

We Aren't Married, But We Are Engaged to Our Attorney

Every estate planner has been presented with a client who wants to bring a spouse, child, or successor trustee to the attorney-client meeting. Attorneys often grapple with wanting to be accommodating and balancing the risk inherent to having a third-party present during attorney-client meetings.

What should an attorney disclose to a potential joint representation? The Texas Disciplinary Rules of Professional Conduct (“TDRPC”) has a whole section called the “Client-Lawyer Relationship”. As attorneys, we all had a law school class that dealt with professional responsibility. We were tested on it for our bar examination, but let’s be honest, over the years we may forget these useful rules or remember the jest of the rule but forget the exceptions that each rule contains. My suggestion is to make these rules your friend. Let’s review them and then discuss how this pertains to the attorney-client relationship and the creation of the engagement letter. See example 1.

TDRPC 1.01 states a lawyer should not perform work in a legal matter which is beyond the lawyer’s competence unless: (1) she works with another lawyer who is competent to handle the matter (getting informed consent from client first), or (2) if your client needs advice in an emergency, the lawyer should only take the steps necessary to provide assistance in that situation. A lawyer can limit the scope of representation if the client gives informed consent. Generally speaking, the client decides the objectives and the lawyer determines how to achieve those objectives. Rule 1.02 (c-g) discusses the type of work a lawyer cannot perform.¹

¹ Texas Disciplinary Rules of Professional Conduct Rule 1.02(c-g). A lawyer shall not assist a client in criminal or fraudulent behavior, a lawyer who knows that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts to dissuade the client from such act; and if the lawyer knows the lawyer’s services were used in a criminal or fraudulent act, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action. The lawyer cannot represent a client in work that is illegal or in violation of the TDRPC.

All lawyers have the duty to communicate. TDRPC Rule 1.03 states that attorneys have a duty to keep the client reasonably informed about the status of representation, to promptly comply with reasonable client requests for information and to reasonably explain the legal matter so that the client can make an informed decision.

TDRPC Rule 1.04 states that a lawyer shall not charge an illegal fee or an unconscionable fee. Factors to consider the reasonableness of the fee are as follows: time, difficulty and whether it will preclude the lawyer from accepting other work; fee customarily charged in similar area for similar service; amount involved and result obtained; time limitations imposed by client, nature and length of professional relationship with client; experience and reputation of the lawyer; and whether the fee is fixed, or contingent, upon results obtained. The fee agreement shall be in writing.

TDRPC 1.05 also imposes a duty of confidentiality. The general rule prohibits a lawyer from knowingly disclosing or using confidential information of client or former client. The reason for allowing confidential communication is clear. Attorneys want their clients to share information truthfully and trust the attorney not to use it to the client's disadvantage. Confidentiality includes both privileged and unprivileged client information. Privileged information is that which is protected by the lawyer-client privilege.² Unprivileged client information means all information relating to a client, or furnished by the client, and is acquired by the lawyer during representation.

A lawyer shall not knowingly reveal confidential information of a client or former client. The attorney shall not reveal confidential information unless the client consents. This is true whether the client is a current or former client. There are some

² Texas Rules of Evidence 503(b)(1). A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made during the course of the representation.

exceptions to this rule.³ A lawyer may reveal unprivileged information when the client has given implicit authorization, when it may benefit the client or when the lawyer has reason to believe it is necessary.⁴ The lawyer may reveal confidential information when expressly authorized, the client consents or the client's representative consents.⁵ Example 2 is an example of consent given for disclosure to the client's representative. Confidentiality of information applies to the attorney-client privilege of Rule 503 of the Texas Rules of Evidence, Rule 502 of the Texas Rules of Criminal Evidence, or Rule 501 of the Federal Rules of Evidence for the United States Courts and Magistrates.⁶

The TDRPC also imposes a duty of loyalty. The TDRPC states loyalty is an essential element in the attorney-client relationship. A lawyer cannot represent or continue to represent opposing parties in litigation. TDRPC 1.06 prohibits a lawyer from representing two people with opposing interests, in a substantially related matter that is directly averse to the interest of another client. A closer look at Rule 1.06 (c-f) provides some insight in representing clients with a conflict. Rule 1.06 uses the term "Directly Adverse". Directly adverse is defined as:

Representation of one client is directly adverse to the representation of another client if the lawyer's independent judgement on behalf of a client or lawyer's ability or willingness to consider, recommend or carry out a course of action will be or

³ Rule 1.05 allows for the disclosure of confidential information when it is necessary for the lawyer to due so to be in compliance with TDRPC, to enforce a claim or establish a defense in a controversy between lawyer and the client, defense to a criminal charge, to prevent the client from committing a criminal or fraudulent act, to correct the situation when the lawyer's services have been used in a criminal or fraudulent act.

⁴ To carry out representation effectively, defense against a claim of wrongful conduct, respond to allegations about lawyer's representation of the client or in a billing dispute.

⁵ There are other situations when a lawyer may reveal confidential information, these other situations are explained in TDRPC 1.05c(1-8).

⁶ Privileged applies if asserted by the client or the client's representation, but it does not apply if the confidential communication is offered in an action between clients who retained a lawyer in common; was made by any of the clients to the lawyer; and is relevant to a matter of common interest between the clients.

is reasonably likely to be adversely effected by the lawyer's representation of, or responsibilities to, the other client.⁷

A lawyer should evaluate the client's individual interests, goals and objectives in estate planning. Are one client's individual interests directly adverse to the other client's interests and vice versa? If yes, the lawyer cannot represent both clients.

TDRPC 1.07 governs when an attorney jointly represents multiple clients in the same matter. Joint representation is possible when joint clients have common goals and interests that outweigh potential conflicting interests. Usually a husband and wife do not want to hire separate attorneys to draft their Wills. Even if the husband and wife have some different goals, their overall plan may be similar enough that both husband and wife want to keep legal fees down and use the same attorney to draft their estate planning documents.⁸

An examination of case law regarding estate planning and conflicts yields some interesting and incredible lapses of judgement. Debra Bassett argues in "*Three's a Crowd: A Proposal to Abolish Joint Representation*" that there are too many risks to joint representation.⁹ Joint representation unnecessarily divides an attorney's loyalty. Bassett argues that lawyers cannot inform their clients of all future possible conflicts, nor can they anticipate all situations where a conflict might arise. Bassett believes that waivers for joint representation have three flaws: possible coercion, client misunderstanding and lawyer self-interest.

Bassett's concerns may be well founded in *Moran*,¹⁰ a case involving multiple conflicts. The law firm handled all legal matters of the estate. The same law firm

⁷ TDRPC. Rule 1.06 comment 6.

⁸ Please do not construe this statement to mean all conflicts are waivable. In cases where husband and wife have a large difference in wealth, completely opposite views on post death gifts, or the attorney observes an obvious power difference between spouses are a few examples of possible conflicts between married couples. In all of these cases the better course is to have each spouse retain their own attorney. Certainly, there are other fact patterns that would also warrant separate representation.

⁹ Bassett, Debra. *Article: Three's a Crowd: A Proposal to Abolish Joint Representation*. 32 Rutgers L.J. 387 (2001).

¹⁰ *Vinson & Elkins v. Moran*, 946 W.W.2d 381, 386 (Tex. App. Houston [14 dist.] 1997).

had numerous ties with a bank, who was a co-executor of the estate. Principal attorneys had leadership roles in the same bank, in a family business created by the estate and other companies doing business with the estate. The law firm wanted to represent the estate in the sale of one of the family businesses and sought a waiver of conflict from the estate, but the waiver only disclosed that the purchasing company was also a client of the firm. The law firm disclosed none of the other conflicts. The firm argued that the conflicts had been disclosed, the executors signed off on the conflicts and that each attorney in the firm handled the conflicts as they felt was best. The holding was that the law firm breached its fiduciary duties.¹¹

Can an attorney overcome self-interest and fully inform the clients of a conflict or a potential conflict? Should an attorney represent husband and wife? Parent and child? Trust and beneficiary? Business and various owners? In joint representation, a lawyer is typically expected to find solutions to common goals or conflicts. How does an attorney reconcile the TDRPC rules and fairly represent two clients in a joint representation? The attorney owes all clients a duty to communicate, of loyalty and of confidentiality. The attorney should ask him/herself:

1. Are the clients' interests' material and directly adverse¹² to each other?¹³
2. Can the attorney be loyal to each client?
3. How will the attorney handle confidentiality within the joint representation?
4. Will the representation be adverse to the responsibility of another client, the lawyers or law firm's own interests?¹⁴

¹¹ *Vinson & Elkins v. Moran*, 946 W.W.2d 381, 386 (Tex. App. Houston [14 dist.] 1997).

¹² TDRPC Rule 1.06 comment 6.

¹³ TDRPC Rule 1.06(B)1.

¹⁴ *Id.* At Rule 1.06(b)2

5. Have all clients affected, or potentially affected, consented to such representation after full disclosure.^{15,16}
6. Is the conflict due to a prior representation? Generally, the rule is that the attorney may not represent them in a dispute of the same matter unless prior consent is obtained from all parties.¹⁷
7. If the attorney later discovers a conflict during the representation, then the lawyer should withdrawal to the extent necessary to avoid violation of any of the TDRPC.¹⁸

Russell G. Pearce in “*Proceeding of the Conference on Ethical Issues in Representing Older Clients: Family Values and Legal Ethics: Competing Approaches to Representing Spouses,*” stated that in joint representation the lawyer should require a waiver with full disclosure to each party of assets involved and the planning adopted by each spouse.¹⁹ TDRPC Rule 1.07 states a lawyer shall not act as an intermediary between clients unless:

- (1) The lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved; the effect on the attorney-client privileges and obtains each client’s written consent to the common representation;
- (2) The lawyer reasonably believes that the matter can be resolved without the necessity of contested litigation on terms compatible with the clients’ best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and
- (3) The lawyer reasonably believes the common representation can be undertaken impartially and without improper effect of the other responsibilities the lawyer has to any of the clients.²⁰

¹⁵ *Id* at Rule 1.06(c)1-(2).

¹⁶ *Id.* at comment 7.

¹⁷ *Id* at Rule 1.06(d).

¹⁸ *Id* at Rule 1.06(e).

¹⁹ Pearce, Russell G., 62 Fordham L. Rev. 1253 (1994). n. 175

²⁰ Texas Lawyers Professional Ethics. Texas Young Lawyers Association. 4th Edition 2007 State Bar of Texas. Chapter 2 pg. 46-47.

Example 3 is an example of waiver language that the author has used when representing joint clients. This would be presented after an in-depth conversation about the pros and cons of a joint representation and is included in the engagement letter. If one of the clients in the joint representation refuses to sign the waiver, it would be advisable not to proceed with the representation. Even after joint representation has begun, if either of the clients request the joint representation to end or the attorney to withdraw, then the lawyer will have to withdraw and not continue to represent either of the clients. The same rule applies to any lawyer in the same law firm.²¹ The lawyer must remember the rules of confidentiality and privilege. In a joint representation, the lawyer is required to keep each client adequately informed and maintain confidentiality of information (with the exception of between the clients).²²

Today, estate planning attorneys have non-traditional clients. In fact, is there even a typical estate plan? In my practice, I have clients that are blended families, unmarried but cohabitating opposite couples (sometimes with children in common), married or unmarried same sex couples and couples that are “together” but not cohabitating. Life has gotten complex in the year 2017. Where does this leave the estate planning attorney? Jennifer Tulin McGrath states that these “non-traditional” couples can waive conflicts of interests as long as the conflicts are subordinate to their common objectives. McGrath even takes it a step further and argues that joint representation of a non-traditional couple is superior than each client being represented by their own attorney.²³

Each potential conflict will have its own set of factors to weigh. In considering everything discussed herein and a mindful consideration of TDRPC Rules 1.05, 1.06 and 1.07, an estate planner may determine that the particular conflict

²¹ *Id.*

²² *Id.* at Chapter 2 page 48.

²³ McGrath, Jennifer Tuline, Article: *The Ethical Responsibilities of Estate Planning Attorneys in the Representation of Non-Traditional Couples*, 27 Seattle U.L. Rev 75 (2003) pgs. 121-125.

is waivable. With each client's full disclosure and informed consent, the attorney can represent another client with opposing, or potentially opposing interests, so long as the lawyer reasonably believes the representation of each client will not be materially affected and each potentially affected client consents to the representation after full disclosure of the conflict and possible adverse consequences of the joint representation.²⁴

Engagement letters are an effective way to handle informed consent. In an engagement letter the attorney can outline the scope of representation, explain confidentiality and loyalty, outline the potential conflict and ask the clients to agree to a waiver of the conflict and address how the attorney may handle future conflicts that are yet unknown.²⁵

In *Mecom v. Vinson & Elkins*, two sisters were beneficiaries of various trusts. For over 20 years the same law firm represented both sisters. One particular attorney was involved in the representation of both sisters and each of their spouses. Eventually one of the sisters and her husband decided to sell their royalty interest in a ranch. The law firm represented the wife, the trust and also the primary creditor (a bank which held the liens against the ranch). The law firm advised the couple that the trust had already hired the firm. The parties were told by the firm that unless there was a waiver the firm would not prepare the documents. Husband consulted wife and waived the conflict as did the trustee of the trust. There is no mention of whether the bank waived the conflict or whether the other parties were told that the firm represented the bank.²⁶ Interestingly, the court upheld the waivers despite the fact that the husband signed the waiver and not the wife (her separate property via her

²⁴ 7 Tex Jur Attorneys at Law §186.

²⁵ Tremble Eyster, Constance, *Engagement Letters and Common Conflicts of Interest in Joint Representation* (2009).

²⁶ *Mecom v. Vinson & Elkins*, No.01-98-00280-V, 2001 LEXIS 3088 (Tex. App.-Houston [1st Dist.] May 10, 2001).

interest as a beneficiary in a trust).²⁷ This case highlights the importance of waivers, although it would be prudent to get the waiver from all relevant parties rather than just one party signing for both. Again, please remember that a careful reading must be made of TDRPC Rule 1.06 “Conflict of Interest” and Rule 1.07 “Conflict of Interest: Intermediary”. Both rules apply to all joint representations. Not all joint representation may be entered into, or should be entered into.

The waiver found in example 3 is for a married couple, the author no longer makes the distinction in her engagement letter regarding whether they are same sex or heterosexual marriage partners. Post *United States v. Windsor*²⁸ and *Obergefell v. Hodges*²⁹ the distinction no longer matters. Currently, there may need to be a greater focus on the disclaimers for couples that are not married. Therefore, the author adds the additional language found in examples 4 and 5 to highlight whether or not the couple views themselves as married by common law definition.

For cohabitating but unmarried couples, the author believes it is important to take the waiver a step further and have the clients state that if they terminate their relationship they understand that Texas Estate Code §751.053, 123.151, 1022.001, 123.151, 112.031 and 123.001 and also Texas Family Code 9.301³⁰ will not apply to them. Obviously, the clients will be unfamiliar with such code sections and it will be important that the lawyer explains their meaning as it applies to an unmarried couple and bequests under a Will or a fiduciary appointment. The author has used language found in example 6 for a cohabitating non-married couple.

What happens when you draft the estate planning documents for an unmarried, cohabitating couple and the couple subsequently separates. One or both individuals remembers the lawyer’s admonishment to update their own estate plans

²⁷ *Id.*

²⁸ *United States v. Windsor*, 699 F.3d 169, 2012 United States S. Ct.

²⁹ *Obergefell* 576 U.S. ____ 2015.

³⁰ Various code provisions that revoke gifts and fiduciary appointment to former spouses or the family of the former spouse.

upon separation/termination of the relationship. If one of the client calls wanting to update his/her own documents, can the lawyer proceed? TDRPC Rule 109 states that without consent a lawyer cannot represent only one of the clients of a former joint representation in a subsequent matter that is adverse to other former joint client. This rule does not prohibit representation if there is consent.³¹ In this situation it may be better for the attorney to state he/she is prohibited from the new representation, unless both parties consent to the new representation. The author has only proceeded in such a representation a handful of times and both of the former clients each signed their own new engagement letter with the disclosure found in example 7.

Until now, this paper has discussed several rules of TDRPC and the use of engagement letters and waivers. The focus has been on who can, or cannot be, the client. It is now time to focus on the scope of representation. Each estate plan should be tailored to the individual goals and objectives of the client. While an estate planning attorney may discuss the pros and cons of a revocable Living Trust, Will, a Medical Power of Attorney or Statutory Durable Power of Attorney, how many estate planners are having conversations about a Declaration of Guardianship, an Appointment for Disposition of Remains, a Cohabitation Agreement, and a Declaration and Registration of Informal Marriage?

A Declaration of Guardian of the Person can be an extremely useful document. To avoid families fighting over the right to make decisions about personal residence upon incapacity, couples in non-traditional relationships should consider creating a Declaration of Guardian. We have all heard horror stories of a non-married, homosexual couple with one partner denied the rights to make medical decisions. What about the right to determine personal residence upon incapacity? The same familial conflict may also be present with non-married, heterosexual couples; blended families; and/or marriages by common law. §1104.202 of the Texas

³¹ TDRPC Rule 1.06(d).

Estates Code allows for a person to designate a guardian of a person or of the estate, if the person subsequently becomes incapacitated. The court shall appoint the person designated to serve as guardian in preference to any other person entitled to serve (unless the so designated person is disqualified or not in the Ward's best interest). This declaration may be wholly in the declarant's handwriting or attested to in front of two credible witnesses who are at least 14 years of age and not named as the guardian.³² Additionally, the declaration may also disqualify an individual from serving as a guardian of the person or estate. The disqualification language must be signed by the declarant and may be acknowledged by a notary instead of being attested by two witnesses. §1104.204 of the Texas Estates Code Declaration of Guardian is attached as example 8.

A traditional family may disagree about a decedent's post death plans: cremation or burial, religious or non-religious, service or graveside burial. The choices are endless. Add in some dysfunctionality and there is bound to be trouble. The Texas Health & Safety Code §711.002 states that if a decedent has left directions in writing for the disposition of his/her remains, then those should be honored; but in lieu of directions the following persons, and in the following order, have the right to control disposition and burial decisions:

1. Surviving spouse,
2. Adult surviving children,
3. Any surviving parent of decedent,
4. Any of the decedents surviving adult siblings,
5. Duly qualified executor of estate, or
6. Any adult in the next degree of kinship.

Nowhere on that list is named the live-in boyfriend of 20 years (who the family all despises because he never married their daughter/sister). If the daughter/sister loves

³² Texas Estates Code. §1104.202.

him and trusts him to make burial decisions, then she probably should create an Appointment for Disposition of Remains.³³ See example 9.

Cohabiting is increasing in frequency. The 2010 U.S. Census Bureau estimated that 7.5 million unmarried couples live together (15 million people). Of that 7.5 million unmarried cohabitating couples, forty percent of those have children.³⁴ A cohabitation agreement can deal with personal property, disclose assets and income, assign household expenses and responsibilities, discuss how the parties deal with property during the relationship, life insurance, marriage, parenting of children, support and termination provisions. A cohabitation agreement can be a very complex document and is beyond the scope of this lecture. There have been several good lectures and forms in recent Estate Planning & Probate Drafting courses.

Finally, if two people present who claim they are common law married and want to undergo estate planning, it is a good idea to discuss the requirements to prove an informal marriage. There is a document available online called the “Declaration and Registration of Informal Marriage.” It has to be signed and sworn to in front of the county clerk by both parties and for a nominal fee, their common law marriage will be validated. See example 10. This document may be particularly useful if one, or both, of them have children from a prior marriage who may oppose the “common law” status at death of their parent as it will impact their own inheritance rights.

As an attorney, it is important to discuss these potentially uncomfortable issues with each of our clients in order to determine if these types of documents may be an important part of the estate plan. Not only should attorneys be aware of conflicts that may arise from the attorney-client relationship, but attorneys should also make reasonable efforts to learn family history and dynamics in order to ascertain if dysfunctional family dynamics will present upon the client’s incapacity or death. It is

³³ Texas Health and Safety Code §711.002(b).

³⁴ <https://www.census.gov/population/www/socdemo/Inc-Opp-sex-2009-to-2010.pdf>

our duty to draft documents that will fulfill our client's wishes and in a manner that will successfully implement their estate plans.

**DISCLAIMER: THESE ARE EXAMPLES OF
WAIVERS THE AUTHOR HAS USED IN THE
PAST AFTER EXAMINING THE POTENTIAL
CONFLICTS. IT IS UP TO YOU TO EVALUATE
YOUR OWN CLIENTS AND POTENTIAL
CONFLICTS. THE EXAMPLES MAY NOT
PROTECT YOU IN A SUBSEQUENT DISPUTE**

Example 1 -- Sample of a basic engagement letter:

Jane Q. Smith
123 Estate Lane
McKinney, Texas 75069

**PRIVILEGED AND
CONFIDENTIAL**

RE: Engagement of the Oliai Law Firm, PLLC to represent Jane Q. Smith

Dear Jane:

I appreciate your decision to engage Oliai Law Firm (“my Firm”) to provide legal representation to you. I look forward to this engagement and am confident that you will be pleased with the quality of work performed and promptness of communication.

The purpose of this letter is to define the scope and terms of representation:

Scope of Representation

Last Will and Testament
Statutory Durable Power of Attorney
Combination Medical Power of Attorney with HIPAA Release and Directive to
Physicians
Declaration of Guardian
Agent to Control Remains
Revocable Living Trust
Pour-Over Will
Certificate of Trust
Special Warranty Deed
Transfer on Death Deed

My representation does not include rendering any income tax advice. You must seek such advice from your accountant. I will be advising you regarding the federal estate tax.

Fee Agreement

cc: Jane Smith

I have read the foregoing letter and understand its contents. I consent to having Oliai Law Firm, PLLC and you represent me on the terms and conditions set forth.

Example 2 – Consent for disclosure:

I consent to the disclosure of confidential information to

_____.

Dated _____

Jane Q. Smith

Example 3 -- Joint representation, usually married couples:

I have read the foregoing letter and understand its contents. I understand that the rules of confidentiality do not apply in the discussions between <client 1>, our attorney and me. I also understand that if litigation happens as a result of this representation then the attorney-client privilege will not protect such communications.

I consent to having Oliai Law Firm, PLLC represent me on the terms and conditions set forth. I understand that all communication will be open between us (client 1, client 2 and our attorney). I further understand that, if a conflict of interest should arise between myself and my spouse, ethical obligations may require Oliai Law Firm, PLLC to either (1) withdraw as the lawyer of both of us or (2) may only represent one of us as a client and the other one of us would be required to retain another lawyer to represent him or her.

I have had the opportunity to ask questions and understand the issues of joint representation. I further understand that I may seek independent counsel, but have requested joint representation.

Dated _____
_____ <CLIENT 1>

Dated _____
_____ <CLIENT 2>

Example 4 -- Joint Clients, common law marriage:

We have represented to Oliai Law Firm, PLLC that we are husband and wife. Although we have never been married in a civil or religious ceremony, we agree that we are married, we have lived together in the State of Texas for more than two years as husband and wife and we have held out to the public that we are husband and wife. I want us to be listed as husband and wife on our individual estate planning documents. Additionally, I swear that I am not related to my spouse as an ancestor or descendant, by blood or adoption; a relative of whole or half-blood; or by adoption; or a current or former stepchild or stepparent of my spouse. I further understand that I may seek independent counsel, but have requested joint representation.

Example 5 -- Unmarried couple, does not want common law marriage:

We have represented to Oliai Law Firm, PLLC that we are not husband and wife and have never been married in a civil nor religious ceremony and we are not married under the definition of common law. We do not want to be defined as a married couple in any of our estate planning documents. I further understand that I may seek independent counsel, but have requested joint representation.

Example 6 -- Unmarried couple, either heterosexual or homosexual:

I have read the foregoing letter and understand its contents. I consent to having Oliai Law Firm, PLLC represent me on the terms and conditions set forth. I understand that all communication will be open between the three of us. I understand that the rules of confidentiality do not apply in discussions between us (client 1, client 2 and our attorney). I also understand that if litigation happens as a result of this representation that the attorney-client privilege does not apply and will not protect any such communication.

I understand that certain laws that apply to married couples with regard to gifts, beneficiary designations and fiduciary appointments and the protection married couples automatically have upon divorce do not apply to me/us as an unmarried couple. It will be my responsibility to update my own estate plan if we separate or terminate the relationship.

I further understand that, if a conflict of interest should arise between me and my partner/significant other, ethical obligations may require Oliai Law Firm, PLLC to either (1) withdraw as the lawyer of both of us or (2) may only represent one of us as a client and the other one of us would be required to retain another lawyer to represent him or her.

I understand that I may seek independent counsel, but have requested joint representation.

Example 7 -- Former joint clients who are now separating:³⁵

I have read the foregoing letter and understand its contents. I consent to having Oliai Law Firm, PLLC represent me on the terms and conditions set forth. I release the former joint representation of <client 1> and myself.

I understand that a disclosure to <client 1> will be limited to the acknowledgment that updates to my estate plan are being made and that gifts and fiduciary appointments to <client 1> will be deleted, but no other information will be disclosed. All other new information discussed between me and my attorney is confidential and privileged, although I recognize that the prior representation is still governed by the rules contained in the engagement letter regarding attorney-client privilege and confidentiality as it pertains to that work. I give my consent so that Oliai Law Firm, PLLC may update <client 1>'s estate plan as well as my own.

³⁵ Not all cases may be waived. I only use this waiver in a situation that I reasonably believe I can represent both clients with loyalty and fairness. Additionally, it must be with both clients' consent.

Example 8 -- Declaration of Guardian:

**DECLARATION OF GUARDIAN IN THE EVENT OF
LATER INCAPACITY OR NEED OF GUARDIAN**

I, JANE Q. SMITH, make this Declaration of Guardian to operate if the need for a guardian of my person or estate ever arises. This Declaration of Guardian shall revoke any prior Declaration of Guardian I may have made.

1. I appoint my partner, SAMUEL A. BROWN, to serve as guardian of my person. The guardian of my person shall have all rights and powers to perform all the tasks necessary to care for my person, and shall serve without bond if permitted by State law.

2. I appoint my partner, SAMUEL A. BROWN, to serve as guardian of my estate. The guardian of my estate shall have all rights and powers to perform all the tasks necessary to care for my estate, and shall serve without bond if permitted by State law.

SIGNED on the ____ day of _____, 2017.

JANE Q. SMITH, Declarant

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2017, by JANE Q. SMITH.

Notary Public, State of Texas

Example 9 -- Appointment for Disposition of Remains:

I, JANE Q. SMITH, with an address of 123 Storybrook Trail, McKinney, Texas 75069, being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by my partner, JOHN B. SMITH, in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact). All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

I direct my agent to dispose of and give my body, after my death, to the University of Tennessee, Knoxville, Forensic Anthropology Center for education and research purposes. I understand my remains will not be returned to my family.

AGENT:

Name: SAMUEL A. BROWN
Address: 123 Storybrook Trail
McKinney, Texas 75069
Telephone Number: 972-334-5678

SUCCESSOR:

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if I divorce my agent or successor agent and this instrument does not state that the divorced agent or successor agent continues to serve after my divorce from that agent or successor agent, I hereby appoint the following person to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

Name: SALLY SMITH
Address: PO Box 110
Pecatonica, IL 61088
Telephone Number: 815-239-1234

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

SIGNATURES:

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting pursuant to this appointment must indicate acceptance of the appointment by signing below before acting as my agent.

Signed on this the _____ day of _____, 2017.

JANE Q. SMITH, Principal

Example 10 -- Declaration and Registration of Informal Marriage:



DECLARATION AND REGISTRATION OF INFORMAL MARRIAGE, _____ COUNTY, TEXAS

The form and content of this application is prescribed by section 2.004 of the Texas Family Code.

WARNING: IT IS A FELONY TO FALSIFY INFORMATION ON THIS DOCUMENT. THE PENALTY FOR KNOWINGLY MAKING A FALSE STATEMENT ON THIS FORM OR FOR SIGNING A FORM WHICH CONTAINS A FALSE STATEMENT IS 2 TO 10 YEARS IMPRISONMENT AND A FINE OF UP TO \$10,000. (HEALTH AND SAFETY CODE, CHAPTER 195, SEC. 195.003)

Applicant One	First Name	Middle Name	Current Last Name	Suffix
	Woman's Maiden Name (If Applicable)			Telephone Number
	Street Address	City	State	Zip
	Date of Birth	Place of Birth (including city, county and state)	Social Security Number	

I am not related to the other applicant as: TRUE FALSE

- an ancestor or descendant, by blood or adoption;
- a brother or sister, of the whole or half blood or by adoption;
- a parent's brother or sister, of the whole or half blood or by adoption;
- a son or daughter of a brother or sister, of the whole or half blood or by adoption;
- a current or former stepchild or stepparent; or
- a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

I solemnly swear (or affirm) that we, the undersigned, are married to each other by virtue of the following facts: on or about _____ we agreed to be married, and after that date we lived together as a married couple and in this state represented to others that we were married. Since the date of marriage to the other party I have not been married to any other person. This declaration is true and the information in it which I have given is correct.

Applicant's Signature and Date Signed

Applicant Two	First Name	Middle Name	Current Last Name	Suffix
	Woman's Maiden Name (If Applicable)			Telephone Number
	Street Address	City	State	Zip
	Date of Birth	Place of Birth (including city, county and state)	Social Security Number	

I am not related to the other applicant as: TRUE FALSE

- an ancestor or descendant, by blood or adoption;
- a brother or sister, of the whole or half blood or by adoption;
- a parent's brother or sister, of the whole or half blood or by adoption;
- a son or daughter of a brother or sister, of the whole or half blood or by adoption;
- a current or former stepchild or stepparent; or
- a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

I solemnly swear (or affirm) that we, the undersigned, are married to each other by virtue of the following facts: on or about _____ we agreed to be married, and after that date we lived together as a married couple and in this state represented to others that we were married. Since the date of marriage to the other party I have not been married to any other person. This declaration is true and the information in it which I have given is correct.

Applicant's Signature and Date Signed

For County Clerk Office Use Only

Subscribed and sworn to before me on _____, 20____ at _____ am/pm
_____ County Clerk _____ County, Texas
By _____ Deputy
Applicant One Identification Type (ID & Age) _____ License Number _____
Applicant Two Identification Type (ID & Age) _____ Volume _____ Page _____

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