

NOTE: This material is intended as only an example, which you may use in developing your own form. It is not considered legal advice and as always, you will need to do your own research to make your own conclusions with regard to the laws and ethical opinions of your jurisdiction. In no event will ISBA Mutual Insurance Company be liable for any direct, indirect, or consequential damages resulting from the use of this material.

Non-Engagement Letter: Conflict of Interest

VIA REGULAR MAIL, CERTIFIED MAIL¹ RETURN RECEIPT REQUESTED,
AND VIA ELECTRONIC MAIL

[Name]
[Address]

RE: Declination of Representation

Dear **[Name]**:

You contacted our firm **[last week]**² and requested that we represent you in the **[describe case/matter]**. Although we did not discuss the particulars of your legal matters, our review has revealed that we have a possible conflict of interest. We appreciate the confidence you have expressed in our firm; however, because it does not appear that the ethical rules will permit an engagement under these circumstances, we must decline to represent you. **[Enclosed herewith are the documents that you provided to us for review. We have not kept any copies thereof.]**³

In declining to accept your matter, the firm is not expressing an opinion as to the merits **[or value]** of such matter. You should be aware that any advice provided during our consultation were based on a preliminary understanding of the pertinent facts and were not based on a thorough legal analysis.

[It appears that your legal matter is time-sensitive. This means that the failure to take prompt legal action may result in your legal matter being barred by a time limit.]⁴ In order

¹ If the firm is returning documents to the individual or entity seeking representation, or if the statute of limitations is fast approaching, it is recommended that the firm send the letter by certified mail. Because the certified letter may not be accepted by the intended recipient, it should be sent via regular mail, as well. If the individual or entity seeking representation has an email address, the declination letter should be sent via email as well as via regular mail and, under the aforementioned circumstances, via certified mail.

² The nonengagement letter should be sent within a reasonable time after the engagement is first sought, especially if the legal matter for which representation is sought involves time-sensitive matters, such as a statute of limitations.

³ Preferably, the proposed client will not have provided any documentation to the lawyer, as documentation should be obtained only after a conflict-check has been run and a determination that no conflict exists has been made.

⁴ As a general rule, lawyers should not specify the exact date on which they believe a statute of limitations period will expire or even the length of the statute of limitations (i.e., one year, two years). This is because lawyers who are declining a case may not have all of the information necessary to establish either the correct date or the statute of limitations that applies to the matter. Case law

to preserve your rights, I strongly recommend that you contact another lawyer regarding this matter immediately.] [Although your legal matter may not be time-sensitive, I recommend that you contact another lawyer promptly should you wish to pursue the matter.]

suggests that a lawyer who states an incorrect limitations period or date in his nonengagement letter may be held liable for providing negligent advice if the nonclient relies on that advice to her detriment.