

# Lawyers' Responses to Audit Letters: Law, Practice, and A Few Tips

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## SUMMARY OF PRESENTATION

AUDITING STANDARDS

ABA STATEMENT OF POLICY—AUDIT LETTERS

AUDIT LETTER PROCESS

1. CITY LETTER REQUESTING LAWYER'S RESPONSE TO AUDITOR
2. CLAIMS AND LITIGATION MATTERS THAT MUST BE ADDRESSED IN THE AUDIT LETTER
3. PREPARATION OF THE AUDIT LETTER
4. IS THE AUDIT LETTER PROTECTED AGAINST DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT PRIVILEGE?

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## AUDIT INQUIRY LETTER REQUESTING RESPONSE TO AUDITOR

Client consent to response

Matters in which the lawyer and the lawyer's law firm have engaged and "devoted substantial attention."

Claims threshold

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## CLAIMS AND LITIGATION MATTERS THAT MUST BE ADDRESSED IN THE AUDIT LETTER

### Litigation

Personal injury and property damage  
Writs of Mandate and Injunctions

### Claims

Government Claims Act  
Exceptions to Government Claims Act  
Disputes

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## CLAIMS AND LITIGATION MATTERS THAT MUST BE ADDRESSED IN THE AUDIT LETTER (cont'd)

### Unasserted Claims

No obligation to report unless directed by client

Obligation to discuss with client and confirm obligation to auditor

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## PREPARATION OF THE AUDIT LETTER

For each claim or litigation matter, the Auditor will request the lawyer's response include:

1. A description of the nature of each matter,
2. The progress of each matter to date,
3. how the city has responded or intends to respond (for example, to contest the case vigorously or to seek an out-of-court settlement), and
4. An evaluation of the likelihood of an unfavorable outcome and an estimate, if one can be made, of the amount or range of potential loss.

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## PREPARATION OF THE AUDIT LETTER (con't)

**Sample language** for description of personal injury litigation:

“The complaint alleges that a city sidewalk had a three-inch offset, causing the plaintiff to fall and suffer a broken shoulder, broken arm and concussion. The complaint alleges the plaintiff will incur future medical expenses, partial loss of use of arm, present and future loss earnings.”

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## PREPARATION OF THE AUDIT LETTER (con't)

**Sample language** describing progress of case and how the city has responded or intends to respond to the case:

“The parties are engaged in extensive discovery concerning issues of liability and damages. In addition, the city has authorized the retention of expert medical witnesses to evaluate the plaintiff’s allegations of personal injuries and the future treatment of these injuries. City has also authorized an economist to evaluate plaintiff’s allegation of loss of earnings and future loss of earnings. Once discovery is completed, the court is likely to order the parties to mediation.”

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## PREPARATION OF THE AUDIT LETTER (con't)

**Sample language** providing a qualified deferral of the evaluation of liability and potential damages:

“Until such time as discovery is complete and the reports of medical and economic experts have been evaluated, we are not able to develop a position for the city to assert in mediation. The city will continue to vigorously defend its interests in the case.”

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## IS THE AUDIT LETTER PROTECTED AGAINST DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT PRIVILEGE?

California Law

Federal Law

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