

JOINT REPRESENTATION

In this case several defendants are being represented by the same attorney. That does not mean that you are to regard them as if they were one person. Each of these defendants is entitled to your separate consideration of the evidence concerning him (or her), even if they are represented by the same counsel. The question of whether guilt has been proven beyond a reasonable doubt is personal to each defendant, and you must decide it as to each defendant individually. It is completely irrelevant how many lawyers there are in the case.

"In criminal cases, the potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one codefendant On the other hand, common representation of persons having similar interests is proper if the lawyer reasonably believes the risk of adverse effect is minimal and all persons have given their informed consent to the multiple representation, as required by [1.7](b)." Comment 7 to Mass. R. Prof. C. 1.7, 430 Mass. 1301 (1999).

This model instruction is not offered to encourage joint representation of multiple defendants, but to acknowledge that it sometimes occurs in the District Court for minor offenses, where counsel has investigated and found no potential conflict of interest.

Judges have an affirmative duty to assure themselves by due inquiry of counsel and/or defendants that no conflict exists, including a colloquy with jointly represented defendants "to assure that each defendant is adequately informed of the risks and potential dangers of joint representation and that each acknowledges an understanding of this information." *Commonwealth v. Davis*, 376 Mass. 777, 784-785, 384 N.E.2d 181, 188 (1978). See District Court Committee on Criminal Proceedings, *Model Colloquies* at 7-11 (rev. June 2007).