

Sample Conflict Waiver - Estate Planning

{Date}

Re:

Dear _____,

As I indicated in our initial consultation, the estate planning process often involves the joint representation of both husband and wife. However, I also advised you that in certain circumstances, it might be necessary or desirable for each spouse to obtain separate legal counsel in creating and implementing each of their estate plans. This may be appropriate in cases where there are children of prior marriages, where separate property of one or both spouses constitutes a sizable portion of the estate, when spouses differ in the intended dispositions of their estates, or any number of other possible scenarios. Furthermore, certain estate planning techniques may be beneficial to the estate of the husband and wife as a whole, while at the same time adversely affect or limit the potential future use and disposition of estate assets by either or both spouses.

With this in mind, it is my ethical duty to inform you of the possibility that conflicts of interest may now exist or may come to exist at some time in the future as to your estate plans. In order to proceed with the planning process, it is necessary for me to obtain your written consent to represent both of you in implementing your plans.

If you choose to have me represent you jointly, then I will be under the legal duty to immediately tell the other spouse anything that one of you later tells me in confidence that relates to your estate planning. Failure to reveal such information to the other spouse would be a violation of the joint attorney-client relationship. In other words, your conversations with me are not privileged as between the two of you even though they are privileged as against everyone else.

Further, I am only allowed to represent both of you if I am able to act to the best of my ability on behalf of each of you. If a disagreement as to how your estates should be structured arises between the two of you, it is likely that I will not be able to continue to represent either of you and would, in fact, be forced to resign.

In our initial consultation, each of you indicated that you would like me to represent you jointly. This written explanation is designed to make certain that each of you fully understands the duties imposed by such joint representation. In order that the file can reflect this, and assuming that neither of you wishes to change your mind, I am asking each of you to take a day or so to think over the contents of this letter. If you still agree to my joint representation, please sign the enclosed documents and return them to me. Be advised that I will not begin drafting any documents relative to your estate unless and



until I receive the signed waivers from both of you. Finally, I would recommend that you each consider consulting with separate counsel if either of you have any hesitation about deciding whether to consent to joint representation.

If you have additional questions or concerns about these matters, I would be happy to consult with you as necessary.

Sincerely,

Enclosures

CONSENT TO JOINT REPRESENTATION BY HUSBAND

I hereby agree, and reconfirm my previous decision, to have _____ represent my wife and me jointly with regard to our estate plan. While everything that either one of us reveals to our attorney is to be kept in strict confidence as to others, I hereby authorize and direct our attorney to tell my wife anything that I reveal to our attorney about my estate plan while we are married, even information that I reveal to our attorney outside of my wife's presence. I understand that my wife will be giving our attorney the same authorization and direction.

[Husband's Name]

[Dated]

CONSENT TO JOINT REPRESENTATION BY WIFE

I hereby agree, and reconfirm my previous decision, to have _____ represent my husband and me jointly with regard to our estate plan. While everything that either one of us reveals to our attorney is to be kept in strict confidence as to others, I hereby authorize and direct our attorney to tell my husband anything that I reveal to our attorney about my estate plan while we are married, even information that I reveal to our attorney outside of my husband's presence. I understand that my husband will be giving our attorney the same authorization and direction.

[Wife's Name]

[Dated]

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 **ALPS** be liable for any direct, indirect, or consequential damages resulting from the use of this material.