

Sample Small Business Formation Joint Representation Conflict Waiver

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Meet Mark:

Mark Bassingthwaighte, Esq., serves as Risk Manager at [ALPS](#), a leading provider of insurance and risk management solutions for law firms. Since joining ALPS in 1998, Mark has worked with more than 1200 law firms nationwide, helping attorneys identify vulnerabilities, strengthen firm operations, and reduce professional liability risks.

He has presented over 700 continuing legal education (CLE) seminars across the United States and written extensively on the topics of risk management, legal ethics, and cyber security.

A trusted voice in the legal community, Mark is a member of the State Bar of Montana and the American Bar Association and holds a J.D. from Drake University Law School. His mission is to help attorneys build safer, more resilient practices in a rapidly evolving legal environment.



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{Date}

[Client Name 1]

[Client Name 2]

[Address]

Re: Proposed Formation of [Insert name of proposed entity] ("Company")

Dear _____,

You have asked me to represent both of you jointly in connection with the formation of the Company, including preparation of organizational documents and addressing initial governance and ownership matters.

Unless otherwise agreed in writing, I will also represent the Company as an entity once formed. You understand that representation of the Company does not create a separate attorney-client relationship with either of you individually beyond the joint representation described here.

Joint representation can be efficient and cost-effective, but it is permitted only when all clients understand the limits on what I can, and cannot, do if your interests diverge. This letter is intended to ensure that we begin our working relationship with a clear, shared understanding of those limits.

1. Current Alignment of Interests

During our initial discussion, you both indicated that you have reached agreement on the major terms of your new venture. Based on what you shared, it appears you have agreed on matters such as: [Insert agreed-upon terms: ownership percentages, capital contributions, compensation structure, management roles, etc.]

These understandings form the basis for my ability to represent you jointly at this time.

2. Possibility of Future Disagreements

Even when clients are aligned at the outset, disagreements can arise as documents take shape or as new issues surface. For example, you may not yet have fully resolved: [Insert examples: voting rights, transfer restrictions, buy-sell terms, dissolution procedures, dispute-resolution mechanisms, etc.]



If either of you changes your position on an issue, or if an unexpected disagreement emerges, my ethical obligations prevent me from advocating for one of you against the other.

3. Limits on My Role if a Disagreement Arises

If a conflict develops between you, my role becomes limited to:

- Identifying options available to resolve the issue
- Explaining the general pros and cons of each option
- Encouraging each of you to seek **independent legal counsel** for individualized advice

I cannot negotiate on behalf of one of you against the other, nor can I take sides. If the conflict becomes significant or unmanageable, I may be required to:

- Withdraw from representing both of you; and/or
- Withdraw from representing the Company.

4. No Confidentiality Between Joint Clients

By choosing joint representation, you both understand and agree that:

- **Nothing either of you tells me may be kept confidential from the other** if it is relevant to the matter.
- Communications with me are **not privileged as between the two of you.**
- If you want private, confidential advice, you must consult separate counsel.

This is a core feature of joint representation and cannot be waived.

5. Right to Seek Independent Counsel

I am required to advise each of you to consult with independent counsel before deciding whether to consent to this joint representation. Whether you choose to do so is entirely up to you, but you should make this decision with full awareness of the risks and limitations described above.

6. Consent and Next Steps



Please take whatever time you need to review and discuss this letter. I cannot begin work on your behalf until both of you have signed and returned a copy. If you have questions or would like to discuss any part of this before signing, I am happy to do so.

Sincerely,

[Attorney Name]

CONSENT TO JOINT REPRESENTATION

We have read and understand the conflict-of-interest disclosures above. We consent to joint representation of both individuals and the Company as described.

[Client 1] _____

Date: _____

[Client 2] _____

Date: _____