

A NOTE ABOUT JOINT REPRESENTATION OF MULTIPLE CLIENTS

Conflicts waivers of all types can be challenging to write because they must be fact specific. Therefore, generic sample forms are difficult to come by; and yes, this does mean that a client's signature on a standardized generic form should never be viewed as sufficient documentation that you have obtained your client's informed consent.

To document that you have obtained consent to any conflict of interest, you must thoroughly discuss and document in writing every specific issue that is causing the conflict. You must also delineate any potential adverse consequences that might arise should the clients agree to move forward with the conflict in play. Also include a statement that encourages your clients to seek outside advice as to the advisability of agreeing to waive any conflicts.

Finally, if there is a real possibility that conflicts might arise down the road or are present at the outset, be sure to give your clients adequate time to decide if they wish to seek outside advice before you have them sign a conflict waiver.

SAMPLE JOINT REPRESENTATION CONFLICT WAIVER

[Client A] and [Client B] have asked us to jointly represent them in connection with [full description of the scope of representation]. Given that neither they nor we have as of yet detected a basis for a conflict, we would be pleased to agree to do so subject to the following understandings.

Although the interests of both of you in this matter are generally consistent, you both acknowledge that you recognize and understand that differences may exist or become evident during the course of our representation. Notwithstanding these possibilities, the two of you have determined that it is in your individual and mutual interests to have a single law firm represent you jointly in connection with this matter.

Potential conflicts of interest that might arise include but are not limited to: [Use "Murphy's Law" to discern and describe all reasonably foreseeable ramifications to each client by their agreeing to joint representation]. In addition, it is possible that a circumstance could arise whereby our continuing with our joint representation could not occur without it adversely affecting one of you. Should this happen, we will be forced to terminate our representation of you both and it will be necessary for each of you to hire your own independent lawyers. In light of this possibility, we would recommend that you both seek independent legal advice to determine if it is in your best interest to consent to joint representation. However, whether you do so is up to you.

Accordingly, this confirms your mutual agreement to have us represent you jointly in connection with the above-described matter. This will also confirm that you both have each agreed to waive any conflict of interest arising out of, and that you will not object to, our representation of each of you in the matter described above. Therefore, you hereby state that you prefer that

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[Lawyer/Law Firm] jointly represent you in this matter and that you refuse to exercise your right to hire independent lawyers.

Finally, know that anything either of you shares with us will not be held in confidence from the other as we will have a legal and ethical duty to tell the other anything either one of you tells us in confidence; but only if it has any relevancy at all to any of the legal issues at hand. In fact, failure to reveal such information to the other would be a violation of the joint attorney-client relationship. In other words, your conversations with us are not privileged as between the two of you. If you want independent advice or wish to be able to discuss matters in complete privacy, you both will need separate counsel.

If you need to discuss the terms of this agreement or any related issues, please contact us at your earliest convenience. If you have no questions and also agree that the foregoing accurately reflects your understanding, please sign and return the enclosed copy of this agreement.

[Signatures]:

[Name]

[Date]

[Name]

[Date]

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