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## Multi-Party Representation of an Organization in Formation

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July 7, 2021, Austin, Texas

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### Introduction: Reality of Multi-Party Representation

#### Practical Realities

- Most lawyers work for organizational clients.
- Most lawyers jointly represent individuals at some time.
- Most lawyers represent families.
- Most lawyers wants to be helpful.

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### Absent an organization:

Absent an organization, ethics rules:

- Demand sensitivity to potential conflicts of interest among individuals seeking joint representation.
- Forbids joint representation when conflicts too great.

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### Absent an organization:

Joint representation is cumbersome & fragile

- Cumberse – joint representation requires unanimity. Notice is required to everyone.
- Fragile – each client can terminate his or her relationship with the lawyer at will. Former client can veto representation of others for substantially related matter.

[Brennans', Inc. v. Brennans' Restaurants, Inc., 590 F.2d 168, 172 \(5th Cir. 1978\)](#) (holding that when one or more clients withdraw from a joint representation the lawyer may not continue to represent one without consent of the others).

Lawyer should initiate ending representation when conflict goes beyond mutual consent.

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## Basic Analysis: Presumptive Rules for Joint Representation

### Once an organization is adopted:

Everything changes.

- Representation is of the “entity” not the aggregate individuals.
- When there is internal conflict, lawyer does not need to withdraw.
- The entity rules allows the group to speak, listen and act without unanimity.
- Decisions can be made in the interest of the organization, not the individuals.
- Interests of organization can be identified separate from individuals.

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## Basic Analysis: Presumptive Rules for Joint Representation

### When Organization Form is Ambiguous

Sometimes,

- Formation of organization is too hasty or casual.
- Organizational structure not integrated to actual operation.
- Entity formed to get limited liability, but do not change their informal method of operation.

Then, ethics rules disregard the organization:

[Woods v. Superior Court, 197 Cal. Rptr. 185 \(Cal. Ct. App. 1983\)](#) (treating representation of two-person corporation as joint representation for conflicts purposes)

[Opdyke v. Kent Liquor Mart, 181 A.2d 579, 583-84 \(Del. 1962\)](#) (treating representation of three-person corporation as joint representation for the purpose of lawyer's fiduciary duty to provide information to clients).

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30<sup>th</sup> Annual LLCs, LPs and Partnerships session  
"Multiparty Representation —Entity Formation"