

Co-Counsel Representation Agreement



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Co-Counsel Agreement
Re: **[Client Name and Matter Number]**

The purpose of this document (Agreement) is to confirm and clarify the rights and responsibilities of **[ATTORNEY/FIRM A]** and **[ATTORNEY/FIRM B]**¹ (the Parties) to associate in the representation of **[CLIENT]** (Client) in the matter of **[DESCRIPTION OF LEGAL ISSUES OR CASE THE ATTORNEYS ARE AGREEING TO UNDERTAKE]** (Case)²

This agreement does not preclude the Parties from entering into different agreements regarding other matters.

1. The Parties will be jointly responsible for the case and have advised Client of this joint responsibility and the basis upon which we are sharing the fees, settlement or judgment. The Parties shall not assign or transfer any interest in this Agreement, nor assign or transfer any of the services to be performed under this Agreement, without the prior written consent of the other party.

¹ **[Practitioner's FN]** When considering entering into a co-counsel relationship with an attorney about whom little is known, investigate the attorney before committing to the relationship. At a minimum, confirm the lawyer is admitted to practice in the jurisdiction and conduct an Internet search of the attorney's name. You might also ask for recommendations or references, conduct a background check, interview the attorney, and/or contact area judges or attorneys who practice in the same field in order to ask about prospective co-counsel's qualifications and reliability.

² **[Practitioner's FN]** Carefully and specifically describe the joint undertaking. Sometimes this will be clear (e.g., a case name and number). But if the undertaking is more ambiguous, limited, or complicated, then take the time now to detail the undertaking so that each party clearly understands the scope of the agreement. E.g., **[FIRM B]** will associate on this matter and provide assistance on all pre-trial matters and will "second chair" the case at trial. This joint undertaking is anticipated to include, but may not be limited to, work on all of the following: witness preparation, trial strategy, motions in limine, mediation, arbitration, jury instructions, trial brief, voir dire, jury questionnaire, all pre-trial court filings, trial, and any post trial work such as a petition for fees.

2. [FIRM A or FIRM B] will assume the role of lead counsel.³ Lead counsel shall be responsible for directing the course and conduct of the litigation and ensuring that the matter is prosecuted in a timely and professional manner. Lead counsel shall also determine the assignment of specific task responsibility to all attorneys participating in the case. The Parties agree to work cooperatively and to keep each other apprised of all developments in the case, including communications with the client, court and opposing counsel. Lead counsel will have primary responsibility for communicating with Client. The Parties agree to provide each other with courtesy copies of all correspondence, pleadings, and discovery requests and responses (exclusive of the documents produced). The Parties also agree that absent compelling circumstances, neither of the Parties will file pleadings without the agreement of the Parties as to the substance and timing of the filing of the pleading. The names of all participating attorneys will appear on all pleadings, and the principal drafter will sign the pleading.

3. The Parties shall have the opportunity to review and comment on every press release before it is released to the media. To the extent feasible, the Parties should consult with each other before any attorney working on the matter contacts or provides comment to the media.

4. Each of the Parties will: (i) be solely responsible for its own actions in connection with the Case; (ii) carry out its work on the Case in compliance with applicable law, rules of court and the California Rules of Professional Conduct; (iii) maintain its own professional liability coverage;⁴ and (iv) pay for its own overhead costs such as rent, telephone calls, secretarial time or payment of salaries for attorneys or paralegals working on the Case. Neither of the Parties assumes any responsibility or other liability for the other's actions including, without limitation, malpractice, unethical behavior or violation of the [STATE] Rules of Professional Conduct, and each understands and acknowledges that it is not covered by the other's professional liability coverage.

³ [Practitioner's FN] Written documentation of roles should always be given to the client, especially if one attorney will have a very limited role in the matter.

⁴ [Practitioner's FN] Exchange a copy of everyone's declaration page to their malpractice policy so you have a written record of coverage.

5. This Agreement shall terminate at the conclusion of the litigation. However, any co-counsel may withdraw from representation prior to the conclusion of the litigation, provided that such withdrawal is consistent with the Rules of Professional Conduct for the State Bar of [STATE JURISDICTION] and the applicable provisions of [STATE] law.

6. [Firm A or Firm B] will advance all costs and expenses of the Case not paid for by Client. [Firm A or Firm B] will maintain complete and correct records of all such costs and expenses. [Firm A or Firm B] will not incur any litigation expenses exceeding [\$500] without approval from [Firm B or Firm A].

7. Parties each agree to maintain a complete, detailed and contemporaneous record of time to the nearest [1/10] of an hour spent by any timekeeper (lawyer, law clerk, legal assistant) in connection with this Case. The Parties will disclose their time and expense records to the other promptly upon request.

8. Parties will divide any attorneys' fees, costs and expenses recovered by means of a court order or settlement agreement as follows⁵:

(a) First, all costs and expenses will be reimbursed to the party that paid them. If the court order or settlement is insufficient to reimburse all such costs, the Parties will allocate the available funds in the same proportion as the costs were incurred, unless some other allocation is specified by settlement or court order.

(b) If expenses and fees recovered by settlement or court order exceed the amount to be repaid to counsel under Section 8(a), the balance after such payments will be reimbursed on a pro rata basis, based on the total lodestar (the number of hours reasonably expended

⁵ [Practitioner's FN] For purposes of this Agreement [Practitioner's FN], litigation expenses shall include filing fees, court fees, certified reporters' fees, other fees in connection with depositions, fees for service of process, photocopying costs, mailing/shipping costs, long distance telephone calls and faxes, consultant fees, witness fees, payments to expert witnesses, necessary travel costs, and any other fees or expenses arising from this litigation. Litigation expenses do not include overhead costs such as rent, local telephone calls, secretarial time or payment of salaries for attorneys or paralegals working on this case.

by each party multiplied by the historic hourly rate of each party), unless some other allocation is specified by settlement or court order.

- (c) Expenses that are reduced or disallowed by the court or discounted by settlement will also be deducted on a pro rata basis, based on the proportion of the total expenses, and will not be borne only by the party whose costs and expenses have been reduced, disallowed, or discounted.

9. Liability for fees, costs or sanctions assessed directly against attorneys in this case shall be shared equally by [FIRM A] and [FIRM B], if they result from decisions or conduct jointly approved by both parties. If, instead, the assessment resulted from actions taken outside the generally agreed-upon litigation strategy or from one party's conduct then in that case, the firm or agency employing the attorney responsible for those actions shall be deemed liable for the assessment. Nothing in this agreement shall be considered as acceptance of responsibility or liability on behalf of any of the individual attorneys for the fees, costs or sanctions imposed.

10. If any disputes regarding this agreement arise at any time, the Parties shall attempt to resolve any such dispute through good faith efforts. If, after good faith efforts, the Parties are unable to agree, then the Parties will seek resolution of any such dispute by submitting the said dispute to binding arbitration in front of a mutually agreeable arbitrator. The Parties agree to be bound by such ruling and the prevailing party shall be awarded the costs and attorney fees of any dispute resolution proceeding. However, any costs or fees required to initiate arbitration shall be borne by each party in equal parts.

11. In providing the scope of services outlined herein, the Parties shall comply with all applicable laws, ordinances, and codes of the federal, state, and local governments. This agreement is governed by laws of [STATE].

12. The Parties knowingly and expressly disclaim and hereby waive any right or ability to assert the lack of enforceability of this Agreement or to challenge the adequacy of enforceability of this Agreement before any court, arbitrator or mediator.

13. This agreement shall be effective upon the signature of both Parties, and may be executed in parts, and an electronic signature shall be valid and binding. This Agreement constitutes the full and complete agreement between the Parties. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

14. It is expressly understood and agreed by the parties that if any paragraph or any provision or portion of this Agreement is held to be invalid, illegal, or void, then and in such event, any paragraph, provision, or portion so held to be invalid, illegal, or void shall be deleted from this Agreement, and this Agreement shall be read as though such invalid, illegal, or void paragraph, provision, or portion was never included herein, and the remainder of such Agreement excluding such invalid, illegal, or void paragraph, provision, or portion shall remain in being and continue with full force and effect.

DATED this _____ day of [Month, Year].

[FIRM A ATTORNEY]
[Firm Contact Information]

[FIRM B ATTORNEY]
[Firm Contact Information]