

Section 1.08: Joint representation of codefendants

5. Sometimes one of the defendants represented by a lawyer will take the stand to testify in his or her own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. However, the lawyer may not be able to do that because he or she cannot ask the defendant as a witness about anything that the defendant has told the lawyer in confidence.
 6. The best defense for a single defendant often is the argument that while the other defendants may be guilty, he or she is not. A lawyer representing two or more defendants cannot effectively make such an argument.
 7. Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, the lawyer might offer or object to evidence that could help one defendant but harm another.
 8. Regarding sentencing, dual representation would prohibit the lawyer from engaging in post-trial negotiations with the government as to full disclosure by one defendant against the other. It would also prohibit the lawyer from arguing the relative culpability of the defendants to the sentencing judge.
- F. An attorney proposing to represent codefendants should be required to assure the court that there will be no conflict that could result in a lack of effective assistance of counsel or other prejudice to any defendant.
- G. Consider recommending that defendant consult with other, independent counsel about the wisdom of waiver. Offer to make CJA counsel available (if appropriate) and allow adjournment for that purpose.
- H. If defendant wants to waive the right to separate counsel, get a clear, on-the-record oral waiver by him or her of the right to separate counsel. In addition, you may want defendant to sign a written waiver.