



## Sample Conflict Waiver - Small Business Formation

{Date}

Dear Ms. Jones and Ms. Smith,

Given that the two of you have asked me to represent the both of you, in addition to your proposed new [Partnership/LLC/Corporation] StartUp, I have an ethical duty to discuss the matter of potential conflicts of interest before I begin to work on your behalf. The reason that I must do so is that our state's rules of professional conduct for lawyers place limits upon any lawyer's ability to represent clients whose interest do or may conflict and this is the situation here. The purpose of this notice is to make certain that our relationship starts out on the right foot by seeing that you are fully informed of what I am allowed and not allowed to do under our rules.

During our initial discussion, both of you shared that you believe you have resolved all the major potential points of contention between the two of you regarding the creation and operation of StartUp. Based upon this initial discussion, it does appear that you have agreed upon many of the issues including [set forth what has been agreed upon such as the compensation plan, contributions, division of stock, etc.].

Nevertheless, it is possible that as the necessary documents begin to take their final form one or both of you may decide to change your mind with respect to one or more of the resolved issues. It is also possible that disagreements may arise that yet remain unidentified. For example, [List examples. Perhaps voting rights, dissolution issues, or buyout concerns have yet to be resolved].

If such disagreements do arise, know that I will be unable to, and would in fact be prohibited from, advocating the interests of either one of you against the other. The most that I could do would be to set forth possible alternatives and highlight the general pros and cons to each of you individually. I would then need to urge both of you to seek separate and independent counsel in order to assure that each of you are properly advised in regard to the disputed matter. In addition, should your disagreements become too numerous or too serious, it will become necessary for me to cease representing either StartUp or the two of you, if not forced into having to withdraw from this matter entirely.

Furthermore, if you choose to have me represent you jointly, then understand that neither of you should assume that anything you say to me will be held in confidence from the other as I will have a legal and ethical duty to tell the other anything that one of you tells me in confidence; but only if it has any relevancy at all to 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 me 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.

Finally, I am required to advise you both to seek advice from independent counsel in order to help you decide if you should consent to this joint representation. The decision as to whether or not you actually seek this outside advice is up to you.

**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.



Feel free to take whatever time is necessary to think about and discuss all that I have set forth here; but be advised that I am unable to commence my representation of you both until a copy of this letter has been signed and returned. If you have any questions that you would like to discuss prior to making this decision, please don't hesitate to ask. Otherwise, if your decision is to consent to being jointly represented, please date and sign the one of the enclosed copies of this letter and return it to me at your earliest convenience.

Sincerely,

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We hereby consent to the representation as set forth above:

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Ms. Cheryl Jones

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Dated

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Ms. Shirley Smith

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Dated

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