

## NONENGAGEMENT LETTERS

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Nonengagement Letter – Retainer Needed

In a nonengagement letter, a lawyer documents that the lawyer has not accepted the case and clarifies for the prospective client that the lawyer will not be representing him or her. Under the “reasonable expectations” test for lawyer-client relationships, it is easy for a lawyer-client relationship to be formed. A lawyer who wishes to avoid malpractice claims and ethical complaints should send a clear and concise nonengagement letter to all prospective clients.

The following letters are sample forms only. Use of these letters will help to establish clear expectations and avoid misunderstandings between you and your prospective client. They will not, however, provide absolute protection against a malpractice action.

## IMPORTANT NOTICES

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**NONENGAGEMENT LETTER 1**  
**DECLINING CASE AFTER RESEARCH OR INVESTIGATION**

*(Sample – Modify as appropriate)*

*(May be sent by certified mail, return receipt requested)*

Re: [Subject]

Dear [Name]:

As discussed in my letter of [date], we conducted [legal research/ an investigation] to determine whether you have a claim that could be asserted against [insert appropriate name]. The results of our [research/investigation] indicate that there is no enforceable legal basis for maintaining an action against [insert appropriate name].

Our opinion is based on our preliminary research. However, we have found [insert number of cases] cases that support our conclusion.

We urge you to consult another lawyer if you wish to have a second opinion. Time limitations may affect your rights to pursue a claim, so you should act promptly in consulting another lawyer or otherwise pursuing your claim. If you wish another attorney to review this matter and you do not have another attorney in mind, we suggest you call the Oregon State Bar Lawyer Referral Service, 503-684-3763 or 1-800-452-7636.

Since we are unable to proceed on your behalf, we are returning your original documents to you. I have included a copy of this letter for you to review, sign, and return to me.

Thank you for your interest in our firm. If you need legal assistance in the future, we hope you will consider our firm. If you have any questions, please feel free to call.

Very truly yours,

[Attorney]  
[Firm]

I have read this letter, understand it, and agree with it.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Date]

Enclosure

*[NOTE: If you decide to decline representation after research or investigation, you should protect yourself and your client by (1) promptly advising the client in writing of your decision not to take the case or matter; (2) informing the client of his or her right to contact another lawyer for a second opinion; and (3) informing the client that time lines may bar a claim and that his or her prompt attention is required. Disengagement and nonengagement letters are especially critical when a lawyer decides not to continue past a specific stage in the case. In some instances you may want the client to sign an acknowledgment of nonengagement.]*

**NONENGAGEMENT LETTER 2  
AFTER REVIEW**

***(Sample – Modify as appropriate)***

*(May be sent by certified mail, return receipt requested)*

Re: [Subject]

Dear [Name]:

You have contacted this firm and requested that we evaluate whether we will represent you in a claim you wish to make against [insert appropriate name]. I met with you yesterday and have reviewed various documents you left with me. I enclose those documents for your file.

We are unable to represent you in this matter because [provide a brief explanation of why you cannot represent this client]. We appreciate being given the opportunity to review this matter and hope that you will consider our firm again in the future.

The passage of time may bar you from pursuing whatever claim, if any, you may have against [insert appropriate name]. Because time is always important, and could be critically short in your case, we recommend that you immediately contact another attorney for assistance if you wish to pursue your claim. If you do not have another attorney in mind, we suggest you call the Oregon State Bar Lawyer Referral Service, 503-684-3763 or 1-800-452-7636.

In declining to take this case, our firm is not expressing an opinion on whether you will prevail if a complaint is filed. We encourage you to seek a second opinion if you wish to do so. You should not refrain from seeking legal assistance from another attorney because we are unable to represent you in this matter.

We are not charging you for any legal fees or expenses. Our policy is to charge for evaluating cases only when we express an opinion on the merits of the case to the client. Since we are not expressing an opinion about your case, we are not charging you. I have included a copy of this letter for you to review, sign, and return to me.

Thank you again for the opportunity to meet you and review your case. If you have any questions about this letter or any other issues, please contact us.

Very truly yours,

[Attorney]

[Firm]

I have read this letter, understand it, and agree with it.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Date]

Enclosure

*[NOTE: If you decide to decline representation after reviewing the matter, you should protect yourself and your client by (1) promptly advising the client in writing of your decision not to take the case or matter; (2) informing the client of his or her right to contact another lawyer for a second opinion; and (3) informing the client that time lines may bar a claim and that his or her prompt attention is required. Disengagement and nonengagement letters are especially critical when a lawyer decides not to continue past a specific stage in the case. In some instances you may want the client to sign an acknowledgment of nonengagement.]*

**NONENGAGEMENT LETTER 3**  
**AWAITING FURTHER INSTRUCTIONS**  
**(Sample – Modify as appropriate)**  
*(May be sent by certified mail, return receipt requested)*

Re: [Subject]

Dear [Name]:

This letter confirms our discussion regarding [subject matter] on [date]. I advised you [insert advice given].

At this time, you have not decided whether you wish to proceed further in this matter. I will not be representing you until you advise me that you wish to proceed and you send me the following documents: [insert needed documents]. Please note that time limits may apply to your claim. If you wish to proceed with your claim, it is important to act immediately.

If I have not heard from you within [30, 45] days, I will assume you do not wish to proceed and I will close my file.

Very truly yours,

[Attorney]  
[Firm]

**NONENGAGEMENT LETTER 4**  
**CONFIRMING CONVERSATION REGARDING NONREPRESENTATION**  
**(Sample — Modify as appropriate)**  
*(May be sent by certified mail, return receipt requested)*

Re: [Subject]

Dear [Name]:

The purpose of this letter is to confirm, based on our conversation of [date], that [firm name] will not represent you in [describe matter] because [insert reason for declination if possible and appropriate to state it]. Our decision to decline this case should not be taken as a statement of the merits of your case.

You should be aware that any action in this matter must be filed within the applicable statute of limitations. I strongly recommend that you consult with another lawyer concerning your rights in this matter. If you do not have another lawyer in mind, we suggest you call the Oregon State Bar Lawyer Referral Service, 503-684-3763 or, toll-free in Oregon, 1-800-452-7636.

Very truly yours,

[Attorney]  
[Firm]

COMMENT: This form was adapted and reprinted with permission from the *ABA Desk Guide to Legal Malpractice*, published by the American Bar Association Standing Committee on Lawyers' Professional Liability.

**NONENGAGEMENT LETTER 5**  
**NOT MONITORING CHANGES**  
**(Sample – Modify as appropriate)**  
*(May be sent by certified mail, return receipt requested)*

Re: [Subject]

Dear [Name]:

This letter is to confirm that this firm will not represent you in the [subject] matter. Please note that because we are not currently representing you on any matter, we will not be able to monitor changes in the law or your circumstances that may affect the strength of your case.

Important time limits [could be] [are] involved. We have not researched these time limits and we are unable to advise you on the applicable time limits. We urge you to contact another lawyer immediately if you wish to have this advice. If you do not proceed promptly, your legal matter may be barred by a time limit.

If you wish to have a lawyer represent you and you do not have another lawyer in mind, we suggest you call the Oregon State Bar Lawyer Referral Service (LRS) at 503-684-3763 or 1-800-452-7636. The LRS maintains a list of lawyers who may be able to handle your case.

Thank you for contacting our law firm. [Optional: We hope we can serve you in the future.]

Very truly yours,

[Attorney]  
[Firm]

**NONENGAGEMENT LETTER 6**  
**RETAINER NEEDED**  
*(Sample – Modify as appropriate)*

Re: [Subject]

Dear [Name]:

Thank you for consulting our law firm to discuss *[insert type of problem]*.

Until we have a signed fee agreement *[or engagement letter]* along with the required retainer of *[enter dollar amount]*, we do not represent you and will not begin any work on your case. **[If applicable, explain time limits that are involved in the case and how legal rights may be jeopardized if the case is not properly pursued.]** We will do nothing further until we hear from you. We do not represent you on your legal matter at this time. We are happy to provide representation when we receive the funds referred to above.

When you deposit the funds, we will hold your funds in our Lawyer Trust Account. We will provide you with a monthly statement of fees, costs, and expenses. After we mail you the monthly statement, we will apply the funds in trust to fees earned, costs, and expenses incurred. You are also responsible for paying fees, costs and expenses in excess of the funds held in trust.

I have included a copy of this letter for you to review, sign, and return to me. If you have any questions, please call me.

Very truly yours,

[Attorney]  
[Firm]

I have read this letter, understand it, and agree with it.

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Date]

Enclosure