

Table 6 – Joint Representation and Waivers Fact Patterns

Criminal:

- Husband was arrested for domestic violence committed against Wife. Wife told the arresting officer that Husband busted down the bedroom door, broke the bureau mirror, and slapped her. Husband told the officer that they were bickering, he broke the mirror, and Wife scratched him on the back of the neck after punching the mirror. Their teenage daughter reported that Husband slapped Wife and threw her into a wall. That's when Daughter called the police. Husband was released on PR bail and not to contact Wife or be with 100 feet of her.
- Wife retained Attorney to lift the no-contact condition of the bail so Husband could return home.
- Attorney called Husband to obtain his consent to appear on his behalf at the bail hearing. The bail order was modified, but the judge expressed concern about the dual representation.
- Attorney represented Husband in the criminal matter.
- Rules in play: 1.7(a), 1.9(a), 1.1, 8.4(a)

Wills and Trusts:

- Husband and Wife schedule a meeting looking to make “sweetheart wills” for each other. At the meeting, the couple explains that they have two kids together, and they are secondary heirs. Things go smoothly until Husband asks if he can speak to Attorney alone because he has some questions. Wife is a little surprised but leaves. After Wife has left the room, Husband explains when he was younger, he was a wild man. When he was twenty, he got a woman pregnant. They were a couple for a little while because of the pregnancy. The GF eventually left him because of his wild ways, and he didn't care much because he had at least another seven years before he even thought about finding the right woman. Husband was not present at the time of birth and did his best to avoid child support. The GF got married two years later to a nice man who had acted as the child's father since age one. The GF and her husband moved to Michigan shortly thereafter. Within the year, GF asked the Husband to terminate his rights to the child so her husband could adopt the three-year-old. Still in his wild phase, Husband readily agreed because it would stop his child support obligations. Now, later in life, Husband wants to give something to this child something through his will, but he does not want Wife to know about it because he's never told her about the child.
- Rules in play: 1.1, 1.4, 1.6, 1.7, 1.16, 1.18

Corporate:

- You receive a call from two members of a closely held three member LLC. The third member of the LLC has filed suit against the other two alleging that they wasted corporate assets and usurped corporate business opportunities. The two LLC members contacting you want you to represent both of them in the lawsuit.
- Questions:
 - Can you represent both LLC members? If yes, do you need a waiver, what should it say, and how should it be documented?
 - Who, if anyone, represents the LLC? Does the LLC need to be a named party in the lawsuit? What facts would help answer this question?
 - Assume the same scenario as above, and add that your law firm previously represented the LLC and one of your partners wrote the LLC operating agreement. How does this impact whether you can represent the two LLC members being sued by the third member?
 - Assume that upon a review of the facts you have determined you can appropriately represent the two LLC members and you schedule a meeting to discuss the case and review relevant

client documents. During the meeting, you learn that one of the two members has not reported income or distributions from the LLC on her tax return for the last several years.

- Does your representation of the two LLC members extend to representation on the tax issue?
 - How does the tax issue impact your ability to represent the two LLC members?
- Rules in play: 1.6, 1.7, 1.13