

Practice Resource

The joint retainer letter is still in DRAFT form but can be used presently (November 2013) to comply with rules 3.4-5 to 3.4-9 of the Code of Professional Conduct. Please check the website for updates in 2014/2015.

1. Joint Retainer – Acting for two or more Clients

[[Rules](#) 3.4-5 to 3.4-9 of the Code of Professional Conduct]. Any letter must be tailored to individual circumstances.

Dear Client A and Client B (*a separate letter to each client is required*):

Re: [Matter]

We confirm that we agree to act for both of you jointly with respect to this matter. Representing you jointly simply means that we will be engaged by both of you to act on the same matter at the same time. We are allowed to act jointly for clients only when their interests are not in conflict. We believe your interests are currently not in conflict; however, it is possible that your interests could diverge or even conflict in the future.

The rules of the Code of Professional Conduct for British Columbia require that, before we represent you jointly, we must raise certain issues with you and obtain your consent as to the course to be followed in the future if a conflict arises. The following will apply to our joint representation of you:

(a) We owe each of you a duty of undivided loyalty. This means that we must act in each of your best interests at all times and must not favour the interests of one of you over the interests of another, or allow anything to interfere with our loyalty to each of you or our judgement on your behalf. If we are unable to fulfill this duty of undivided loyalty to each of you, we will have to withdraw.

(b) No information we receive from one of you or from any other source with respect to this matter can be treated as confidential from either of you. This means that, as long as the joint retainer continues, we must disclose relevant information to both of you. However, should we receive information from any source that makes it clear we are in a conflict by acting for you jointly, or if a contentious issue arises between you, we must cease acting for both of you in the matter unless the conflict/contentious issue is resolved. [*if applicable also insert, “or the circumstances of a permitted continuing relationship apply as set in paragraph (g)”*]. In the event

the conflict/contentious issue is not resolved, however, we would not be permitted to disclose the confidential information to you.

[Lawyer when drafting letter must choose either (c) or (d) following, as applicable]

(c) If we currently act for one of you in a matter separate from this one *[if you are currently acting, you must receive the prior consent of the current client to disclose the fact of the representation itself]*, and we receive confidential information from that separate matter that is relevant to this matter, we will have to withdraw from this matter unless we receive the consent of the client in the separate matter to disclose that information.

or substitute the following for (c)

(d) We wish to advise Client A that we have acted for and will continue to act for Client B on a continuing relationship basis *[you must receive the prior consent of Client B to disclose the fact of the continuing relationship itself]*. We recommend that Client A obtain independent legal advice on the issue of us acting for both of you on a joint retainer given our continuing relationship with Client B. If we receive confidential information because of our continuing relationship with B that is relevant to this matter, we will have to withdraw from this matter unless we receive the consent of client B to disclose that information.

(e) If a conflict/contentious issue arises between you, you have the option to settle the conflict/contentious issue by direct negotiation with one another, or if you both agree that you wish us to assist you in attempting to resolve an issue we may decide to do so, as long as the issue in our view falls short of an actual conflict/contentious issue between you. If a conflict/contentious issue is resolved by direct negotiation between you, or if an issue short of an actual conflict/contentious issue is resolved with or without our assistance, we may then continue to represent both of you.

[Lawyer when drafting letter must choose either (f) or (g) following]

(f) If a conflict/contentious issue arises between you that is not resolved, then we will cease to represent both of you and we will refer you to other lawyers.

or substitute the following for (f)

(g) If a conflict/contentious issue arises between you and that conflict/contentious issue is not resolved, and if at the time of the issue arising both of you agree to these proposed terms, we will cease to act for Client A and will refer Client A to another lawyer, but we will continue to act for Client B with respect to the conflict/contentious issue. *[State reasons why lawyer would continue to act for client B. For example, after receiving the prior consent of Client B to disclose the continuing relationship: “We confirm that Client B is a continuing client of this firm and is regularly represented by lawyers in this firm on different matters.”]*.

Although joint representation of a number of clients by a single lawyer or law firm has some advantages, there are aspects of joint representation that could lead to the potential problems we have outlined above. For that reason, we ask that you consent to the potential course of action we have outlined before we commence acting for both of you jointly. We recommend that you each obtain independent legal advice before you give us that consent.

If you are satisfied that you wish us to continue to act for you on the basis outlined above, please sign the enclosed duplicate copy of this letter and return it to us.

Yours very truly,