

ARRANGING FOR THE JOINT DEFENSE

Eric J.R. Nichols
Beck, Redden & Secrest, L.L.P.
One Houston Center
1221 McKinney Street, Suite 4500
Houston, Texas

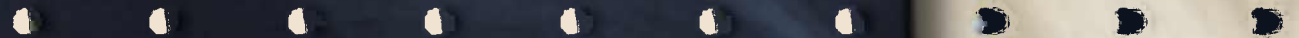
State Bar of Texas

WHITE COLLAR CRIME FOR THE CIVIL PRACTITIONER



**“By uniting we stand, by
dividing we fall . . .”**

John Dickenson, *The Liberty Song*, 1768



Why the Joint Defense Agreement?

- Advantages of Written (or Oral) Joint Defense Agreement
 - Binds parties to terms (enforceable contract)
 - Memorializes intent of agreement
 - Promotes sharing of information
 - Reduces costs for client
 - Allows specification of duration of privilege

Why the Joint Defense Agreement?

- Advantages of Written (or Oral) Joint Defense Agreement
 - Avoids controversy over potential disqualification issues
 - Allows advance notification of third-party requests for information
 - Can provide remedies for breach of agreement (injunctive relief)
 - Allows specification of information to be shared

Why the Joint Defense Agreement?

- Advantages of Written (or Oral) Joint Defense Agreements
 - Sets scope of “confidential” information
 - Can limit scope of “joint defense” obligations (e.g., settlement)
 - Allows for coordination of civil and criminal defense

Why the Joint Defense Agreement?

- Disadvantages of Joint Defense Agreements
 - Adverse inference drawn by regulators or prosecutors
 - Can restrict options in dealing with ongoing regulatory or criminal investigation
 - Imposes additional responsibilities, especially if not tailored
 - Danger of disqualification motion

