



Who is the client?

This seems like a simple question, but in the case of a company or other type of entity, the answer can have important ramifications for both the client and the attorney.

Often the client is the company and the lawyer represents the company itself. However, since entities are made up of various constituencies (including, in a corporation, shareholders, directors, officers, and employees), the lawyer may be called upon to represent one or more of them as well.

Interests can change as companies mature

Take the seemingly simple case of two individuals who want to form a company. At first glance, their interests seem to be the same – they want the company to be created so it can function as a legal entity. But their interests may not necessarily be aligned in regard to other issues. For example, how will the company be governed? Will the two individuals have equal rights? What happens if they disagree? The parties need to recognize when the interests diverge and whose interests the attorney represents. As a company matures, disagreements between the owners may arise, again requiring clarification about who is being represented. In some of these cases, the individuals may need to retain their own attorneys to represent their individual interests.

Common interests can quickly diverge during lawsuits

Similar problems may exist when the entity or one of its constituencies (a director or employee, for example) is involved in a lawsuit or is the subject of a criminal investigation. In such cases, while the entity and those individuals involved in the dispute or investigation may have a common interest in seeing the entity prevail in the lawsuit or the investigation, the interests of the entity and its various individual constituents may quickly diverge. Separate counsel for the various individual constituents may be prudent, and perhaps required.

Each party should be cognizant of the scope of the representation and the potential need for independent counsel. This review of representation should be done at the outset of the engagement and whenever a potential conflict situation arises. It's important that all parties understand the limitations and know who is representing their interests.

In the Field

Avoiding Disputes

Marc Laredo is chairing **Representing the Closely-Held Entity – How to Avoid Disputes and Resolve Them When They Arise**, a Massachusetts Bar Association continuing legal education course to be held on September 26 from 4-7pm. The program will also be available as a live webcast, allowing remote participants to ask questions during the program.

Since many problems can be avoided or minimized at the time an entity is formed, the discussion will include:

- a) selecting the proper type of entity;
- b) the appropriate structure of funding;
- c) the importance and type of written agreements and other documents for the owners; and
- d) tax compliance matters.

It will also include practical guidance on how to handle disputes that do arise.

Contact the MBA or sign up via www.massbar.org to attend.