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**CONFLICTS DISCLOSURE LETTER**

**Disclosure of Potential Conflicts of Interest in  
Situations Where Joint Representation Occurs;  
Consent to Representation Despite Potential Conflicts**

Whenever an attorney considers the representation of two or more parties which have, or potentially might have, conflicting interests, the Rules of Professional Conduct of the State Bar of California require that the possibility and nature of such conflicting interests be disclosed to the potential clients. Although this letter is long and may seem unduly formal, it contains important information which you need to know. Please read what follows closely and carefully.

First of all, this letter will confirm that the two of you have asked me (and this firm, the Law Offices of F. Michael Hanson), to assist you in your estate planning affairs (which may include long term care planning and related asset preservation planning). I can do this, of course, but this arrangement has certain consequences which you need to understand.

A Diminished Attorney Client Privilege. Any **individual** client typically possesses an "attorney-client privilege" which prevents the attorney from disclosing, to any other person, the contents of any discussions that client has had with the attorney. However, when I am representing both of you at the same time, this privilege gets "watered-down" somewhat. In other words, because you are both my clients, anything which one of you discusses with me must be disclosed to the other. I cannot discuss things with, or advise, either of you individually or privately unless the other has or receives full knowledge of the discussions we have had. In short, the Rules of Professional Conduct of the State Bar of California (the ethical rules which we as lawyers are obligated to follow) prohibit me from agreeing with either of you to withhold information from the other.

In addition, should the two of you ever become involved in any lawsuit against one another, neither of you will be able to invoke the attorney-client privilege concerning any communication made by me, or to me, in the course of my joint representation of the two of you, and either of you may compel me to testify in court concerning any communication made in the course of that representation.

Of course, anything which either of you discusses with me or communicates to me (or with or to any other member of this firm), is privileged from disclosure to any third party (Note: in the course of assisting you, employees in this office may become familiar with information you provide to me, or I to you, but no third person outside of this office will have access to any of the information you have provided me, or the discussions we have had, unless such disclosure is necessary to complete some aspect of the estate planning we are pursuing on your behalf. The other attorneys and employees in this firm understand the nature and importance of this confidentiality and the legal privilege which protects it).

A Loss of Independent Advocacy. Because you are both retaining me to assist you in your estate planning, I cannot do what we as lawyers are typically famous for doing, that is, arguing for a particular client's position. If the two of you should have a difference of opinion concerning your estate plan, or if a disagreement arises between you during the estate planning process, I can point out the advantages and disadvantages of your different positions. However, the Rules of Professional Conduct prohibit me, as the lawyer for both of you, from advocating one of your positions over the other. In short, I cannot "take sides" with one of you against the other if any differences or disagreements should arise.

Serious Disagreements or Irresolvable Conflicts of Interest May Require Separate Representation. Where minor disagreements between you will ordinarily not affect my ability to represent each of you fully and fairly, serious disagreements may indicate the presence of a conflict of interest which may make it impossible for me to continue my representation of both of you in a manner consistent with my ethical and professional obligations. If such a conflict of interest does arise between the two of you, regarding any aspect of the work I am to perform for you, and the conflict is of such a nature that it is impossible in my judgment to perform my obligations to each of you in an ethical and professional manner, it will become necessary for me to withdraw as your joint attorney, and advise both of you to obtain other and separate attorneys to represent you.

Examples of Common Issues Which are (or Lead to) Conflicts of Interest. Some of the most common concerns (and possible areas of "conflict") which couples can have are:

- (1) the concern over what is "husband's property" and what is "wife's property", and the related concern over what is "community property" and what is "separate property";
- (2) the desire to leave one's assets to the other spouse (to the spouse who survives), and also leave those same assets to one's children of a current or former marriage, or to one's own family members;

(3) the risk that the surviving spouse may get remarried or involved with a new partner and then decides to change the manner in which the estate is to be distributed at the surviving spouse's death; one of you may want to have the estate plan provide protections against this possibility, and the other of you may not;

(4) where one spouse wants the estate assets distributed one way, and the other spouse wants them distributed in a completely different manner;

(5) how one can preserve and protect (or recover) his or her "separate property" in the event of an unexpected dissolution of the marriage;

(6) where one of you becomes incapacitated and your spouse (or child or other person) is acting as the trustee over your trust, or as your financial agent (under a power of attorney) and will, at that time, have an almost unlimited authority over your financial affairs;

(7) where one of you must be placed in a nursing facility, and Medi-Cal benefits are needed to pay for that care. In order to protect assets and qualify for Medi-Cal, it may be necessary to transfer virtually all of your assets into the name of the other spouse alone. And the other spouse will then be under no obligation to make those assets available to the spouse in the nursing facility (or even follow the distribution provisions of the original estate plan; in other words, the other spouse would be in a position to "re-write" the distribution provisions of your estate plan and change how your estate is to be distributed);

(8) where the person(s) you have selected as a successor trustee, executor, or agent has retained our office to assist them in the administration or settlement of your trust and/or other financial affairs, or your personal affairs, and that successor trustee, executor, or agent has an opinion or approach, which might ultimately be different from yours, as to how your trust or some other aspect of your personal or financial affairs should then be managed (Note: and for this reason you might prefer, under the options described on the last page of this document, that our office not have the ability to consider representing and assisting your successor trustee, executor, or other agent).

This is not an exhaustive list. There may be other "conflicts" or related concerns of which you are aware, or which might later arise. The most important aspect of this (or the "bottom line" here, so to speak) is that the solution to such conflicts and related issues can often be complicated. Sometimes they can appear to be, or actually are, incapable of being resolved to everyone's satisfaction. For these reasons some clients might prefer to have their own separate and independent attorneys.

Each person having his or her own attorney is certainly the best way to protect

everyone who is involved in this process; especially if a serious disagreement or conflict of interest should ever arise. On the other hand, many people prefer to work with one attorney or one lawfirm - viewing the alternative (that is, multiple attorneys) as overly complicated and unnecessarily expensive.

Obtaining Separate Representation and Advice is Always an Option. In any event, you should both know that either one of you can discontinue my services at any time, and obtain a separate attorney of your own choosing. Either one of you can also, and at any time, hire a separate attorney "on the side" (even while I am still working for the two of you) to review and advise you on what we have discussed and the documents I have presented for your consideration.

The Rules of Professional Conduct of the State Bar of California also require that the two of you sign this letter before I represent you and begin working on your estate plan.

To signify that you understand and consent to the matters discussed in this letter, please date and sign in the spaces on the next page.

Thank you.

Law Offices of F. Michael Hanson

Dated: \_\_\_\_\_

By: \_\_\_\_\_

We have read this Conflicts Disclosure Letter.

We understand that in the course of your representation of us that there will be: a diminished attorney-client privilege, the loss of independent advocacy, the potential for conflicts of interest between us, and the fact that we each have the right, which can be exercised at any time, to retain our own separate attorney and/or to terminate your representation of either or both of us - all as described in this letter.

Nonetheless, we both agree that you may represent the two of us jointly under the conditions set forth in this Conflicts Disclosure Letter.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Husband

\_\_\_\_\_  
Wife

(Optional):

We also agree that in the event either of us becomes mentally incapacitated, or passes away, you have permission to consider representing and assisting the other spouse.

\_\_\_\_\_  
(initials-Husband)

\_\_\_\_\_  
(initials-Wife)

(Optional):

We also agree that in the event of our death or incapacity, you have permission to consider representing and assisting any other person we or either of us have selected to act as a successor trustee, executor, agent under our financial power of attorney, and agent under our power of attorney for health care.

\_\_\_\_\_  
(initials-Husband)

\_\_\_\_\_  
(initials-Wife)