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Multi-Representation for the Business Lawyer- 2020 Revisited

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**MULTI-PARTY REPRESENTATION FOR THE BUSINESS LAWYER
2020 REVISED**

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MULTI-PARTY REPRESENTATION FOR THE BUSINESS LAWYER 2020 REVISTED

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1. INTRODUCTION

Commonly, the lawyer will represent multiple parties at the same time. Often, this type of representation occurs in a family context. When forming a business entity, the lawyer may represent an original client while non-clients are recruited as investors. The investors may look to the lawyer as their lawyer.

Despite risks or the appropriateness of concurrent representation of multiple business owners or family members, this is common practice among lawyers. For lawyers who think of themselves as counselors, not litigators, intertwined multiple representation is recognized and even perhaps encouraged. Clients may even be better served by such representation. It is economical and offers coordination of the business or family goals. The common goals predominate over narrow, individual and possibly inconsistent interests. Much of legal work is and should be non-adversarial.¹

The ABA has recognized this reality in a formal opinion,

[c]onsiderable efficiency is gained through having one lawyer or firm manage the legal affairs of all family members. The firm learns about family businesses, assets, documents, and personalities and thus is able to provide quality representation requiring less time.²

Ethical rules dictate standard of conduct to which attorneys should conform. They are quasi-statutory and enforced by disciplinary proceedings and represent standards of conduct.³

¹ Am. C. Of Tr. & Est. Couns. Found., Commentaries on the Model Rules of Prof'l Conduct 91 (5th ed. 2016) [hereinafter "ACTEC COMMENTARIES"]. One of the main themes of the ACTEC Commentaries is "the utility and propriety, in this area of the law, of representing multiple clients, whose interests may differ but are not necessarily adversarial." Am. C. of Tr. & Est. Couns. Found., Commentaries on the Model Rules of Prof'l Conduct Reporter's Note (1st ed. 1993). Mary F. Radford, Ethical Challenges in Representing Families in Family Limited Partnerships, 35 ACTEC J. 1 (2009).

² ABA Comm. on Ethics and Prof'l. Responsibility, Formal Op. 02-428 (2002), n.2 (citing Am. C. of Tr. & Est. Couns. Found., Commentaries on the Model Rules of Prof'l Conduct 149-50 (3d ed. 1999)).

³ See Tex. Disciplinary Rules Prof. Conduct preamble ¶ 10, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G, app. A (West 2019) (Tex. State Bar R., art. X § 9) ("The Texas Rules of Professional Conduct define proper conduct for purposes of professional discipline."). Sealed Party v. Sealed Party, No. CIV.A.H-04-2229, 2006 WL 1207732, at *8 (S.D. Tex. May 4, 2006) ("The [Texas Disciplinary Rules of Professional Conduct] are quasi-statutory and are

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