



Practical and Ethical Considerations in Joint or Multiple Representations

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OVERVIEW

- ✓ Joint or multiple representation defined
- ✓ The duty of loyalty
- ✓ The rule that permits joint representation: Rule 1.7(b)
- ✓ Things that can go wrong
- ✓ Advance waivers
- ✓ Confidentiality and privilege
- ✓ Fees and costs
- ✓ Limited the scope of representation
- ✓ Unintentional joint representations

JOINT REPRESENTATIONS COME IN MANY FORMS



For example:

- Multiple officers or employees
- Affiliated business organizations
- A business organization and an officer
- A business organization and third parties (e.g., former employees)
- One person who serves as trustee for two or more trusts
- Multiple minority shareholders against a majority shareholder



ADVANTAGES OF JOINT REPRESENTATION—AND THE ALTERNATIVE

- Efficient
- Economical
- Control
- Leverage against adversaries
- Separate representation





RISKS & DOWNSIDES

- Problems with sharing information—including confidential business information and privileged communications
- Tensions in “personalities” or litigation positions, including differing ideas on strategy
- Decision-making and communication difficulties
- Hidden conflicts of interest—sometimes grave conflicts—emerging mid-stream
- Settlement—a subject that can often lead to disagreement



SAFEGUARDS & SOLUTIONS

- Consider the matter carefully at the outset
- Draft a good engagement agreement
- Consider advance waivers
- Maintain good communication throughout the process
- Continually scrutinize the appropriateness
- Withdrawal



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