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## **Blanket Waivers: A Very Useful Practice Management Tool**

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“Blanket” waivers are a very useful way to help manage conflicts in your practice. They offer a way to take on a discrete project for a client without affecting your ability to be adverse to that client on other unrelated matters in the future.

Let’s start with an example: You regularly represent developers in land use matters against a city. The city has a specialized appeal that it would like you to handle. The work sounds interesting, but you are wary that if you take on the appeal for the city you will be “conflicted out” of your regular work for developers. A blanket waiver could be your answer.

In our example, the concern about being “conflicted out” is real. Like any other current client, the city would be able to prevent you from taking on work for other clients adverse to it even on unrelated matters. During the time that you were handling the specialized appeal for the city, you could seek waivers from it for each new matter that one of your developer clients had adverse to it. But, there would be no assurance in advance that the city would grant these individual waivers. Therefore, your land use practice for developers would be at risk by taking on the specialized appeal for the city.

With a blanket waiver, however, you would have the advance assurance that you wouldn’t be putting your developer practice at risk by taking on the

discrete project for the city. A blanket waiver would make your representation of the city contingent on it agreeing in advance to waive all future conflicts on unrelated matters. In that way, you could handle the single matter for the city while still opposing it in the future on unrelated work for your developer clients. At the same time, the city might well be very receptive to this arrangement because it gives the city access to a broader spectrum of potential counsel for specialized projects.

The Oregon State Bar approved the use of blanket waivers in Legal Ethics Opinion 1991-122, which is available on the Bar's web site at [www.osbar.org/2practice/ethics/Data/1991-122.pdf](http://www.osbar.org/2practice/ethics/Data/1991-122.pdf). The Bar's web site also has a sample blanket waiver at [www.osbar.org/2practice/bulletin/02jun/letter6.pdf](http://www.osbar.org/2practice/bulletin/02jun/letter6.pdf).

There are a few caveats with blanket waivers.

First, as with any multiple client conflict, you need to obtain consent from both the client you are opposing and the one you are representing. A blanket waiver takes care of the first part of this equation, but you would still need to secure a waiver from the client you are representing. In our example, the blanket waiver would mean you wouldn't have to go back to the city again, but you would need to obtain waivers from your developer clients as you took on new matters adverse to the city.

Second, a blanket waiver only works when the conflict itself is waivable. Here in Oregon, nonwaivable conflicts are called "actual" conflicts and arise if a

lawyer would effectively be on both sides of the same matter for opposing clients. In our example, you couldn't use a blanket waiver if the specialized appeal for the city involved the same matter you were handling for one of your developer clients.

Finally, blanket waivers are best used with relatively sophisticated clients. Because you will be relying on the waiver later in ways that you cannot completely predict at the time that it is executed, you will want be able to point to the sophistication of the client granting that waiver if any issues arise later. For a recent case illustrating how even a sophisticated client had second thoughts about a blanket waiver in the heat of a latter battle, see *VISA U.S.A., Inc. v. First Data Corp.*, 241 F Supp 2d 1100 (ND Cal 2003). In enforcing the blanket waiver there, the court relied heavily on the fact that the party granting the waiver knew what it was doing.

Although there are some caveats, blanket waivers offer lawyers—and their clients—a very useful way to manage conflicts.

## **ABOUT THE AUTHOR**

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