

CONFLICTS OF INTEREST, DISQUALIFICATION RISKS, AND ATTORNEY-CLIENT PRIVILEGE CONSIDERATIONS IN LIMITED LIABILITY COMPANY MEMBER DISPUTES

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Typical issues to consider

- **Successive representation: May counsel for the LLC subsequently represent the then-controlling members in a derivative action?**
- **Must the LLC engage independent counsel to represent the business itself in a derivative action by a minority member?**
- **Must a waiver of any conflict or approval of permissive indemnification be made only by a majority vote of disinterested members?**

- Does representation of the LLC impose duties on counsel to individual LLC members?

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Typical fact patterns

- LLC's regular outside counsel represents LLC in various transactions, provides advice, prepares organizational documents (e.g., buy-sell agreement).
- Minority member files suit, alleging some type of improper self-dealing or oppression.
 - Failure to follow company agreement

- **Excluding minority member from management of the company**
- **Fraud or waste of the assets of the business**
- **Termination of minority member's employment in conjunction with required book value or other low-dollar buyout**
- **Denying minority member information about the business**

- **Suit asserts claims both individually on behalf of the minority member, and derivatively on behalf of the company.**
- **Controlling members engage regular outside counsel to represent them individually in the suit**
 - **Regular outside counsel has confidence of controlling members, historical experience with the company.**

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