

APPENDIX I

FORMER CLIENT'S CONSENT TO REPRESENTATION UNDER WRPC 1.9

Re:

Dear _____:

[*New client*] wishes to engage our law firm to [*description of transaction that creates WRPC 1.9 potential conflict*].

Our firm previously represented you with regard to [*similar matters or the same matter or a substantially related matter*]. Because of the potentially conflicting interests between you and [*new client*], the Washington Rules of Professional Conduct (WRPC) require us to consult with you to explain the implications of these potential conflicts and to obtain your written consent after consultation and a full disclosure of the material facts.

This letter confirms the subject matter of our consultation with you and the conclusions we reached. It also provides the means for you to give your written consent to our representation.

1. Not the Same or Substantially Related Matters. [*Optional paragraph; use only if applicable*]

With the authorization of [*new client*], we disclose to you that our representation of [*new client*] would involve [*summarize material facts*]. Based upon these facts, in our view the subject matter of our previous work for you and the engagement proposed by [*new client*] are not the same or substantially related. In these circumstances, WRPC 1.9 and its consultation and consent requirements technically do not apply. However, because of the sensitive nature of this situation, and our desire to avoid any misunderstanding about our role, we will proceed as if WRPC 1.9 did apply. We will not accept the representation unless you agree that the matters are not the same or substantially related and you consent to our representation of [*new client*] in writing.

2. No Material Adversity. [*Optional paragraph; use only if applicable*]

Although our representation of [*new client*] would involve a matter that is the same or is substantially related to the subject matter of our previous representation of you, we do not consider your interests to be materially adverse. With [*new client's*] authorization, we disclosed the following material facts to you during our consultation:

[*Summarize the material facts disclosed.*]

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On the basis of these facts, the work [*new client*] wishes us to perform poses no material risk of prejudice to your interests. [*Elaborate how the representation does not involve materially adverse interests.*]

3. Interests Are Materially Adverse But Consent to Representation Requested. [*Optional paragraph; use only if applicable*]

With the authorization of [*new client*] we disclosed the following material facts to you during our consultation:

[*Summarize the material facts disclosed.*]

We believe the proper test in these situations is whether our advocacy or advancement of the interests of [*new client*] will prejudice or in some way be harmful to your interests. During our consultation, we reviewed the several reasons why we do not believe this new engagement with [*new client*] would compromise your interests. [*Summarize reasons, including risk (if any) of disclosure of former client's confidences and secrets.*] However, as we told you at the time, you need to review this matter yourself and we will not proceed unless you reach the same conclusion and indicate your consent in writing on the signature line at the end of this letter. I recommend that you consult other counsel prior to reaching a decision, but you are not obligated to do so if you do not wish to.

Please contact us if you require any further information to analyze the issues discussed in this letter. If, on the other hand, you wish to consent to our representation of [*new client*], please indicate by signing the consent below.

Very truly yours,

CONSENTED TO this _____ day of _____, 20____.

[*name of client*]