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Third-Party Waivers and Why We Sometimes Need Them

As your trusted estate planning attorney, if we do not have an immediate answer or solution for you, we can often get one by contacting another attorney or advisor who works in an area that falls outside of our expertise—a vetted professional that we have developed working relationships with or perhaps your trusted advisor who can be brought in to enhance the services provided to you.

When this happens, we must adhere to specific ethical guidelines, including those outlined in the American Bar Association's (ABA) Code of Professional Conduct Rule 1.6,¹ regarding client confidentiality and obtaining informed consent before disclosing information related to your planning. According to ABA Model Code Rule 1.6, "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent."²

Attorney-Client Privilege

You are surely familiar with attorney-client privilege—confidential communications between you and your attorney stay between you and your attorney. This is one of the oldest legal privileges, with boundaries respected by the courts. However, there are times when attorney-client privilege is waived, such as when information is shared outside of the attorney-client relationship.

Lawyers often include other individuals as part of their "team," specifically to provide the best and most comprehensive representation to their client. For example, lawyers may often seek out a trusted accountant, tax advisor, financial planner, or insurance agent to help translate complex financial information, tax strategies, or policy information for advanced estate planning. However, when these individuals are brought in, we want to make sure that you are informed and protected.

The Third-Party Waiver Form

In situations where nonclients, including your family members and advisors, are integral to the estate

planning process, we may ask you to sign a third-party waiver form. This form serves a dual purpose:

1. It allows us to share confidential information that is otherwise protected by the attorney client privilege with relevant third parties to complete the estate planning process.
2. It allows third parties to be present during our estate planning meetings where sensitive details are discussed.

The third-party waiver is not only an ethical requirement but it also serves as a practical tool for permitting effective communication and collaboration among various experts. This can help to cultivate a comprehensive and transparent approach to estate planning. By seeking informed consent through the third-party waiver, we adhere to legal and ethical standards that prioritize your best interests.

Knowing What to Expect from Your Estate Planning Attorney

If you are ready to start the estate planning process and have other trusted advisors you feel would help the process, you can expect to sign a third-party waiver form. Your privacy is of the utmost importance. If you want to include family members or friends in your estate planning meetings, you will need to sign a waiver permitting us to share your private planning information with them as well. In some instances, we have found it helpful to include family members in a meeting once the estate plan is complete, especially if those individuals have been given a role as an executor, trustee, or agent under a financial or medical power of attorney. We will explain what their roles involve and your intentions for them in decision-making processes. We can be there to provide them with advice and support and navigate tough conversations if needed.

We are your attorneys, and it is our responsibility to represent you and your interests. In some areas of the law, this may mean excluding people; however, in estate planning, it may be to your benefit to include outside professionals, family members, or loved ones. Regardless of the situation, we are here for you to ensure that you have an estate plan that is comprehensive and carries out your wishes.

¹ *A state may have its own specific rule.*

² *Model Code of Pro. Resp. R. 1.6(a) (Am. Bar Ass'n 1980),*

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/.