the corporation or preparation of applicable documents*] may not be disclosed by me to the other. If at any time one of you discloses to me any information in confidence which, in my opinion, would be material to decisions that might be reached by the other party, I may be forced to withdraw from representation of [*both/all*] of you.

E. OTHER.

[List any other material risks or appropriate disclosures, such as the possibility of disparity in the parties' negotiating positions, i.e., minority shareholders versus majority shareholder, or other factors which may affect the lawyer's duty of loyalty to any party. Disclosures should include the fact that the lawyer has represented one party longer than the other, the fact that one of the parties is paying the lawyer's fee, or any other fact that might cause the lawyer's clients to question the ability of the lawyer to act in the best interests of the parties.]

**III.
SUMMARY**

Obviously, at any time throughout work on this matter, one or more of you may choose to seek independent counsel. If any party becomes uncomfortable with my representation, I understand that this resort to other counsel both should and will be made. I also recommend that you review this matter with another lawyer before reaching a decision, but you are not obligated to do so if you do not wish to.

I would be more than pleased to discuss further any of the foregoing issues with you. If you consent to my representation of each of you in connection with preparation of [*the shareholders' agreement or formation of your corporation*], please sign the enclosed copy of this letter and return it to us for our files.

If I am authorized to represent both of you, my general billing arrangement after [_____] will be charged [*describe billing arrangement, such as 50 percent to each client*].

Very truly yours,

CONSENTED TO this _____ day of _____, 20__.

[name of client #1]

CONSENTED TO this _____ day of _____, 20__.

[name of client #2]

[See Appendix F if you seek to confirm an oral consent in writing.]

