

CAN YOUR CO-DEFENDANT BE YOUR LAWYER?



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You and a friend who happens to be a lawyer are arrested in the same incident. It feels efficient — even comforting — to have her handle your defense. The law's answer is a careful "no, and here's why."

The short answer

Suppose you and your friend Julia are arrested together after the same incident. Julia is a licensed attorney. The natural impulse is to lean on the person you trust who also happens to know the system from the inside. May she represent you?

In theory, yes. In practice, she should not — and a court may forbid it outright. The reasons are not bureaucratic fussiness. They go to the structural realities of how two co-arrestees' interests behave once charges are filed, and to rules of professional conduct that exist precisely to protect a defendant from the lawyer's well-meaning but compromised loyalty. The short version: each of you needs your own lawyer.

The right to counsel of choice

Start with what the Constitution does promise. The Sixth Amendment guarantees more than a warm body at the defense table; it protects your ability to choose the advocate you trust. As the Supreme Court put it in [United States v. Gonzalez-Lopez](#), the Amendment commands "that the accused be defended by the counsel he believes to be best."

That is a meaningful right. If you have the means and the relationship, you are generally entitled to retain the lawyer you prefer rather than accept one assigned to you. So the instinct to choose Julia is not, by itself, legally naive. The problem is that the right to counsel of choice is qualified, not absolute — and the qualification is exactly the situation you are in.

Why the right yields to conflict

The Court drew the boundary in [Wheat v. United States](#). There, multiple co-defendants in a drug conspiracy wanted to share a single attorney, and the trial court refused to allow it. The Supreme Court agreed with the refusal, explaining that the "essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers."

Read that sentence twice, because it reframes the whole question. The point of the right is an *effective* advocate, not merely a *preferred* one. When the preferred lawyer cannot be effective for you — because she is pulled in two directions — the preference gives way.

Critically, *Wheat* also makes clear that the trial judge does not have to wait for disaster. The Court held that trial courts enjoy "substantial latitude in refusing waivers of conflicts of interest," and may decline a waiver even where only "a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses." So even if you and Julia both sign a paper saying you understand the risks and want her anyway, the judge can still say no. The court is protecting the integrity of the proceeding, not just your present wishes.

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The concurrent-conflict problem

Now to the heart of it. Why are two co-arrestees a conflict in the first place? Because their interests are structurally opposed, whether they feel that way on the night of the arrest or not.

Pennsylvania's [Rule of Professional Conduct 1.7](#) forbids a lawyer from undertaking a representation tainted by a "concurrent conflict of interest." Such a conflict exists, the Rule provides, where "the representation of one client will be directly adverse to another client." Co-defendants are close to a textbook example.

Consider how a shared-arrest case actually unfolds. One defense is "it was him, not me." Another is "I didn't know what she was doing." The prosecutor often rewards the first person to cooperate with a better deal, which means there is a live incentive for one of you to point at the other. A lawyer representing both of you cannot pursue the finger-pointing defense for one client without betraying the second. She cannot negotiate the first-mover cooperation bargain for one of you without selling out the other. Every move that helps Julia's case may quietly hurt yours, and she would be the one making those moves.

The deepest danger is not that your friend would deliberately favor herself. It is that a single lawyer cannot give undivided loyalty to two people whose best outcomes may require throwing each other under the bus. Loyalty that must be split is loyalty you don't actually have.

This is why the conflict is "concurrent" and not hypothetical. It is baked into the relationship the moment you are charged together. A lawyer who is also a co-defendant carries that conflict in the most acute form imaginable, because her own liberty is on the line in the very case she would be running for you.

The lawyer-as-witness problem

There is a second, independent obstacle, and it would exist even if Julia were a disinterested attorney rather than a co-arrestee. [Rule of Professional Conduct 3.7](#) provides that "A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness," subject only to narrow exceptions.

Think about what Julia actually knows. She was there. She was arrested in the same incident. She can testify to where you both were, what was said, what each of you did or did not do. A person who was present at the events giving rise to the charges is, almost by definition, a fact witness. The jury may need to hear from her directly.

The rule against the advocate-witness exists because the two roles are incompatible. An advocate argues; a witness reports facts under oath and is cross-examined. A jury cannot cleanly separate Julia-the-lawyer arguing your case from Julia-the-witness whose own credibility is being tested. Letting one person occupy both chairs distorts the trial and confuses the fact-finder. Because a co-arrestee is so likely to be a necessary witness, Rule 3.7 alone would frequently bar the arrangement.

Why self-representation doesn't help

People sometimes reach for a clever workaround: if Julia can represent herself, and you trust her completely, can't she somehow extend that authority to cover you both? No. The Sixth Amendment, as recognized in [Faretta v. California](#), "implies a right of self-representation." But that right runs to one's own defense and no further.

Self-representation is exactly that — representation of *self*. It is the right to refuse a lawyer and speak for yourself in your own case. It is not a license to represent anyone else, and it does not transform a friend's willingness to help into a recognized form of cross-representation. There is no constitutional doctrine that lets one defendant lawyer for a co-defendant simply because they are close, or because one of them happens to hold a bar card.

What to do instead

The practical answer follows cleanly from everything above: each of you needs separate counsel. Julia should retain her own lawyer, and you should retain yours. Each attorney can then do what the Sixth Amendment actually guarantees — give one client undivided loyalty, pursue that client's best defense without hesitation, and be obliged to testify against no one.

That separation also frees you and Julia to make the hard strategic decisions honestly. Maybe your interests really are aligned and your lawyers coordinate a joint defense; maybe they diverge and one of you cooperates. Either way, you each have an advocate whose only job is you. If you find yourselves arrested together, resist the comfortable shortcut. The most loyal thing your lawyer friend can do is insist that you get your own lawyer — and find her own.

Authorities Cited

1. Pa. R.P.C. 1.7 — <https://www.padisciplinaryboard.org/for-attorneys/rules/rule/3/the-rules-of-professional-conduct>

2. Pa. R.P.C. 3.7 — <https://www.law.cornell.edu/regulations/pennsylvania/204-Pa-Code-r-3.7>
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 4. United States v. Gonzalez-Lopez, 548 U.S. 140 (2006) — <https://supreme.justia.com/cases/federal/us/548/140/>
 5. Faretta v. California, 422 U.S. 806 (1975) — <https://www.law.cornell.edu/supremecourt/text/422/806>
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